

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1-150

VOLUME 24 of 47

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT # : 2003-0071-CR

1 IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, MISSISSIPPI

2
3 STATE OF MISSISSIPPI

4 V.

CAUSE NUMBER 2003-0071-CR

5 CURTIS GIOVANNI FLOWERS

6
7 *****

8 TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE TRIAL OF

9 THE ABOVE STYLED AND NUMBERED CAUSE, BEFORE HIS HONOR,

10 JUDGE JOSEPH H. LOPER, JR., CIRCUIT JUDGE, FIFTH CIRCUIT

11 COURT DISTRICT OF THE STATE OF MISSISSIPPI, AND A JURY OF

12 TWELVE MEN AND WOMEN, DULY IMPANELED, ON JUNE 4, 2010

13 THROUGH JUNE 19, 2010.

14 *****

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1 IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
2 FIRST JUDICIAL DISTRICT

3 STATE OF MISSISSIPPI

4 V. CAUSE NO. B2401-98-00960

5 CURTIS GIOVANNI FLOWERS

6 *****

7 TRANSCRIPT OF TWO MOTION PROCEEDINGS HEARD IN THE ABOVE
8 STYLED AND NUMBERED CAUSE BEFORE THE HONORABLE CLARENCE E.
9 "CEM" MORGAN, III, AT WHICH TIME VENUE HAD BEEN CHANGED FROM
10 MONTGOMERY COUNTY, MISSISSIPPI, WITH THE FIRST TRANSCRIPT
11 CONSISTING OF THE TESTIMONY, ARGUMENTS AND COURT RULING
12 CONCERNING DEFENDANT'S MOTION TO SUPPRESS WITNESS
13 IDENTIFICATION HEARD PRETRIAL OF FLOWERS II IN GULFPORT,
14 MISSISSIPPI, ON THE 6TH DAY OF JANUARY, 1999, BUT NOT THE
15 ENTIRE MOTION HEARING;
16 AND THE SECOND PORTION OF THE TRANSCRIPT BEING THE MOTION
17 HEARING HELD ON DEFENDANT'S MOTION TO SUPPRESS DEFENDANT'S
18 STATEMENT ON MARCH 26, 1999, ALSO IN GULFPORT, MISSISSIPPI,
19 WHICH HEARING WAS HELD DURING THE TRIAL OF FLOWERS II IN OPEN
20 COURT BUT WITH THE JURY OUT.

21 THESE TWO MOTION HEARINGS ARE INCLUDED WITH THE
22 TRANSCRIPT IN CAUSE NO. 2003-0071-CR IN THE CIRCUIT COURT OF
23 MONTGOMERY COUNTY, MISSISSIPPI, PURSUANT TO DEFENDANT'S
24 DESIGNATION OF RECORD AND COURT'S ORDER STRIKING PARTS OF
25 DEFENDANT'S DESIGNATION OF RECORD.

26 *****

27

28

29

1 APPEARANCES:

2 Present and Representing the State:

3 HON. DOUG EVANS

4 HON. KEVIN HORAN

5 HON. WALTER BLECK (Present for the March 26, 1999 hearing)

6 DISTRICT ATTORNEY AND ASSISTANT DISTRICT ATTORNEYS

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8 Grenada, Mississippi 38902

9

10 Present and Representing the Defendant:

11 HON. CHOKWE LUMUMBA

12 HON. HARVEY FREELON

13 LUMUMBA & ASSOCIATES

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15 Jackson, Mississippi 39286

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17 REPORTED BY LINDA F. BURCHFIELD, C.S.R. #1019

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1 (MOTION TO SUPPRESS EYE WITNESS IDENTIFICATION ON 1/6/1999
2 WAS AS FOLLOWS:)

3 BY MR. LUMUMBA: We have a Motion to Suppress
4 Eye Witness Identification.

5 BY THE COURT: Okay, well, let's break until--
6 how long do you think that is going to take, Mr. Lumumba?

7 BY MR. LUMUMBA: Counsel tells me it is going
8 to take 30 minutes.

9 BY THE COURT: Okay, why don't we break until
10 1:30, and in that time between 1:00 and 1:30, maybe y'all can
11 get together on your questions on the questionnaire. Maybe
12 you can get that thing faxed to you, and then we will proceed
13 and we will finish up. Court is adjourned until 1:30.

14 (FOLLOWING THE NOON RECESS ON JANUARY 6, 1999,
15 MOTION PROCEEDINGS CONTINUED IN OPEN COURT WITH THE COURT,
16 ALL COUNSEL, AND THE DEFENDANT BEING PRESENT:)

17 BY THE COURT: What did y'all decide about
18 your questionnaire?

19 BY MR. LUMUMBA: I didn't see them during
20 lunch. We were here, but apparently, they went out to
21 lunch. I just gave them the questions that I suggest. He
22 wanted to see the one actually from Hinds County. I called,
23 my secretary called the Public Defender's Office in Hinds
24 County, and they said they were going to fax it, and
25 apparently it hasn't been faxed yet.

26 BY THE COURT: Okay.

27 BY MR. LUMUMBA: She is checking back. So we
28 can proceed with the hearing if you would like.

29 BY THE COURT: We will do that, and then we

1 will get, we will do something on that before we leave
2 today.

3 BY MR. LUMUMBA: Okay.

4 BY THE COURT: I want to be in a position
5 where I can at least mail her the questionnaire by the first
6 of the week.

7 BY MR. LUMUMBA: Okay. Our first, we are
8 going to proceed on-- our first witness is going to be--

9 BY THE COURT: Which motion is this that you
10 are going to call up? The Motion to Suppress Identification?

11 BY MR. LUMUMBA: Identification, yes.

12 BY THE COURT: Okay.

13 BY MR. LUMUMBA: Our witness would be Mr.
14 Collins, Mr. Porky Collins.

15 BY THE COURT: Okay. Do you want to call all
16 the witnesses around that we are going to have on this and
17 let me swear them now? Somebody may want the rule invoked.

18 BY MR. LUMUMBA: Okay, yeah. The witnesses we
19 intend to call are Mr. Collins and the officers who were
20 present at the time that he made an identification.
21 Matthews, Mr. John Johnson, and one other gentleman.
22 Matthews and Miller.

23 BY THE COURT: Okay. Where are they?

24 (Some witnesses came into the courtroom.)

25 BY THE COURT: I need one more and then we
26 will be ready. (Pause) Let's go ahead and swear y'all, and
27 we will swear Mr. Johnson when the time comes.

28 (Witnesses sworn by the Court.)

29 BY THE COURT: All right. Mr. Collins, if you

1 will have a seat up here. You two gentlemen, I will ask
2 y'all to step outside, and if Mr. Johnson is out there, y'all
3 just tell him to wait, don't come in the courtroom.

4 **CHARLES "PORKY" COLLINS,**

5 upon being called to testify as a witness by the Defendant on
6 the Motion to Suppress Identification, having first been duly
7 sworn, testified as follows, to-wit:

8 DIRECT EXAMINATION BY MR. LUMUMBA:

9 Q. I believe they call you Porky Collins; is that
10 correct?

11 A. That's correct.

12 **BY THE COURT:** That was my fault. First state
13 your name for the record, please, sir.

14 **BY THE WITNESS:** Charles Collins.

15 **BY THE COURT:** Okay, now.

16 **BY MR. LUMUMBA:**

17 Q. Charles Collins; is that correct?

18 A. Uh-hum.

19 Q. But they call you Porky sometimes?

20 A. That's right.

21 Q. And Mr. Collins, if I'm not mistaken, you appeared
22 as a witness in this case at a trial which occurred some time
23 ago in Tupelo, Mississippi; is that correct?

24 A. That's correct.

25 Q. And you testified at that time concerning an
26 identification that you had made; is that correct? Or you--
27 well, let me strike that. You testified at that time with
28 respect to some observations that you said that you had made;
29 is that correct?

1 A. I don't understand what you are talking about.

2 Q. Did you testify at that time concerning
3 observations that you said you made on July the 16th, 1996,
4 around and about the Tardy grocery-- Tardy Furniture store?

5 A. That's correct.

6 Q. And would it be safe to say, Mr. Collins, that when
7 you testified, you had indicated that you had on that day
8 gone downtown; is that correct?

9 A. That's correct. I had several places to go
10 downtown.

11 Q. Yeah, and in fact, you have indicated that you went
12 downtown to go to the cleaners; is that correct?

13 A. That was one of the places; that is correct.

14 Q. But you never really went to the cleaners; is that
15 correct?

16 A. That's correct. Not at that time, no.

17 Q. In fact, you went downtown several times to go to
18 the cleaners--

19 BY MR. EVANS: --Your Honor, I object. This
20 motion is strictly on one thing, and that is
21 identification.

22 BY MR. LUMUMBA: Okay.

23 BY THE COURT: Well, I will let him lay a
24 predicate.

25 BY MR. LUMUMBA:

26 Q. Okay, all right. You testified that you went
27 downtown on at least two different occasions to go to the
28 cleaners; is that correct?

29 A. That's correct.

1 Q. Did you go two or three different times?

2 A. I went three times.

3 Q. Okay, and at no point did you wind up at the
4 cleaners; is that correct?

5 A. No. The third time I couldn't go get to the
6 cleaners.

7 Q. Okay, well, at no point did you get there the two
8 times before the third time; right?

9 A. No, I did not.

10 Q. And would it be safe to say that you also testified
11 that you had gone downtown to go to the bank; is that
12 correct?

13 A. That's correct.

14 Q. And you never got to the bank?

15 A. No, I did not because after this happened, they
16 closed the bank.

17 Q. I see. Okay, now and I think that you testified on
18 this day in question that at some point you went downtown,
19 and you saw a Miss, a lady who you knew that worked at
20 Tardy's; is that correct?

21 A. Carmen Rigby; that's right.

22 Q. Okay, and I think that you at some point followed
23 her from the post office to an area where you saw her going
24 into Tardy's; is that correct?

25 A. I followed her from the post office. We got into a
26 conversation in the post office. We followed, we walked out
27 talking to her car. She got in her car, and I pulled out
28 behind her going to-- she was going down Summit Street, and
29 she went to Tardy's. Yes, I was right behind her, and she

1 waved at me as she went through the door.

2 Q. Okay, you saw her at the post office at eight-- you
3 said around about 9 o'clock, did you?

4 A. There was a postal money order that I got at the
5 post office. They have got the correct time on it, and
6 that's when I saw her.

7 Q. Okay, was that--

8 A. --It was around 9 o'clock though.

9 Q. Okay. And did you also indicate or do you indicate
10 now that you actually saw her going into Tardy's around about
11 9:15?

12 BY MR. EVANS: Your Honor, again I object.
13 This is not a preliminary hearing or a discovery
14 hearing. This is a motion on identification only.
15 He is attempting to go through his entire
16 testimony, and that is improper on this motion.

17 BY THE COURT: Well, it may be, but I need my
18 memory refreshed as to what went on so I can get
19 the context of what we are talking about. So I'm
20 going to allow him to testify to it as long as you
21 don't drag it out, Mr. Lumumba.

22 BY MR. LUMUMBA: No, I am getting right to it.

23 BY MR. LUMUMBA:

24 Q. About 9:15, I think, is when you said you saw her
25 proceed into--

26 A. --I didn't say what time it was. I said it was
27 ever how long it took me and her to go from the post office
28 to the car and talk about two or three or four minutes, and
29 then ever how long it took her to go down there; that's when

1 I seen her go in. I never did give a time.

2 Q. Well, in any event once you saw her go in, I think
3 that you indicated that at that time you went back; you left
4 downtown. Is that correct?

5 A. That's right. I went to the cleaners, and there
6 was a lot of cars parked around the cleaners, and I can't
7 walk very far. I am handicapped. And what I had to get from
8 the cleaners was of no pressure. I mean I could have gotten
9 it any time. My wife just told me, she give me one of these
10 "honey do" lists of what to do that day, and that's what I
11 was doing.

12 Q. I see. But you didn't get into the cleaners?

13 A. Not at that time, I did not.

14 Q. I see. And in fact, you intended to go to the
15 cleaners, but you didn't because it was too many cars?

16 A. That's right.

17 Q. Okay. So you went back home?

18 A. I started back home, yes.

19 Q. All right, and--

20 A. I didn't go back home at that time.

21 Q. All right, and where did you go?

22 A. I went and paid my gas bill.

23 Q. Okay, then did you go home?

24 A. No, I did not. I was on my way home, and I got a
25 phone call. My wife called me on the car phone. I had
26 brought my other car down to a mechanic to have some plugs
27 and plug wires put on it. And I had picked up the wrong
28 plugs, and my wife called me and told me I had got the wrong
29 plugs. So I rode three or four miles south of Winona to Don

1 Mitchell's repair shop, picked up those plugs, and went to
2 Wal-Mart and swapped them and brought them back to Don
3 Mitchell's repair shop. Then I went home.

4 Q. Okay, let me just see. You got a call indicating
5 that Don Mitchell said he had the wrong plugs?

6 A. That's right.

7 Q. So you went all the way to Don Mitchell's; right?

8 A. That's right.

9 Q. And got the plugs he had?

10 A. Uh-hum.

11 Q. Then you went all the way back to the--

12 A. To Wal-Mart.

13 Q. --to Wal-Mart and swapped the plugs, or you got the
14 plugs you needed?

15 A. Got the right plugs; that's right.

16 Q. And then you went all the way back to Don
17 Mitchell's?

18 A. That's right. And they have got a copy of the
19 receipt from Wal-Mart. It'll tell you what time that was.

20 Q. Okay. And then after you went to Don Mitchell's
21 for the second time-- well, actually that was the third time
22 you had been to Don Mitchell's that day; right?

23 A. No, the second time.

24 Q. Hadn't you gone earlier that day to drop off your
25 car?

26 A. That's right. Went earlier that day-- well, the
27 third time; that's right. I went and picked them up; that's
28 right, the third time, yeah.

29 Q. Okay, and then after that, you went back to your

1 home?

2 A. That's right.

3 Q. Okay. Then at your home then you left again going
4 back to get the clothes; is that correct?

5 A. That's exactly right. I had left the money at home
6 for the clothes. The clothes was for my son, and he had left
7 the money there.

8 Q. Okay, you left--

9 A. --And I went back by there and got the money for
10 the clothes, and I went back to the cleaners, yes, sir.

11 Q. Okay. Well, so you had also forgotten the money
12 for the cleaners when you went downtown the first time;
13 right?

14 A. That's right. My wife told me-- it was laying on
15 the cabinet inside the house. I was at my wife's shop when
16 she give me the rest of the stuff, and she said go in there
17 and pick that stuff up. And I walked out of her shop, and I
18 was talking to a man outside the shop, and I forgot to get
19 the money.

20 Q. Okay, I see. So now, so without going into great
21 detail, it would be safe to say you really forgot to do, you
22 forgot quite a few things that day; is that correct?

23 A. I don't hardly think so.

24 Q. Okay. Well, you forgot to go to the cleaners. You
25 forgot to get the money for the cleaners?

26 A. Uh-huh.

27 Q. Isn't that right?

28 A. I forgot to get the money for the cleaners, but
29 that is nothing unusual. I imagine everybody does that.

1 Q. I see. Weren't you having some problems with your
2 memory because of some medication that you were on?

3 A. I take a lot of medication.

4 Q. Were you taking medication at that time?

5 A. I was taking medication at that time. I am taking
6 medication today.

7 Q. Okay, and medication affects your memory?

8 A. Well, I couldn't hardly say. I don't know how you
9 could-- a lot of times-- no, I wouldn't say it affects my
10 memory.

11 Q. Okay. One second here.

12 A. At the particular time I am taking that medicine at
13 times, but I hadn't just taken that medicine.

14 Q. Well, you testified at this point that you were
15 taking the medication at the time; isn't that correct?

16 A. I take the medication every day.

17 Q. One second. (Pause) Okay, we will come back to
18 the medication issue, and I will ask counsel to remind me to
19 come back to it. Okay, now it would be safe to say, Mr.
20 Collins, when you came back downtown the second time, this is
21 after you had gone to the Don Richards--

22 A. Don Mitchell.

23 Q. Don Mitchell, I'm sorry, on three different
24 occasions. This is after that; right. And this is after you
25 had come from Wal-Mart.

26 A. Uh-hum.

27 Q. And you went to Don Mitchell's once-- well,
28 actually twice before you went to Wal-Mart's and once after
29 you went to Wal-Mart?

1 A. That's correct.

2 Q. Right, okay. And you had gone by your house to get
3 the money that you had forgotten?

4 A. That's correct.

5 Q. You went back downtown, and at the time you got
6 back downtown, what street did you turn on?

7 A. Went down Summit Street and turned south on Main
8 Street.

9 Q. Is Summit Street the street that the bank is on?

10 A. That's right.

11 Q. Did you go to the bank at that time?

12 A. No, I did not because when I came to town, I came
13 up Church Street and turned down Summit Street.

14 Q. Okay. Did you stop anywhere else before you got in
15 the area of Tardy Grocery store-- Tardy Furniture store?

16 A. No, I did not.

17 Q. Okay, and when you came into the area of Tardy
18 Furniture store, you were just going down the street there,
19 and I think that you have indicated before that you saw a
20 couple of people; is that correct?

21 A. That's right, correct.

22 Q. Okay, now you have been down that street many
23 times; isn't that correct?

24 A. Well, I have lived there all my life; yeah.

25 Q. Okay, these people that you saw, you didn't see any
26 guns; right?

27 A. Why no.

28 Q. Okay, you didn't see anybody hitting anybody or any
29 physical, anybody physically--

1 BY MR. EVANS: --Your Honor, again I'm going
2 to object. This hearing, this motion that we have
3 been noticed for is on one issue, and that is his
4 identification in the lineup of this Defendant.
5 That is the only thing he has filed a motion on,
6 and we are going through his entire testimony which
7 is ridiculous.

8 BY MR. LUMUMBA: Judge--

9 BY THE COURT: Of course, part of his
10 identification is what it was, is what was the
11 basis he used to identify the person. I think it
12 is highly relevant. I'm going to allow him to go
13 into it.

14 BY MR. LUMUMBA:

15 Q. Okay, you didn't see anybody pointing a gun at
16 anybody or anything like that?

17 A. No, I did not.

18 Q. You didn't see anybody hit anybody or anything like
19 that?

20 A. No, I did not. I never would have noticed them if
21 it hadn't have been for the motions they was making, that one
22 of them was making with his hands. I would have never
23 noticed them.

24 Q. Okay, so a person was making motions with his
25 hands?

26 A. Yeah, looked like they were arguing.

27 Q. And that was the only-- but you don't know that
28 they were arguing, do you?

29 A. No, I do not. I just told you the only thing that

1 made me notice them was the motion of their hands.

2 Q. Okay, now what--

3 A. --one of them's hands. It wasn't but one of them
4 doing it.

5 Q. Only one person was doing it?

6 A. That's right.

7 Q. And it would be safe to say you have seen people
8 move their hands in various different ways at various
9 different times; right?

10 A. Not just like this, no.

11 Q. Well, it was the first time you ever saw anybody
12 move their hands--

13 A. --No, that is not what I said. Not like this. It
14 looked like they were arguing to me.

15 Q. Okay, but you have actually seen people argue many
16 times?

17 A. Oh, sure, I have, yeah.

18 Q. Okay.

19 A. That's the reason I said that.

20 Q. Okay, but that was not-- I mean that drew your
21 attention?

22 A. That's right. That's what drew my attention to
23 them. I probably never would have seen them if it hadn't
24 been for that.

25 Q. I understand, but that wasn't like, seeing somebody
26 argue wasn't like an exciting event for you or anything like
27 that, was it?

28 A. No, but that's what made me notice them.

29 Q. I understand that, and I'm not taking that away

1 from you. But that's what drew your attention?

2 A. That's right.

3 Q. Okay, and you notice people on the street for
4 various different reasons; right?

5 A. Yeah, and that's why I may have seen a whole bunch
6 of people that day I never noticed because, you know.

7 Q. I understand. But my only question at this point
8 so I can go to the next question is that seeing somebody who
9 you thought may have been arguing was not an exciting event
10 for you?

11 A. No, it just made me notice them.

12 Q. Okay. And actually all you did was glimpse in that
13 direction; is that correct?

14 A. That's correct.

15 Q. And you only got a glimpse of one man; is that
16 correct?

17 A. That's correct.

18 Q. The other person, you didn't even see his face?

19 A. No, I did not.

20 Q. Okay. And it would be safe to say that you only
21 got a glimpse on one occasion. That was as you were passing
22 them going south; is that correct?

23 A. That's correct.

24 Q. You then turned around and went north, and you
25 didn't see that person's face at all?

26 A. No, I did not.

27 Q. Okay, and it would be safe to say, would it not,
28 that at least as far-- and you had no reason to believe that
29 that person that you got that glimpse of was somebody that

1 was doing anything wrong? You had no reason to believe that?

2 A. No, I did not.

3 Q. Okay, you had no reason to believe-- in fact, you
4 don't know; you never did see that person do anything wrong;
5 isn't that correct?

6 A. No, I did not.

7 Q. And you had never seen in your life before that
8 person that you got this brief glimpse at; isn't that
9 correct?

10 A. Not that I know of. As far as I know, I had not.

11 Q. Okay. And it would be safe to say, would it not,
12 that on your way back coming south-- I mean going north; you
13 were going north as you were coming; right?

14 A. That's correct.

15 Q. So that was about the second time you were going to
16 that cleaners; right?

17 A. That's correct.

18 Q. You didn't go in that time either?

19 A. No. The reason I didn't, I made the circle because
20 I was going to look and see what was going on.

21 Q. I see. So you made the circle, and then you just
22 saw two people walking away from the car; right?

23 A. That's right.

24 Q. Doing nothing; nothing eventful?

25 A. That's right.

26 Q. Nothing fantastic?

27 A. They was headed across the street.

28 Q. Right, and walking actually toward the side of the
29 street where Tardy's was; right?

1 A. That's correct.

2 Q. But actually walking away from Tardy's; right?

3 A. That's correct.

4 Q. And also walking away from the car; is that
5 correct?

6 A. That's correct.

7 Q. So that wasn't exciting to you, was it?

8 A. No.

9 Q. Okay so nothing-- you really, you didn't see any
10 faces; right?

11 A. That's correct.

12 Q. So nothing fantastic about that?

13 A. I seen one. I just got a glimpse of one man's
14 face; that's all.

15 Q. I mean you got that the first time?

16 A. That's the first time.

17 Q. You didn't get that the second time?

18 A. No, I did not.

19 Q. So the second time you didn't get anything that
20 excited you in any kind of way?

21 A. No, I did not.

22 Q. Nothing that even drew your attention really the
23 second time; right?

24 A. That's correct.

25 Q. Okay. And so once you did that, did you remember
26 to go back to the cleaners?

27 A. I didn't go back to the cleaners then.

28 Q. All right, sir. Okay, now let me ask you this.
29 You at some point, and that's the only thing that you saw

1 that day concerning the two people that you have shared with
2 us here today; is that correct?

3 A. That's correct.

4 Q. And it would be safe to say that you never saw in
5 person-- well, let me ask you this. At some point you talked
6 to the police; is that correct?

7 A. It was after all this happened, yeah.

8 Q. Yeah, and it would be safe to say this was-- you
9 gave the police a description of the two black men; is that
10 correct?

11 A. Yes, I did.

12 Q. Okay. And the only thing you were able to tell
13 them-- you told them all you could tell them; isn't that
14 correct?

15 A. That's right.

16 Q. You didn't leave anything out?

17 A. I wouldn't hardly think so.

18 Q. Okay. And the only thing you were able to tell
19 them about these two black men is that they were two black
20 men with medium complexion; isn't that correct?

21 A. I don't think I ever said that. I told them they
22 had the complexion of Johnny Hargrove's because he was
23 sitting there. I don't think I ever said anything about
24 medium complexion, but that may be where that come from.

25 Q. Oh, I see. So you pointed to Mr. Hargrove; is that
26 right?

27 A. That's right.

28 Q. And you say, and Mr. Hargrove is the police chief?

29 A. That's right.

1 Q. He is a black man?

2 A. That's right.

3 Q. And so you don't remember saying two black men,
4 medium complexion?

5 A. I don't remember saying that. I told them he had
6 the complexion of Mr. Hargrove sitting there.

7 Q. Let me ask you this. Are you denying that you said
8 that, or you just don't remember, and I'm not trying to put
9 words in your mouth. Are you denying that you actually said
10 medium complexion, or are you saying you didn't, or you just
11 don't remember?

12 A. I don't think I said it.

13 Q. Okay. You don't think you said it. I'm not trying
14 to get picky with you, but we need to know for the record.
15 You don't think you said it, but could you have said it? I
16 guess that's my question.

17 A. I guess I could have, but I said he had a
18 complexion like Mr. Hargrove's. I think that's all I said,
19 but I mean I could have said it.

20 Q. Okay, is Mr. Hargrove to you a black man of medium
21 complexion?

22 A. That's right.

23 Q. Okay, now one second.

24 (Pause while Defense Counsel confer.)

25 Q. Okay, but in any event you remember saying that
26 there were two black men of medium complexion. You remember
27 two black men who had a complexion like Mr. Hargrove. That's
28 what you remember saying; right?

29 A. That's correct. Well, I said he looked like Mr.

1 Hargrove. Yeah, that's correct.

2 Q. Well, now let me ask you this. You didn't see
3 either one of these people that you got the glimpse at again
4 that day as far as you know; right?

5 A. As far as I know I didn't.

6 Q. You didn't see-- the police didn't show you any
7 pictures of anybody that day, did you?

8 A. No, they did not.

9 Q. And in fact, the police didn't show you any
10 pictures until sometime about August the 24th of 1996; is
11 that correct?

12 A. I don't know what date it was.

13 Q. You know it was over a month later?

14 A. I couldn't tell you that. It was some time had
15 passed. I couldn't tell you how long it had been.

16 Q. Okay, you don't know but you know a lot of time
17 had--

18 A. Some time had passed, yeah.

19 Q. Okay, all right. You wouldn't-- now just listen to
20 the question carefully. If I was to say that it was on
21 August the 24th or somebody else was to testify to that, you
22 wouldn't take issue with that? You wouldn't deny that, would
23 you?

24 A. No, because it was several, it was a time lapse
25 there. I couldn't say it was or it wasn't.

26 Q. Okay, I understand. I'm not trying to nail you
27 down, but I just wanted to make sure that that is something
28 that you didn't disagree with, and you wouldn't disagree.
29 You just wouldn't know for sure?

1 A. That's right.

2 Q. Okay. Now would it also be true that when you saw
3 these pictures, you had not seen as far as you know this
4 person -- I am focusing now on this person that you got this
5 glimpse at; right?

6 A. Right, okay.

7 Q. A person you had never seen before in your life;
8 right?

9 A. Uh-huh.

10 Q. A person you had only seen when you were moving
11 down the street driving; right?

12 A. Okay.

13 Q. A person you couldn't see his face when you came
14 back; right?

15 A. Right.

16 Q. You never saw that person when you got this brief
17 glimpse at again prior to the time that you saw the pictures
18 as far as you know; is that correct?

19 A. As far as I know.

20 Q. And so when you looked at those pictures, your
21 identification, you were looking, you were basing, when you
22 looked at the pictures, on nothing but this brief glimpse
23 that you got at this person for the first time in your life
24 as far as you know?

25 A. That's correct.

26 Q. Okay. Now would it be safe to say also--

27 (Pause while Mr. Lumumba confers with Mr.
28 Evans.)

29 BY MR. LUMUMBA: Could I see that?

1 BY MR. EVANS: I don't know that I want this
2 one introduced into evidence today.

3 BY MR. LUMUMBA: Judge, my problem here is we
4 never got a copy of the actual pictures. We just
5 got a xeroxed copy. They have a much better copy
6 than I have. They are concerned about their copy
7 being introduced into evidence. I'm not concerned
8 about marking it up or whatever. I just want to
9 use it, and if they want to introduce this in
10 evidence and let me use that to show you and the
11 witness, I have no problem.

12 **BY THE COURT:** Let me see what you have got.

13 BY MR. EVANS: I have no problem with doing
14 that, Your Honor, but this is his motion. He
15 should have had the Supreme Court petitioned for
16 the original. This is a copy which I do not want
17 marked up because it's the only copy we have got.
18 And if we don't get the one back from the Supreme
19 Court, that's the one we will have to use in the
20 trial.

21 **BY THE COURT:** How about this? You will agree
22 that that copy he has got is a copy of this?

23 BY MR. EVANS: Yes, sir.

24 **BY THE COURT:** Okay. I'm going to let him
25 look at this and testify from this, but if you want
26 to introduce anything, it'll have to be that copy.
27 Well, I'm going to allow this or something like
28 this to go to the Supreme Court if that becomes
29 necessary. The original will have to go. At this

1 point in time I don't want it marked up as far as
2 evidence goes. We will put this in for that
3 purpose. My ruling is that if it is necessary that
4 this record go to the Supreme Court, that this go
5 or the original to this go.

6 BY MR. EVANS: We can stipulate that the copy
7 that he has got is a true and correct copy of it
8 and introduce that one as far as the Motion as far
9 as I am concerned and use this one just for
10 demonstration purposes.

11 BY THE COURT: Right, but I think if it goes,
12 I think the originals are better evidence for what
13 this is about than the copies are. So if it goes--
14 I have looked at the original. He is going to look
15 at the originals. If it goes to the Supreme Court,
16 they need to look at the originals rather than a
17 copy. So my ruling is I will grant your objection
18 to this point, but if it comes down to it-- unless
19 they already have this.

20 BY MR. EVANS: They have got the original.

21 BY THE COURT: Okay, well, if they--

22 BY MR. LUMUMBA: Who?

23 BY THE COURT: The Supreme Court.

24 BY MR. LUMUMBA: Okay.

25 BY THE COURT: If they have got the originals,
26 then we won't have to even do that. But for the
27 purposes of this hearing, I want to use it where he
28 can see. Let the record reflect that Mr. Lumumba
29 is going to show the witness the original lineup

1 pictures. There are six of them; is that correct?

2 BY MR. LUMUMBA: That's correct.

3 BY THE COURT: Okay, they will not be, this
4 particular document will not be marked into
5 evidence. There will be a true and correct copy
6 entered into evidence for the purpose of this
7 hearing. If necessary, the originals will go to
8 the Supreme Court.

9 BY MR. LUMUMBA: Can we have another copy?

10 BY MR. EVANS: You have got it. How many do
11 you want?

12 BY MR. LUMUMBA: He was shown two photographic
13 displays that day and picked people out of both of
14 them. I would like to be able to show him both if
15 I can.

16 BY MR. EVANS: Petition the Supreme Court and
17 get it. That's the one I have got here.

18 BY THE COURT: Wait a minute; wait a minute.

19 BY MR. LUMUMBA: You don't have the other
20 copy?

21 BY MR. EVANS: No, I don't. It's in the
22 Supreme Court.

23 BY MR. LUMUMBA: Isn't that it?

24 BY MR. EVANS: No, that's the same thing you
25 are holding in your hand.

26 BY MR. LUMUMBA: Okay, I'm sorry. Okay.
27 Thank you. That was all that question.

28 BY MR. LUMUMBA:

29 Q. Now you recall, don't you, Mr. Collins, that you

1 showed, you were shown two different sets of photos; is that
2 correct?

3 A. I was shown some photos. I think it was two sets.
4 It may have been; I don't know.

5 Q. And it would be safe to say that when you were
6 shown the first set of photos, you pointed to one or two
7 different persons in that array; isn't that correct?

8 A. I remember saying one of them looked like him. I
9 don't remember pointing to two. I remember saying one of
10 them may have, looked like him.

11 Q. What you remember is that the first set of photos
12 that you looked at you said that one of the people looked
13 like the person; is that correct?

14 A. I don't remember exactly what I said. I am trying
15 to remember exactly what I said.

16 BY MR. EVANS: Your Honor, if he is going to
17 ask him questions about different documents, I
18 would like for him to be shown these documents and
19 asked about specific documents.

20 BY MR. LUMUMBA: Judge, let me say this.
21 First of all, the documents that we have are
22 documents where the police officers took notes in
23 their own hands. There is no reason why he should
24 need those to testify as to what he remembers.

25 BY MR. EVANS: He specifically--

26 BY THE COURT: --Wait a minute; wait a minute,
27 Mr. Evans. One at a time.

28 BY MR. LUMUMBA: That is my comment.

29 BY THE COURT: Okay, Mr. Evans--

1 BY MR. LUMUMBA: So there is no reason why he
2 should need the police officers' documents. I want
3 to see what he said, not what the police officers
4 say he said.

5 BY MR. EVANS: Your Honor, he is making
6 reference with this witness to two different
7 lineups. He is attempting to confuse him. If he
8 wants to ask him about each lineup, I ask that he
9 show him the lineups and ask him specific questions
10 about each lineup so that he knows which one he is
11 talking about.

12 BY THE COURT: The objection is overruled.

13 BY MR. LUMUMBA: Okay.

14 BY MR. LUMUMBA:

15 Q. Now, Mr. Collins, you realize that you were shown
16 two different lineups. Now I want you to do the best you
17 can. Now if you can't remember something, just tell me. I
18 don't have any problem with that; you understand? Okay?

19 A. Yeah, I understand what you are talking about.

20 Q. And okay, now the first lineup, I want you to focus
21 on the first one you were shown. Now by the way, were you
22 ever shown color photos, or were all the photos you saw black
23 and white?

24 A. Some of them were black and white, and the best I
25 can remember some of them... (Pause) They were, some of them
26 were colored, I think.

27 Q. All right, so some of them were black and white?

28 A. Uh-hum.

29 Q. Now the, were-- in the first lineup, first group of

1 pictures you saw, how many was it? About 6, if you can--

2 A. --I would say so. I don't remember exactly how
3 many was in there.

4 Q. Okay. Were all the pictures shown at that time
5 black and white, or were some of those in colors, or do you
6 remember?

7 A. If I'm not mistaken, I believe they were all black
8 and white; I'm not sure. I believe they were all black and
9 white.

10 Q. When you pointed to somebody and said something
11 about them-- strike that for a moment. Let me just ask you a
12 few questions about what you were told when you appeared
13 there. First of all, actually between the time that you
14 talked to the police on July the 16th when the, and the time
15 that you were pointing to different photos, you actually
16 talked to the police on several different days before you saw
17 any photos; isn't that correct?

18 A. Well, I talked to several different-- I talked to
19 the Sheriff's Department. I talked to the Police Department,
20 and I talked to the District Attorney's Office, yes.

21 Q. Okay, and you talked to the District Attorney's
22 Office on several different times before you actually were
23 shown any photos; isn't that correct?

24 A. I talked to them a couple of times. I don't
25 remember just how many times it was.

26 Q. A couple of times, okay. And then after a while,
27 not immediately, but after a while, you did get shown some
28 photos after some time as you have described it. Isn't that
29 correct?

1 A. Uh-hum. That's correct.

2 Q. And you believe that the first set you saw, if I'm
3 not mistaken, I think you just told me that they were all
4 black and white; isn't that correct?

5 A. I think so.

6 Q. And in any event, did you, when pointing to a
7 person in the first photo, did you indicate that a hairline
8 like this may have appeared, a little darker, but it looks
9 like him. Did you indicate that?

10 A. I may have said something similar to that. I may
11 have.

12 Q. Okay, and I think you indicated that the face was
13 shaped the same way; right?

14 BY MR. EVANS: Your Honor, again I object.
15 This particular lineup that he is referring to had
16 nothing to do with this Defendant. It was the
17 other person that he had looked at out there that
18 day, and again, it has nothing to do with this
19 motion that we are here on.

20 BY THE COURT: Well, I am here and I'm going--

21 BY MR. EVANS: --We were not noticed of that.
22 If he wanted to attack them, he at least should
23 have noticed us so that we would have known what he
24 was going to raise today.

25 BY THE COURT: Well, you should have
26 anticipated he was going to raise this. I'm going
27 to hear this. Go ahead.

28 BY MR. LUMUMBA: Okay.

29 Q. Just to reflect to make sure I am right, you only

1 saw the face of one person out there; isn't that right?

2 A. That's correct.

3 Q. I see. And you had told the police that; right?

4 A. That's correct.

5 Q. Now the-- you indicated in this first lineup that
6 the face was the same shape; isn't that correct?

7 A. I think so and I think I also told them, I think he
8 has got more of a receding hairline. I believe that's what I
9 told them.

10 Q. Okay. And of course, and then when you-- you
11 looked at the second lineup. You pointed to a person again;
12 right? You pointed to another person?

13 A. (No immediate response.)

14 Q. Well, let me ask you this. Did you point to one of
15 the pictures in the second lineup? Or first of all, I guess
16 I should ask you, you saw a second lineup; is that correct?

17 A. That's correct.

18 Q. Was it color or black and white?

19 A. It may have been colored. I don't know. I don't
20 remember that part of it. I saw the pictures. That's all I
21 can remember.

22 Q. Okay. And when you saw the second lineup, did you
23 point to a person in that lineup?

24 A. I did.

25 Q. Okay. And would it be safe to say that at no time
26 did you ever say that you were positive that that was the
27 person that you had seen on that day for the first time in
28 your life on July the 16th of 1996?

29 A. I told them, I said, "I think that's him. I

1 believe that's him." I said, "I am sure that's him." That's
2 the words I said.

3 Q. So you said you were sure that was him?

4 A. I said, "I'm sure that's him."

5 Q. Okay. Now this is a person that you had seen for
6 one time in your life; right?

7 A. That's correct. As far as I know.

8 Q. And based upon that one glimpse -- you glimpsed at
9 him once; right?

10 A. That's correct.

11 Q. You now are telling us that you told them that you
12 were sure that was him; is that right? Is that what you want
13 to tell us now?

14 A. I may not have told them that right at first there,
15 but after I looked at it, you know, for a little bit, I said,
16 "I believe that's him. I think that's him." I know I said
17 that the first time.

18 Q. Okay. You first said, "I believe that's him"?

19 A. I said, "I think that's him. I believe that's
20 him."

21 Q. Okay, you said you think that's him?

22 A. Uh-hum.

23 Q. Okay, then you think you said you believe that's
24 him?

25 A. That's right.

26 Q. Then you think you said you were sure that was him;
27 right?

28 A. That's correct.

29 Q. Now as you were looking at him, it would be safe to

1 say-- well, let me ask you first of all; I'm going to present
2 to you what is marked as Exhibit 1, and I will get the copy
3 marked as Exhibit 1.

4 **BY THE COURT:** Well, let's do that so we can
5 keep it in order. Let's mark the copy now.

6 **BY MR. LUMUMBA:** Okay, that's what I am doing
7 right now. In fact, I am going to mark both of
8 those, both copies. I'm not going to mark--

9 **BY THE COURT:** I understand that.

10 **BY MR. LUMUMBA:** I'm going to mark both
11 copies.

12 **BY THE COURT:** Of the two different lineups?

13 **BY MR. LUMUMBA:** Yeah.

14 **BY THE COURT:** Okay, go ahead and let her mark
15 those. Any objection to that?

16 **BY MR. EVANS:** No, sir, Your Honor.

17 **BY THE COURT REPORTER:** Is this for
18 identification or in evidence?

19 **BY THE COURT:** You can mark-- do you want them
20 admitted as exhibits?

21 **BY MR. LUMUMBA:** Yes. I would only ask that
22 before you take them, let me run copies of the
23 copies, so I will have something still.

24 **BY THE COURT:** Well, you can do that before
25 you leave today.

26 **BY MR. LUMUMBA:** Okay, but I do, I wanted them
27 admitted.

28 **BY THE COURT:** Okay. Another thing is
29 apparently you don't have the original of that, of

1 the other lineup.

2 BY MR. LUMUMBA: No.

3 BY THE COURT: So when you are referring to
4 that lineup, make sure you refer to the exhibit
5 number so it will be in the record as to where you
6 are.

7 (COPIES OF PHOTO LINEUPS WERE MARKED AND
8 RECEIVED IN EVIDENCE AS DEFENDANT'S EXHIBITS D-1
9 AND D-2 TO THE MOTION TO SUPPRESS IDENTIFICATION.)

10 BY MR. LUMUMBA:

11 Q. First of all, I'm going showing you those copies.
12 Do you recognize either one of those sheets as a lineup that
13 you were shown that day? If you do, let me know.

14 A. To tell you the truth, I can't tell nothing about
15 neither one of these.

16 BY MR. EVANS: Your Honor, I thought the whole
17 purpose of him getting the original, copy of the
18 original from me was so that we could use it.

19 BY THE COURT: Now I think we can.

20 BY MR. LUMUMBA: Yeah, I think we can.

21 BY MR. LUMUMBA:

22 Q. And the only other thing I want to ask you is that
23 prior to coming here today, how did you become informed that
24 you were going to be asked to come here for this hearing?

25 A. I got this thing right here from you day before
26 yesterday afternoon about 7 o'clock.

27 Q. Okay. Since you have been here or any time that
28 time, have you had a chance to look at any photos that are in
29 the possession of either the police, sheriff, state troopers,

1 or the District Attorney?

2 A. They haven't showed me anything today here.

3 Q. Okay, have they showed you any time before you came
4 here today? Let me say, let's -- you were shown this some
5 time after July 16th; is that correct? You were shown
6 photos?

7 A. Yeah, I was shown some, yeah.

8 Q. Have you been shown, have you looked at any photos
9 any time since that time that were in the possession of any
10 of these people I just named? The police, prosecutor,
11 anybody, anybody like that?

12 A. Not that I remember.

13 Q. Have they ever talked to you about what you would
14 be asked here today?

15 A. Not that I remember.

16 Q. Oh.

17 A. Because I didn't even know what I was being
18 summonsed down here for.

19 Q. I see. Have you talked to either the District
20 Attorney or anybody from the police department or anybody
21 from the DA's office?

22 A. I have here today.

23 Q. Okay, and when was that?

24 A. Today.

25 Q. When today?

26 A. All during the day. From the time I got here this
27 morning when I saw them up until the time when I walked back
28 in here.

29 Q. And prior to today, when is the last time you

1 talked to them?

2 A. I couldn't tell you that.

3 Q. When is the last time you have been at the DA's
4 office?

5 A. Last time I have been in the DA's office? I don't
6 think I have ever been there but one time. That has been
7 about a year or two ago.

8 Q. When is the last time the DA or anybody from his
9 office has been to your store?

10 A. I don't have a store. That is my son's store.

11 Q. When is the last time that they have come to visit
12 you at the store or in the house--

13 A. --I don't know if the DA has ever been to my son's
14 store. Now if he has ever been there, I don't know. Now
15 John has been there, but he lives-- he comes by there every
16 once in a while. But as far as discussing this, I mean, you
17 know. Now they may come in there when I'm not there because
18 I just go up there every once in a while. Like I said, the
19 store belongs to my son.

20 Q. John has never come by to discuss the photos with
21 you?

22 A. Not that I know of.

23 Q. He has never had a discussion with you since that
24 day that you identified these?

25 A. I was shown those photographs right there - I don't
26 know if they was those photographs - at Tupelo.

27 Q. Okay.

28 A. And they asked me to tell the truth, and I couldn't
29 have swore that them was the particular pictures that I

1 looked at. And I said I couldn't tell them that, and I think
2 I was shown the pictures after then and told that that-- said
3 this-- and would-- and said, you know, that that was them.
4 But now I couldn't swear that them right there is the
5 pictures I seen because them pictures could have been
6 changed. They may be copies; I don't know.

7 Q. I understand. Who told you that these were the
8 pictures you were shown after you testified?

9 A. I don't remember that.

10 Q. Was that at the Tupelo trial or afterwards?

11 A. You know, I really don't know. I really don't. I
12 really can't tell you that. I really don't know.

13 Q. Okay. Now I am showing you what is Exhibit number
14 2 and ask you if those are, in fact, the pictures you were
15 shown?

16 A. They are.

17 Q. Pardon?

18 A. They are.

19 Q. Okay. Now but when you were shown those at the
20 Tupelo trial--

21 BY MR. EVANS: --Your Honor, I object because
22 he was not shown that group at the Tupelo trial, so
23 that is improper.

24 BY THE COURT: Maybe you ought to ask him that
25 question.

26 BY MR. LUMUMBA: Okay; yes, sir.

27 BY MR. LUMUMBA:

28 Q. Were you shown some pictures at the Tupelo trial?

29 A. That's correct.

1 Q. Were these the pictures you were shown?

2 A. I do not know whether these are the pictures I was
3 shown or not.

4 Q. I see. And, but the pictures you were shown at the
5 Tupelo trial you have indicated that you had never seen those
6 before; is that right?

7 A. No. They asked me if that was the pictures I was
8 shown. I told them I couldn't tell you if that was the
9 pictures I was shown. I couldn't tell you if these right
10 here are the pictures I was shown.

11 Q. Excuse me, Judge. So you can't tell me whether
12 those are the pictures you were shown?

13 A. You could walk out of this room right here and swap
14 them right out there. I couldn't tell you whether these are
15 the same pictures I was shown. These are some pictures like
16 this.

17 Q. I see. So you don't know whether those are the
18 pictures you were shown or not?

19 A. It's like I told you, these are-- I was shown
20 pictures like this.

21 Q. Okay. Can you at this time see all the persons on
22 those pictures?

23 A. Can I do what?

24 Q. Can you see all the persons, all those pictures?

25 A. Yes, I can.

26 Q. Okay, and let me get a little closer to you so you
27 can make sure you can hear me.

28 (NOTE: Counsel's voice was very hoarse.)

29 Q. On that picture as depicted, who has the biggest

1 head on that picture?

2 A. This man right here. (Witness points.)

3 Q. That is man number what?

4 A. Number four.

5 Q. Four.

6 (Pause while Mr. Lumumba drinks a cup of
7 water.)

8 Q. Can I see that again, please?

9 (After Counsel looked at the exhibit, it was
10 again handed back to the witness.)

11 Q. Who has the darkest complexion in those pictures?

12 A. Well, to me it's about three of them on there that
13 is about the same.

14 Q. And who are those three?

15 A. Be this one and this one. This one, this one, and
16 this one.

17 Q. Give the Judge the numbers; what numbers?

18 A. 1, 6 and 4.

19 Q. And would you say that although you say those are
20 about the same, number 4 is actually darker than the other
21 two people; isn't that correct?

22 A. To me what appears darker is he has got a beard
23 right there.

24 Q. Okay. So that makes him appear darker than the
25 other two people?

26 A. But you asked me what complexion. You asked me the
27 complexion.

28 Q. Does the beard make him appear darker than the
29 other two people?

1 A. Well, naturally it does.

2 Q. And you didn't tell the officers on the 16th that
3 the person that you saw had a beard, did you?

4 A. I was never asked.

5 Q. Did you ever tell them when they asked you to
6 describe him that he had a beard?

7 A. I don't think so.

8 Q. Okay.

9 A. I don't remember that. I don't think so.

10 Q. Now would it be safe to say that number 4 from this
11 picture appears to be older than number 6?

12 A. I couldn't tell you that. I couldn't tell you
13 that. My son runs the store, and I see people like this
14 every day, and I can't tell you their age. I can't even near
15 about start telling you their age.

16 Q. I'm not asking you to tell me their age. Do I
17 appear to be older than Mr. Freelon?

18 BY MR. EVANS: Your Honor, I don't believe--

19 BY THE WITNESS:

20 A. --I don't have any idea, man--

21 BY MR. EVANS: --either one of them are on the
22 lineup--

23 BY THE WITNESS:

24 A. --I have no way of knowing. I mean I couldn't tell
25 you--

26 BY MR. EVANS: --and I object.

27 BY THE COURT: Overruled.

28 BY MR. LUMUMBA:

29 Q. You can't tell me whether I appear to be older than

1 Mr. Freelon?

2 A. I sure can't. I can't tell you.

3 Q. Do I appear to be older than this young man sitting
4 right here?

5 (NOTE: Mr. Lumumba pointed to a man sitting
6 in front of the jury box from the Department of
7 Corrections.)

8 A. Well, that is obvious there. I mean, you know, but
9 as far as that right there, I couldn't tell you that.

10 Q. So I do appear to be older than him?

11 A. Well, I would say so, yeah. And I may be wrong
12 too, but I would say so.

13 Q. Okay. And number 4 in your view, you can't tell me
14 whether he appears to be older than 1 and 6?

15 A. I sure can't.

16 Q. Can you tell me whether he appears to be older than
17 1?

18 A. I sure can't.

19 Q. Okay. Does number 6 have a beard?

20 A. No, he does not.

21 Q. Does he have a mustache?

22 A. It doesn't look like it.

23 Q. Does number 1 have a beard that you can see?

24 A. It doesn't look like it.

25 Q. Does number 1 have a receding hairline?

26 A. No, he does not.

27 Q. Does number 6 have a receding hairline?

28 A. He has a slight receding hairline.

29 Q. Who has the most pronounced, who has a receding

1 hairline in these pictures?

2 A. What now?

3 Q. A receding hairline.

4 A. This one sort of has a receding hairline, this one,
5 and this one right here.

6 Q. Number 4?

7 A. Number 2, number 6 and number 4.

8 Q. Okay, but number 1 does not?

9 A. No, he does not. Not to me he doesn't, from what I
10 call a receding hairline.

11 Q. I see. So number 4 has the biggest head?

12 A. In these pictures here, yes.

13 Q. Right. Number 4 is darker than everybody except
14 for 6 and 1; right?

15 A. To me, yeah.

16 Q. Number 4 and number 1, who is the only person you
17 say is as dark as number 4, does not have a receding
18 hairline; right?

19 A. I told you number 6, number 4, and all of them had
20 the same complexion. Yeah, number 1 does not have a receding
21 hairline.

22 Q. Right, and he is one of the people you said that
23 was as dark as number 4?

24 A. That's right.

25 Q. Who doesn't have a beard?

26 A. He doesn't appear to have one. Part of the chin is
27 cut off there. I don't think he has got one. He hasn't got
28 one on the side of his face.

29 Q. Who you can't tell is younger than this man?

1 A. I sure can't.

2 Q. From this picture?

3 A. I sure can't.

4 Q. All right. And I see. Now number 5 does not have
5 a receding hairline; right?

6 A. Not really.

7 Q. He also has braids in his hair?

8 A. That's correct.

9 Q. The man you saw that day, you never told the police
10 that he had braids in his hair?

11 A. No, I did not.

12 Q. By the way, you have seen a lot of people who have
13 receding hairlines; right?

14 A. Well, sure.

15 Q. There is a whole, millions of people with receding
16 hairlines?

17 A. Sure.

18 Q. A lot of dark black people; correct?

19 A. Uh-hum.

20 Q. Millions of them; right?

21 A. What now?

22 Q. Thousands of millions of dark black people?

23 A. I would say so. I don't know.

24 Q. But there is a bunch of them?

25 A. There is a bunch of them, yeah.

26 Q. All right. A lot of people with big heads?

27 A. I would say so.

28 Q. But the only person in this lineup-- the biggest
29 head in this lineup is number 4?

1 A. This is a closer up picture than these right here.
2 These right here may have a big head; I don't know.

3 Q. But at least the way they are displayed this head
4 looks much bigger than all the rest?

5 A. That's correct. From this pictures, yeah.

6 Q. From the way they are displayed?

7 A. Uh-hum.

8 Q. And that's what you were looking at is these
9 pictures; right?

10 A. At his head? How big his head was?

11 Q. You were looking at these pictures; right?

12 A. Yeah, I was looking at these pictures. I guess
13 these are the pictures, yeah.

14 Q. Yeah, and you, of course, have never seen number 1,
15 2 or 3 in life, have you?

16 A. I don't know whether I have or not. If I have, I
17 don't know them.

18 Q. And you have never seen number 5 and 6; right?

19 A. If I have, I don't know them.

20 Q. Okay. Now you were never shown a live lineup, were
21 you?

22 A. That's correct.

23 Q. I'm sorry. You were never shown a live lineup, a
24 bunch of men standing--

25 A. I was not.

26 Q. Okay. When you were testifying at trial, you never
27 said that you were sure that Mr. Flowers was the man that you
28 saw that day; right?

29 A. I told them that day in the court up there the man

1 I seen didn't have glasses on. He was not that heavy.

2 Q. And then he took his glasses off; right?

3 A. He did, and it was dark in that courtroom.

4 Q. All right, and you never said when he took his
5 glasses off that he was the man, did you?

6 A. No, sir. I don't think I actually come out and
7 said that, no. I think you are correct on that.

8 Q. All right, let me see what you did say. On page
9 435, did you indicate--

10 A. Said, I think that's him.

11 Q. You didn't say you were sure it was him; right?

12 A. That's what I just told you.

13 Q. Okay. And in fact, and then on page 436 you say
14 it looks like him; right?

15 A. Uh-hum.

16 Q. Okay, and that was the same thing you said when you
17 saw the first set of photos. You indicated that you saw a
18 man that looked like him; is that correct?

19 A. Wait a minute.

20 Q. You said hair looked like this, may have appeared
21 a little darker, but it looks like him; right?

22 A. That's correct. That's what I told you while ago.

23 Q. Okay, now that's what you said when you saw the
24 first photos?

25 A. That's what I told you while ago.

26 Q. Right, that was the photos. Okay. Now let me make
27 sure I understand what you are saying now. You said that
28 about the man that you pointed to in the first set of photos
29 that you saw that day; right? That you saw when the police

1 were showing them to you; right? You got shown two sets?

2 A. I think that's what I said. I think I said
3 something like it has got the same, looked like the same
4 complexion. I think it looks like him. I think that is
5 basically what I said.

6 Q. But you said at that time that the man looked a
7 little darker; right?

8 A. I may have.

9 Q. Okay. And in fact, that's what you said in court
10 when you looked at Mr. Flowers after he took off his
11 glasses. You indicated, in fact, that was the last thing you
12 said about him is that the man appeared to be a little
13 darker; right?

14 A. That's what I said because like I told them up
15 there, that courtroom was dark, and I could not see very well
16 in there.

17 Q. You couldn't see very well in a dark courtroom;
18 right?

19 A. That's right.

20 Q. And then you told the people that the man that you
21 saw that day looked a little darker than Mr. Flowers; right?

22 A. I told them that the man didn't have glasses on,
23 and he looked a little darker.

24 Q. And that is after the man, Mr. Flowers, took off
25 his glasses in the courtroom?

26 A. I think that is right.

27 Q. Was any of your discussions-- who showed you these
28 pictures? Maybe I should ask you that first.

29 A. I think John Johnson was there. I think Wayne

1 Miller was there. It may have been somebody else there; I
2 don't remember. I know those two were there, I think.

3 Q. All right. When they showed you those pictures,
4 was your conversation being recorded?

5 A. I don't know. I don't remember. I don't remember
6 that. It could have been; I don't remember.

7 Q. When they talked to you on the 16th, was your
8 conversation being recorded?

9 A. I don't really remember. I know at times there I
10 was there and they was telling me I was being recorded. It
11 may have been; I don't know. I don't remember that.

12 Q. Do you remember how many different times you
13 actually were recorded?

14 A. I have no idea.

15 Q. Was it more than one, or do you know?

16 A. I have no idea.

17 Q. Do you remember if you were ever recorded?

18 A. Oh, I was recorded because they told me they was
19 going to record this. Now how many times, I don't know.

20 Q. Were you ever recorded before you made an
21 identification or-- strike that. Were you ever recorded
22 before you were shown the pictures, the two sets of pictures
23 that you were shown?

24 A. I don't think so, but I'm not sure. I don't think
25 so. I may have been; I'm not sure.

26 Q. Now at the time that you were shown pictures--
27 well, let me ask you this. Were you ever shown any pictures
28 of a car?

29 A. No.

1 Q. The police never showed you any pictures of a car?

2 A. No.

3 Q. Never asked you to identify a car?

4 A. Yes.

5 Q. They asked you to identify a car?

6 A. Yes.

7 Q. And where was the car?

8 A. Behind the police department in Winona.

9 Q. Did you ever identify a car?

10 A. No, I did not.

11 Q. Okay, what kind of car did you look at? How many
12 cars did they show you?

13 A. One car.

14 Q. And what did it look like?

15 A. It was, I really don't know what kind of car it
16 was. It was a two-tone beige or two-tone brown or something;
17 I don't know.

18 Q. And you didn't identify it?

19 A. No, I did not.

20 Q. And you didn't identify it because you knew it?
21 What car were they referring to when they wanted you to make
22 an identification? In other words, what was it that they
23 were asking you to identify or to compare the car to?

24 A. The one I seen them standing beside and in front
25 of.

26 Q. Okay. And by the way, when you were saying at the
27 last trial that the man looked a little darker than him, when
28 asked if that was the man, meaning Mr. Flowers, okay; do you
29 remember at the last trial you said the man was a little

1 darker? You were telling the truth, weren't you?

2 A. Do what?

3 Q. You were telling the truth; right?

4 A. I have been telling you the truth all day, sir.

5 Q. Were you telling the truth at the trial when you
6 said the man looked a little darker?

7 A. I just told you, I have been telling you the truth
8 all day, and I just told you that just a few minutes ago.

9 Q. Okay, but I wasn't at the trial. My question,
10 listen carefully. Were you telling the truth at the trial
11 when you said the man looked darker?

12 A. Yes, I was telling the truth.

13 Q. Okay. And you were asked several times if this
14 here was the man; right? At the trial; right?

15 A. I think so.

16 Q. And at no time did you say you were certain that he
17 was the man; right?

18 A. I told them I believed that was him.

19 Q. At any time did you say you were certain that was
20 him?

21 A. All I ever told them was I believed that was him.

22 Q. Well, actually you didn't say, "I believe it was
23 him"; you said, "I think"?

24 A. Well, maybe I said, "I think it's him."

25 Q. Okay, did you ever say that you were certain it was
26 him?

27 A. I don't think so.

28 Q. All right. And you were telling the truth all
29 those times when you answered that question?

1 A. I told you I been telling the truth all through
2 then and all day today, sir.

3 Q. All right. And you told the truth back then?

4 A. I told the truth back then.

5 Q. Okay. Now so when you saw this car that they
6 showed you and you didn't identify it; is that right?

7 A. I did not.

8 Q. Did you not identify it because you weren't sure
9 that it was the car, or did you not identify it because you
10 were sure that it was not the car? Do you understand my
11 question?

12 A. No, I don't.

13 Q. When you saw the car, did you know whether or not
14 that was the car, the car they showed you?

15 A. It didn't look like the car I seen.

16 Q. Okay. So you said it wasn't, didn't look like the
17 car you saw; is that right?

18 A. That's exactly right.

19 Q. And what did the car that you saw look like?

20 A. The car I saw had taillights all the way across the
21 back, and it was filthy. It was completely covered with dust
22 and mud.

23 Q. Was it a beige brown?

24 A. It was a brown car, a brown car.

25 Q. Was it a beige brown looking car?

26 A. Well, it was sort of beige brown. It was brown.
27 That's all I could tell you about it because it had a lot of
28 dust and a lot of dirt on it.

29 Q. And taillights went all the way across?

1 A. Went all the way across it.

2 Q. Now prior to the time-- when you were brought down,
3 when they brought you down to show you the pictures, did they
4 tell you you were coming down to watch, see pictures?

5 A. I don't remember whether they told me that or not.
6 They didn't bring me down. They called me and asked me to
7 come up there, and I went up there.

8 Q. Okay. You went up there?

9 A. That's right.

10 Q. Up where?

11 A. To the police department in Winona.

12 Q. Okay, and when you went down, did they tell you why
13 you were there?

14 A. Do what?

15 Q. Did they show you pictures, or did you have a
16 discussion first?

17 A. I don't remember. I think we talked a little bit
18 there, and then I think they showed me the pictures. I
19 believe that's the way it was.

20 Q. And they told you that they were going to show you
21 some pictures; is that correct?

22 A. Uh-hum.

23 Q. And they showed you some pictures?

24 A. That's correct.

25 Q. And when they were showing you the pictures, they
26 indicated that they were going to show you a picture of the
27 person that you saw out there that day; is that right?

28 A. No, that is not what they said.

29 Q. What did they say?

1 A. They said they had some pictures they wanted me to
2 look at and wanted to know if I could look at it and see if
3 one of them would be the person that I looked at. They
4 showed me some pictures.

5 Q. I see. And this was some time later; right?

6 A. It was later than after the day that this
7 happened. Yeah, it was-- I don't know how long it was. It
8 was a while after that.

9 Q. Prior to the time that you saw the pictures, had
10 there been discussion in the community about this incident
11 that occurred at Tardy's grocery store?

12 A. Well, sure. There was discussion. That is a small
13 town. Everybody in town knew it.

14 Q. And was there discussion about who the people were
15 that the police were talking to or who may have been
16 suspected?

17 A. Wait a minute. Tell me that, ask me that again.

18 Q. Was there any discussion about who the police had
19 been talking to about this case, who the suspects were?

20 A. I never heard anything about any of it.

21 Q. Okay, you never heard Doyle Simpson's name come up?

22 A. Uh, didn't even know who Doyle Simpson was up until
23 that morning that the crime happened.

24 Q. But you learned that morning?

25 A. That morning. That's when I heard that, that
26 morning.

27 Q. Okay, so did you hear about his name again prior to
28 the time you saw the pictures? Did you ever hear his name
29 mentioned again?

1 A. Yeah, when he come down to my brother-in-law's
2 place and said his gun was stolen.

3 Q. All right, I see. So you heard about his name
4 then; is that right?

5 A. That's when I heard about him. Yeah, never even
6 knew he existed in this world. Didn't even know him.

7 Q. Did you hear about him again after that day, after
8 that time?

9 A. I am sure I did.

10 Q. Okay. Did you hear Curtis Flowers' name mentioned?

11 A. No, I did not.

12 Q. You never heard that?

13 A. Not then I didn't, no.

14 Q. Did you hear after that time?

15 A. It was a while after that time, yeah, because I
16 didn't even, I didn't know this fellow.

17 Q. You heard about his name before or after you saw
18 the photos?

19 A. You know, I really don't know. If I told you one
20 way or the other, I would be lying to you, and I'm not going
21 to lie to you. I don't know.

22 Q. Okay. And so let me see. Maybe you answered this,
23 but let me make sure. Was the conversation that you had
24 prior to the time that you were shown the photos and at the
25 time you were shown the photos, was that conversation taped?

26 A. When they showed me the photos?

27 Q. (Counsel nods his head.) If you know.

28 A. I really don't know, but I am sure it was. I don't
29 know. I really don't know. I couldn't tell you if it was or

1 wasn't.

2 Q. Okay, let me ask you this. You recall some time
3 ago I came to your store to talk to you; is that correct?

4 A. I recall you coming to my son's store and asking,
5 telling me you wanted to talk to me and made an appointment
6 to talk to me, and you never showed up. I remember that.

7 Q. You were at the store when I came?

8 A. That's right. I was sitting at the table with my
9 wife and my brother and my sister and her husband.

10 Q. Okay, and did you talk to me at that time?

11 A. No, I did not. You made an appointment with me for
12 the Monday morning at 10 o'clock you wanted to talk to me,
13 and you never showed up.

14 Q. And did I ask to talk to you the day that I came?
15 I asked to talk to you then, didn't I?

16 A. When? That day?

17 Q. Yeah.

18 A. Yes, you did.

19 Q. Did you talk to me that day?

20 A. That night at the store?

21 Q. Yeah.

22 A. No, I did not.

23 Q. Okay, you refused to talk to me that day?

24 A. I did not refuse--

25 BY MR. HORAN: --Your Honor, what does this
26 have to do with the identification, Your Honor--

27 BY THE WITNESS: --to talk to you no such a
28 thing.

29 BY THE COURT: Wait a minute, Mr. Collins.

1 This really doesn't have anything to do with the
2 motion. Let's move on.

3 BY MR. LUMUMBA:

4 Q. Okay. Did you later on tell me that you wouldn't
5 talk to me at all?

6 BY MR. HORAN: Objection, Your Honor. Did you
7 not just sustain an objection--

8 BY THE COURT: --It just doesn't have anything
9 to do with this motion. It may be at some other
10 point in time. Anything else, Mr. Lumumba?

11 BY MR. LUMUMBA: I have nothing at this time.

12 BY THE COURT: All right.

13 CROSS-EXAMINATION BY MR. EVANS:

14 Q. Mr. Collins, you live in Winona; is that correct?

15 A. That's correct.

16 Q. And the day of the Tardy murders you were downtown?

17 A. That's correct.

18 Q. And you happened to see things at that time that
19 you thought might be important to the law enforcement
20 officials; is that right?

21 A. That's correct.

22 Q. And that same day you went to different law
23 enforcement officials, and you told them what you knew in
24 case it might be important; is that right?

25 A. That's correct.

26 Q. Now the day that this happened you have given
27 detailed statements about where you traveled, who you saw,
28 what kind of clothing different people had on, like Roxanne.
29 I believe you described her clothing when you saw her going

1 back in the store; is that right?

2 A. That's correct.

3 Q. All of these things, all these details were from
4 your memory; is that right?

5 A. That's correct.

6 Q. Nobody told you what to say, did they?

7 A. No, they did not.

8 Q. And when you saw these two people that you say
9 looked like they were arguing out in front of the store, did
10 anybody try to tell you what they looked like, or are you
11 basing what you remember on your own memory of seeing that
12 person in front of the store?

13 A. No, they did not. I told the people inside the
14 place that morning exactly-- I give them a description of it
15 right inside that morning just a few minutes after all this
16 happened.

17 Q. And when you were shown the lineup, this color
18 lineup which was marked on the copy D-2, you didn't have any
19 hesitation in pointing out photograph number 4, did you?

20 A. Did not.

21 Q. And the reason you didn't have any hesitation
22 picking that out is that is the person that you saw in front
23 of the store; is that right?

24 A. I believe it is; yes.

25 Q. And you told John Johnson and Wayne Miller, That is
26 the person that I saw in front of the store, didn't you?

27 A. I think so, yes.

28 Q. And you put your initials on the back of that
29 photograph on the original copy, did you not?

1 A. That I did.

2 Q. And both Wayne Miller and John Johnson witnessed
3 you doing that, didn't they?

4 A. That's correct.

5 Q. And you have testified in a previous trial in this
6 same basic case, have you not?

7 A. That's correct.

8 Q. And in that case you told on the stand about seeing
9 the two people in front of the store, looking at one of
10 them's face and identifying him in a lineup, did you not?

11 A. That's correct.

12 Q. And you have described that the person you saw in
13 the courtroom in Tupelo had on glasses; is that right?

14 A. I said the one that I seen didn't have glasses on.

15 Q. I meant in the courtroom.

16 A. Oh, yes, sir; that's correct.

17 Q. And you had a chance to see him without his glasses
18 on; is that right?

19 A. That's correct.

20 Q. And the courtroom in Tupelo was darker in the front
21 part than this courtroom; is that correct?

22 A. That's correct.

23 Q. Do you see the Defendant sitting over here?

24 A. Yeah. He looks darker now in here than he did up
25 there that day.

26 Q. Is that the person that you saw in front of Tardy's
27 store?

28 A. I will always believe that's the man I seen.

29 Q. And you are basing that on your own memory and not

1 what someone has told you; is that right?

2 A. That's correct.

3 Q. Did anybody in any way - John Johnson, Wayne
4 Miller, or anyone attempt to point out which picture for you
5 to identify on that lineup?

6 A. It wouldn't have done any good to have done that
7 because I wouldn't have listened to you.

8 Q. And opposing counsel has indicated that one of them
9 may have somewhat of a larger picture. Did anybody tell you
10 to pick out the one with the large picture?

11 A. No, they did not.

12 Q. Did anybody tell you to pick out the one with the
13 small picture?

14 A. No, they did not.

15 Q. Nobody tried to influence you in any way?

16 A. No, they did not.

17 Q. And you wouldn't have let them if they had, would
18 you?

19 A. No, I would not have.

20 Q. And you are only identifying this Defendant because
21 he is the person that you saw there that day--

22 A. --I will always believe that's the one I saw.

23 BY MR. EVANS: Nothing further, Your Honor.

24 BY THE COURT: Okay, Mr. Collins. You are
25 excused for now. I'm going to ask you to stay
26 unless y'all-- can y'all finally excuse him?

27 BY MR. EVANS: Yes, sir.

28 BY MR. LUMUMBA: Yes, sir.

29 BY THE COURT: Mr. Collins, you can go home.

1 BY THE WITNESS: All right. Thank you, sir.

2 WITNESS EXCUSED.

3 BY THE COURT: Who will you have next?

4 BY MR. LUMUMBA: I would call John Johnson.

5 BY THE COURT: John Johnson.

6 JOHN JOHNSON,

7 upon being called to testify as a witness by the Defendant on
8 the Motion to Suppress Identification, having first been duly
9 sworn, testified as follows, to-wit:

10 BY THE COURT: Have a seat, please, and then
11 state your name for the record.

12 BY THE WITNESS: My name is John Johnson.

13 DIRECT EXAMINATION BY MR. LUMUMBA:

14 Q. Mr. Johnson, when is the last time prior to this
15 hearing that you talked to Mr. Collins?

16 A. I spoke to him day before yesterday, I think it
17 was.

18 Q. Day before yesterday. Where was he at?

19 A. At his home.

20 Q. Okay, why were you at his home?

21 A. I stopped to check with him to see if he had been
22 subpoenaed to be here.

23 Q. Did you have a discussion with him?

24 A. Yeah.

25 Q. What did you discuss?

26 A. Just basically asked if you and your counsel had
27 asked him any questions beyond what had normally been
28 discussed, and he indicated that you had not.

29 Q. All right, so just the day before yesterday at his

1 home?

2 A. Yeah.

3 Q. Is that right?

4 A. Yeah.

5 Q. Okay. Now when you saw him there, did you tell him
6 what this hearing was going to be about?

7 A. No, I didn't know that much about it myself.

8 Q. I see; so you didn't say anything about pictures?

9 A. I know I probably mentioned to him there would be a
10 picture lineup, you know, the same picture lineup from
11 before.

12 Q. You said the same one from before. You told him
13 that; right?

14 A. I don't remember the exact wordings that were made.

15 Q. But as far as you can remember, you said something
16 like that?

17 A. I don't remember exactly what was said in that
18 regard.

19 Q. Well--

20 A. The picture lineup has to do with his testimony, I
21 know, and the picture lineup was probably mentioned, yes.

22 Q. Okay, and what you shared with me a minute ago, to
23 make sure I heard it right, you did say that you probably
24 told him it would be the same picture lineup that was there
25 before; right?

26 A. No, that is not what I said.

27 Q. What did you-- that is not what is on the record
28 here?

29 A. Well, that's not what I meant to represent. I

1 don't--

2 Q. Did you mean what you said?

3 A. Maybe not.

4 Q. Oh, maybe not, okay. Well, let me ask you this.
5 When is the last time to your knowledge that you gave him
6 these pictures to look at, or did anybody give it to him to
7 look at? And for the record, Judge, the witness is looking
8 at Exhibit number 2.

9 A. These are not the pictures I had. I don't know
10 when the last time I have seen these pictures.

11 BY MR. LUMUMBA: Okay, excuse me. Can I have
12 the other copy, please?

13 BY MR. EVANS: You have got a copy of them.

14 BY MR. LUMUMBA: I'm talking about the small
15 ones that you have.

16 BY MR. EVANS: You have got them right up
17 there. They are introduced into exhibits.

18 BY MR. LUMUMBA: There is a clearer copy of
19 these, the ones that is in as exhibits that they
20 had on their desk. Can I ask to be shown that,
21 please?

22 BY MR. EVANS: He has got a copy of it right
23 there, Your Honor. I am tired of giving him copies
24 of something he has already got.

25 BY MR. LUMUMBA: No--

26 BY THE COURT: Well, if it's the same thing,
27 I'm--

28 BY MR. EVANS: --It's the same thing.

29 BY MR. LUMUMBA: It's not the same.

1 **BY THE COURT:** Well, let me see it, and I will
2 clear it up whether it's the same thing.

3 **BY MR. EVANS:** This is getting ridiculous.

4 (Folder of photographs and Exhibits D-1 and
5 D-2 were handed to the Court.)

6 **BY THE COURT:** Well, it is obviously not the
7 same thing. This is clearer.

8 **BY MR. EVANS:** That is not the copy that I
9 gave him either.

10 **BY THE COURT:** Okay, well--

11 **BY MR. EVANS:** The copy that I gave him is
12 identical to this one.

13 **BY MR. LUMUMBA:** I have never seen a copy like
14 that.

15 **BY MR. EVANS:** I might as well do your work on
16 this too. I have done it on everything else. And
17 I want that back too, Your Honor, because that is
18 the only copy I have got.

19 **BY MR. LUMUMBA:** Judge, I have no problem with
20 that.

21 **BY THE COURT:** Okay.

22 **BY MR. LUMUMBA:**

23 Q. I am showing you a copy of Exhibit number 2 and ask
24 you if you have seen that before?

25 A. Repeat your question.

26 Q. Have you seen that before?

27 A. Yes, I have.

28 Q. And when were you shown, when did you see that?

29 A. I'm not sure. This is a photostatic copy, I would

1 assume, but I have seen one similar to this recently. I have
2 had one recently like that.

3 Q. Recently, within the last several days?

4 A. Yeah.

5 Q. And did Mr. Collins recently see it?

6 A. Yes, he did.

7 Q. And where was he at when he saw it?

8 A. At his house.

9 Q. Was that the same day you went over there?

10 A. Yes. You know, let me, if I could rephrase that.
11 I had it with me. Whether or not he actually looked at it or
12 not, I don't know, but I had it with me, and I indicated to
13 him that my initials were on there, and the date and all was
14 on there.

15 Q. Mr. Johnson?

16 A. Uh-hum.

17 Q. You took it out at the police station--at the, was
18 it in the DA's office? Where was the picture at before you
19 picked it up?

20 A. I got it from the file in the office in Grenada.

21 Q. You picked it up, and you knew where you were
22 going; is that right?

23 A. Yes.

24 Q. You knew you were going to Mr. Collins' office?

25 A. Yes.

26 Q. You knew you were going to Mr. Collins' office, and
27 that's why you got it so you could go?

28 A. In case he asked me questions, yes.

29 Q. And you went to him, and just a few minutes ago you

1 just told us that he saw the pictures; right?

2 A. He probably saw the pictures, yes. I can't swear
3 that he did.

4 Q. I mean I know you can't look through his eyes, but
5 you knew that you showed him the picture; right?

6 A. I didn't, I don't know that I actually showed him
7 the pictures, but I had the pictures in my personal
8 possession when I talked to him.

9 Q. And you had them in your possession so they could
10 be seen?

11 A. If he asked to see them, yes.

12 Q. I see. Now let me-- now we have only been talking
13 for the last ten minutes or so; right. Me and you here?

14 A. I don't know exactly how long we have been talking.

15 Q. Well, I just gave you that picture just less than
16 six or seven minutes ago; right?

17 A. Probably.

18 Q. And I didn't tell you what to say when I gave it to
19 you; right?

20 A. No.

21 Q. I just gave it to you and asked the question. One
22 of the questions was did Mr. Collins see that picture.
23 That's all I did; right?

24 A. (Witness shrugs.)

25 Q. Is that right?

26 A. May have. I don't remember exactly but something
27 on that order, yes.

28 Q. Well, you do remember that you told me that he saw
29 it. You said that; right?

1 A. I said he probably saw it.

2 Q. No, but at first you said he saw it; right?

3 A. Well, he may have seen it. I don't know that he
4 saw it or he didn't see it.

5 Q. So let me understand you. You got this picture
6 from-- was it at the DA's office? I'm sorry.

7 A. Yes.

8 Q. And you went all the way over to Mr. Collins'
9 house?

10 A. I went through Winona. He lives in Winona, yes.

11 Q. And you are from Grenada?

12 A. No, I am originally from Winona. I live in Sallis
13 at this time.

14 Q. Okay, but you had to go get the picture from
15 Grenada?

16 A. I was already there.

17 Q. And you brought the picture with you from Grenada;
18 right?

19 A. I brought this with me from Grenada, yes.

20 Q. Which one? You just said this?

21 A. I had, I'm not sure if this is the same one or
22 not. It may have been a copy, but I had--

23 Q. --You had one that looked like that?

24 A. That looked like this, yes.

25 Q. Right, and for the record when we say looked like
26 this, this is a copy of Exhibit 2, and on the back of it it
27 has HWM 8/24/96; right?

28 A. Right.

29 Q. And it has-- what is this?

1 A. That is my initials.

2 Q. And what date is on it?

3 A. 8/24/96.

4 Q. And it has some spaces that appear to be blocked
5 out on the back; right?

6 A. Right.

7 Q. What is under there?

8 A. That would be the back of the picture lineup as it
9 was, or the front maybe, I don't know. The pictures of the
10 people that were involved in the lineup.

11 Q. And it has here initials "CC"; right?

12 A. That's right.

13 Q. And it has here a time and the date; right?

14 A. Right.

15 Q. And on the front of it, it actually has the same
16 pictures which are in this-- well, just for the record so we
17 can describe it, this appears to be a black and white copy;
18 is that correct?

19 A. That's right. Well, it's a photostatic copy, yes.

20 Q. Which is in black and white?

21 A. It's not in color.

22 Q. And this appears to be in color, what we have been
23 referring to as Exhibit-- is a copy, which we have been
24 referring to as the pictures which are in Exhibit 2, this
25 particular group are in color; is that correct?

26 A. Those particular pictures are in color.

27 Q. Right, and for the purpose of the record to
28 describe it, they are in a manila folder that you can open
29 up; right?

1 A. Yeah.

2 Q. And when you open it up, then it appears to be
3 what-- about what size would you say that is?

4 A. Probably 18 by 12, something like that.

5 Q. Okay, and this other copy of Exhibit 2, this other
6 depiction of the photos in Exhibit 2, this is a copy which
7 has at the top "photographic identification"; right?

8 A. Yeah.

9 Q. And it not only is in black and white, but it is on
10 an eight and a half by eleven sheet?

11 A. Yeah.

12 Q. And these pictures are clear. You can see them
13 clearly; right?

14 A. They are fairly clear. I don't know.

15 Q. Okay, well, let me ask you these questions. And
16 it's that copy, the ones that is fairly clear that you told
17 me that you took with you over to Porky Collins' home?

18 A. I'm not sure if this is the exact copy. I took a
19 copy that represented this same information.

20 Q. To Porky Collins' home?

21 A. I had it with me, yeah.

22 Q. And you brought it from Grenada?

23 A. I did.

24 Q. And it would be safe to say that you don't normally
25 carry around evidence with you from a capital murder case on
26 a day to day basis, do you?

27 A. I don't remember having anything that was marked
28 for evidence, but I had a copy of something similar to this,
29 yes.

1 Q. Well, you don't carry copies around with you of
2 capital murder evidence on a day to day basis?

3 A. (No response).

4 Q. You seem to be having some problems with that
5 question. Let me withdraw it and make it a little simpler.

6 A. I carry copies of a lot of things with me.

7 Q. I understand. But you don't go to Porky Collins'
8 house all the time; right?

9 A. No, I don't.

10 Q. And it just so happens at this time you were
11 carrying a picture which has, or a copy of a picture which is
12 similar to what you have in front of you which has Porky
13 Collins' initials on the back of it; right?

14 A. Yes, that's true.

15 Q. And you happened to go over to his house. You
16 didn't happen to go. You called him and told him you were
17 coming; right?

18 A. That's true. I think he called the DA's office,
19 and I wanted to go by and check on him.

20 Q. And in fact, as far as you know, your phones are
21 not tapped by the Defense; right?

22 A. Repeat the question.

23 Q. As far as you know, your phone is not tapped by the
24 Defense in this case, is it?

25 A. I don't have any knowledge of such.

26 Q. But so I mean, and I don't want to be facetious,
27 but you could have talked to him on the phone and asked him
28 what he got; right?

29 A. I didn't know where Porky was. He is a friend of

1 mine. He works at a store. His home is right there. I was
2 going right through Winona, and I just stopped to check on
3 him.

4 Q. With this copy of this picture?

5 A. I did have a copy of the picture with me. I also
6 had copies of a lot of things that I carry.

7 **BY THE COURT:** Mr. Lumumba, let me say this.
8 If you are trying to make the point that he took
9 the picture there and showed it and wanted him to
10 look at it, you have made that point with the
11 Court.

12 BY MR. LUMUMBA: Thank you.

13 BY MR. LUMUMBA:

14 Q. How long have you been an investigator for the DA's
15 office?

16 A. About 7 years.

17 Q. And would it also be safe to say that before that,
18 you were chief of police?

19 A. I was.

20 Q. In Winona?

21 A. That's right.

22 Q. And during this period of a year, how long was that
23 for?

24 A. I was chief of police six years; assistant chief,
25 four years. I was a policeman in Grenada and Winona prior to
26 that.

27 Q. Okay, so you have been in law enforcement for what,
28 over 20 years?

29 A. About that.

1 Q. And the reason I ask you that, one of the things
2 that you do in law enforcement, you learn about the
3 presentation of photo displays and lineups; is that right?
4 You learn how you are supposed to do it?

5 A. Sure.

6 Q. Okay. And they tell you that one of the
7 fundamental concepts is to make sure that the lineup or the
8 photo display is not what they call suggestive; right?

9 A. True.

10 Q. When we say suggestive, what we mean is anything
11 that makes a particular, let's say photo display; all right?
12 You are not supposed to do anything that makes a particular
13 photo stand out; is that right?

14 A. True.

15 Q. Because the principle is that you really don't know
16 yourself personally whether or not the person you have as a
17 suspect is actually the person that committed the crime;
18 right?

19 A. True.

20 Q. But they teach you that if you do anything
21 suggestive to make the picture of the suspect stand out - you
22 understand what I'm saying - that that might, in fact,
23 influence the identification by the witness; right?

24 A. (Witness nods his head.)

25 Q. Is that correct?

26 A. True.

27 Q. And if you influence the identification of the
28 witness, they teach you that you might be getting the product
29 of the influence rather than the product of what the witness

1 actually knows; right?

2 A. True.

3 Q. And would it be safe to say that they tell you that
4 when you do the photo display, that all of the photos should
5 be similar or look alike. I don't mean-- let's not talk
6 about the persons in the photos. But for instance, you are
7 not supposed to get a photo, a bunch of photos with dark
8 backgrounds and then put the suspect in a photo with light
9 background.

10 BY MR. EVANS: Your Honor, I object. I have
11 tried not to, but this is on one particular photo
12 lineup. He needs to ask his questions about that
13 photo lineup.

14 BY THE COURT: I think that is true.

15 BY MR. LUMUMBA: Okay.

16 BY MR. LUMUMBA:

17 Q. Now but it's true, you are not supposed to--

18 BY MR. EVANS: --I object again, Your Honor.
19 Apparently he didn't hear the Court's ruling.

20 BY MR. LUMUMBA: I am going right to it.

21 BY THE COURT: Okay, but I have ruled now.

22 Let's move on.

23 BY MR. LUMUMBA: Okay.

24 BY MR. LUMUMBA:

25 Q. In this particular photo selection, you have one
26 man there who appears to be close up in the photo as opposed
27 to further back in the background; is that correct?

28 A. Not knowing the actual size of these other people,
29 I can't say that that is totally true, but I would admit that

1 Curtis Flowers looks a little larger in that picture if
2 that's what your question is.

3 Q. And it would be safe to say that his head is
4 definitely bigger than anybody else here; is that right?

5 A. (No response).

6 Q. In this photo spread?

7 A. Probably.

8 Q. It would also probably be safe to say that in this
9 photo display he appears to be darker than anybody else here
10 as it appears in this photo spread?

11 A. That is possibly true, but this is a photostatic
12 copy from a copy machine here. This hasn't been presented to
13 Porky Collins by me.

14 Q. Does it appear in this photo display that he
15 appears to be darker than anybody else?

16 BY MR. EVANS: Your Honor, again, he cannot
17 ask him and I object to him asking him about a
18 photocopy of what is darker or lighter.

19 BY THE COURT: I think you ought to refer to
20 the actual photograph.

21 BY MR. LUMUMBA: Okay.

22 Q. What photographs did you show Porky Collins?

23 BY MR. EVANS: And again, Your Honor, for the
24 record the originals of these photographs are in
25 the Supreme Court. All we have before this Court
26 today are copies.

27 BY MR. LUMUMBA: Judge--

28 BY THE COURT: --Let me ask you this because I
29 don't know. Are these photographs that we have

1 here the same photographs that the Supreme Court
2 has?

3 BY MR. EVANS: They are the same photographs
4 but--

5 BY THE COURT: What is the difference?

6 BY MR. EVANS: They are a copy that are made.
7 So whether they are the same darkness or lightness
8 or exact same size, I don't know. And I want this
9 Court to understand that this is strictly a copy.
10 The originals could have been here today, but
11 nobody got them.

12 BY THE COURT: Okay, well.

13 BY MR. LUMUMBA: Well, can I ask a couple of
14 questions? I think it'll clear it up.

15 BY THE COURT: Well. (Pause).

16 BY MR. LUMUMBA: May I state this? We have
17 never, we have asked for discovery. We have asked
18 to see the exact evidence.

19 BY THE COURT: But they don't have that
20 though. It is with the Supreme Court.

21 BY MR. LUMUMBA: He says it could have been
22 here today.

23 BY THE COURT: Well, it could. You could have
24 filed a motion with the Supreme Court and gotten it
25 here.

26 BY MR. LUMUMBA: All right, well, if you
27 recall our last discussion in your presence, they
28 said they were going to file, and they were talking
29 about this hearing.

1 **BY THE COURT:** But my problem right now is
2 that they are not here, so let me think just a
3 minute.

4 BY MR. LUMUMBA: Can I ask one question?

5 **BY THE COURT:** Wait a minute first. Let me
6 think just a second. (Brief pause) What he needs
7 to be asked is if those photographs are
8 substantially the same as the ones that he was
9 shown, that he showed at the lineup, and that's
10 what the issue is. Then I will have to maybe make
11 a ruling after that.

12 BY MR. LUMUMBA: Okay.

13 BY MR. LUMUMBA:

14 Q. Which-- do we have here in front of us the photos
15 which Porky Collins was shown at the lineup?

16 A. I can't swear that these are identical in size or
17 if these are reproductions and do they actually show actual
18 size to scale individuals. You know, I don't know who took
19 the pictures or whatever. But the original photographs were
20 color pictures similar to these.

21 Q. Similar to the ones in the big exhibit?

22 A. Right.

23 Q. Those are similar to the ones that you actually
24 showed to Porky?

25 A. Right.

26 **BY THE COURT:** Okay, let me make this ruling.
27 Of necessity, because I don't have them, I am going
28 to have to make my ruling based on those
29 photographs here today. If this case should go to

1 the Supreme Court, I direct that the photographs
2 that were actually submitted that are now at the
3 Supreme Court be a part, they be made a part of the
4 record in this case so that the Supreme Court will
5 have the actual ones. They will have a little bit
6 more benefit than I do, but that's the best I can
7 do.

8 BY MR. LUMUMBA: Now just to be clear--

9 BY THE COURT: And this, we are talking about
10 Exhibit 2 here.

11 BY MR. LUMUMBA:

12 Q. Exhibit 2 in the manila folder; right? And the
13 ones which are similar to the ones that he actually saw on
14 that day?

15 A. Correct.

16 Q. Exhibit 2, which is the 8 1/2 by 11 sheet, the
17 copy; right?

18 A. Correct.

19 Q. Is similar to what you had with you in your
20 possession when you went by to see Porky Collins?

21 A. Right. Sure.

22 Q. Looking at these two representations of Exhibit 2,
23 you have no difficulty -- first of all, the same number is
24 under Curtis Flowers in this copy of the exhibit that is
25 under him in this copy; is that correct?

26 A. Correct.

27 Q. Everybody else here is arranged in the exact same
28 order on both of these copies?

29 A. Correct.

1 Q. It's no difficulty ascertaining by looking at these
2 that the persons situated in these positions on one copy are
3 the exact same persons situated in the same positions on the
4 other copy; right?

5 | A. They appear to be; yes.

6 Q. And looking at this exhibit that was shown to Porky
7 on the day or a similar copy of it, it is also clear here
8 that the head of Curtis Flowers is a lot larger than the head
9 of Mr., than anybody else on here; right?

10	A. Probably so.
----	-----------------

11 BY THE COURT: Let me ask a question. Is it
12 significant or relevant at all as to what any of
13 these witnesses think in that regard, other than
14 maybe Porky Collins, since in the ultimate long
15 run, I have got to be the one to examine the
16 photographs and make that decision regardless of
17 what his opinion is and then ultimately, if it goes
18 to the Supreme Court, they have to do the same
19 thing? So his opinion as to whether they differ,
20 does it make any difference?

21 BY MR. LUMUMBA: Yeah, I would argue in two
22 regards, Judge. Excuse me. I would argue in two
23 regards. One, it deals with the question of
24 whether objectively, they place people in the
25 lineup in a way which was suggestive to the
26 witness. That is number one.

27 BY MR. EVANS: Your Honor, he can simply ask
28 him--

29 BY THE COURT: --Let him finish--

1 BY MR. EVANS: --that question.

2 BY THE COURT: Let him finish, and I will let
3 you-- Go ahead.

4 BY MR. LUMUMBA: And I should be allowed to
5 approach that not just by asking that directly, but
6 by breaking down the photos to show it. Secondly,
7 tests have been done and included in the appendix
8 of some of the cases which indicate that very often
9 a witness is influenced by something which is
10 different about the witness-- about the suspect
11 which is not in his conscious mind, that most
12 misidentifications are based upon subconscious
13 factors as opposed to conscious factors.

14 So any difference which appears-- and I
15 appreciate that the Court can look at it, and I
16 think that is good, and the reason it's good is
17 because if I say something, if the witness says
18 something which is obviously not true about those
19 photographs, and I'm not talking about whether the
20 Court can disagree with the witness or that kind of
21 thing. That is not what I'm trying. If he says
22 something that is obviously untrue about the way
23 that those things are depicted, then the Court can
24 take that into consideration. If he says something
25 which is different about the depiction that I bring
26 out and the Court doesn't think it's that relevant,
27 then the Court can also take that into
28 consideration. But this is my only way of pointing
29 out to the Court what dissimilarities and

1 similarities exist in a lineup which we know that
2 all the suspects must all be displayed, are
3 supposed to have similar characteristics. That is,
4 I mean that is true. Everybody should have similar
5 characteristics, or they shouldn't be in there.

6 So I don't want to belabor this, but there is
7 just a couple of other questions. This is the only
8 lineup that we are dealing with, and I would like
9 to ask this witness, and the Court can certainly
10 come to his own conclusion.

11 BY MR. HORAN: Your Honor, you know, if Mr.
12 Johnson - and I'm certainly not admitting that he
13 did that, but if he intentionally put a photograph
14 in there that was suggestive, that doesn't make any
15 difference what his intent was. It's whether or
16 not when the Court looks at the photograph array
17 and when the Supreme Court looks at the photograph
18 array, whether they say that it is suggestive under
19 the existing case law. The photographic array of
20 pictures speaks for itself.

21 Mr. Johnson's display of it is done once Porky
22 Collins looks at it. And the question turns not on
23 whether or not Mr. Johnson thinks that the head is
24 bigger or that there is pony tails or one of them
25 has a mustache. That doesn't make any difference.
26 Once he makes the photographs available to Porky
27 Collins, he can't change what he has laid out in
28 front of him. All these questions don't mean
29 anything. Mr. Johnson's mind set means absolutely

1 nothing. It's whether or not the photograph array
2 of pictures, I mean the array of photographs is
3 suggestive in and of itself. And is there any
4 other inquiry that the Court has to look into when
5 they are trying to suppress an identification? I
6 don't know what it is.

7 BY MR. LUMUMBA: He had a description in his
8 possession at the time that he put these
9 photographs together. One of the things that the
10 case law talks about is whether the people in this
11 display meet that description so, and whether the
12 alleged suspect meets that description. So I think
13 all these are factors to be balanced, and I think
14 these are questions which are customarily asked on
15 a regular basis at these kind of hearings.

16 BY THE COURT: I think you have done that
17 though, Mr. Lumumba. You put Mr. Collins on, and
18 he testified as to what his preliminary report was
19 to the officers as to what their description was,
20 and then this officer has testified, I guess, that
21 these are substantially the same pictures that he
22 was presented. You have gotten those facts before
23 the Court. Now it's just-- regardless of what Mr.
24 Johnson thinks about it or you think about it or
25 Mr. Horan thinks about it, it's up to me to decide
26 whether I think it is constitutionally imperfect.

27 So I think you have established what you are
28 trying to establish as far as getting it before the
29 Court. And I think you did that with Mr. Collins,

1 and I think you have done it with Mr. Johnson.

2 BY MR. LUMUMBA: Okay.

3 BY THE COURT: I don't want to limit you, but
4 you have given me the information I need, I think.

5 BY MR. LUMUMBA: Okay. Well, can I ask just a
6 couple of other questions, and I will move on?

7 BY THE COURT: Yes, sir. If you will keep it
8 to two.

9 BY MR. LUMUMBA:

10 Q. How many people in this photo display appear to be
11 over 30?

12 A. I couldn't answer that. I couldn't-- by looking at
13 that, I can't tell you their age.

14 Q. Can you tell me--

15 A. I would say that they are close to the same age,
16 but I can't tell you how old they are by looking at those
17 pictures.

18 Q. Who appears to be the oldest person in this
19 display?

20 A. (Pause) I can't; I would just be guessing, and I'm
21 not qualified to do that.

22 Q. I just want you to understand the question.

23 A. I understood your question.

24 BY MR. EVANS: I think that is two questions,
25 Your Honor.

26 BY MR. LUMUMBA: No, no. You don't understand
27 the question.

28 Q. I'm not asking you who is the oldest. I am asking
29 you who appears to be oldest based upon this display?

1 A. Based on that display, I don't think I can make
2 that determination.

3 Q. Okay, well, let's go to another question. Do you
4 have information on the persons that you put in that
5 display? In other words, do you know their names and other
6 information on them, about their vital statistics?

7 A. I don't have any names or vital statistics on those
8 individuals, but I didn't put them in that display.

9 Q. Who put them there?

10 A. That was prepared by the Highway Patrol.

11 Q. And do they have that information?

12 A. I couldn't answer that question.

13 Q. And who prepared it?

14 A. I couldn't answer that question. I know that Mr.
15 Miller had that in his possession.

16 Q. Okay. Did you show Mr. Collins a picture of Mr.
17 Doyle Simpson?

18 A. When?

19 Q. On the day--

20 A. --initially? When this lineup, a similar, the
21 original lineup was shown to Mr. Collins? Is that what you
22 are saying?

23 Q. On the same day that you showed these pictures to
24 him which are in Exhibit 2, did you show him a picture of Mr.
25 Collins [sic]?

26 A. A picture of Mr. Collins?

27 Q. Or a lineup with Mr. Collins. I'm sorry--

28 A. --I don't think Mr.--

29 Q. A lineup with Mr. Doyle Simpson in it?

1 A. No.

2 Q. You never showed him a lineup with Mr. Doyle
3 Simpson in it?

4 A. I did not.

5 Q. I am showing you a sheet of paper and asking you if
6 you can identify it?

7 BY MR. HORAN: Your Honor, could it be marked
8 for identification purposes, please?

9 BY THE COURT: Yeah, let's do that.

10 BY MR. LUMUMBA: I will have to copy this too
11 later on.

12 (HANDWRITTEN NOTES CONCERNING INTERVIEW WITH
13 MR. COLLINS WERE MARKED AS DEFENDANT'S EXHIBIT D-3
14 FOR IDENTIFICATION TO THE MOTION TO SUPPRESS
15 IDENTIFICATION.)

16 (Exhibit D-3 ident. handed to the witness.)

17 BY MR. LUMUMBA:

18 Q. Do you recognize that exhibit which now is marked
19 as number 3?

20 A. I do.

21 Q. What is that?

22 A. This is some original notes that I had that I made
23 on the date that Mr. Collins was shown a picture lineup.
24 This is back on 8/24 of '96 looks like it is dated.

25 Q. Was he shown a lineup of Mr. Doyle Simpson?

26 A. Yes.

27 Q. And was the pictures that he was shown of Doyle
28 Simpson, were they in black and white or color?

29 A. I believe they were color like these.

1 Q. When is the last time you saw a copy of those
2 pictures?

3 A. I can't recall really. I don't remember exactly.

4 Q. Did you take a copy of those pictures with you when
5 you went over to Porky Collins' house?

6 A. No, I didn't.

7 Q. Did you take a copy of any other pictures with you?

8 A. No.

9 Q. When you went over to Porky Collins' house?

10 A. No.

11 Q. Is it true that in your experience in setting up a
12 lineup, do you attempt to get people in the lineup with
13 similar characteristics?

14 BY MR. EVANS: Your Honor, this has been
15 covered several times. I object.

16 BY MR. LUMUMBA: I haven't asked him that
17 question.

18 BY THE COURT: What question was it? State
19 that question again.

20 BY MR. LUMUMBA:

21 Q. Is it true that in setting up a lineup, that you
22 attempt to get people in it with similar characteristics?

23 BY THE COURT: But I have held that that is
24 not relevant. The question is whether or not that
25 was done in this case.

26 BY MR. LUMUMBA: So you are saying it is not
27 relevant to this hearing?

28 BY THE COURT: Well, that is all that is
29 before me is at this hearing; yes, sir. Yeah, I'm

1 not excluding it down the road.

2 BY MR. LUMUMBA: Okay.

3 BY MR. LUMUMBA:

4 Q. Okay, now when you brought-- or did you tape, did
5 you audio tape or videotape Mr. Collins when you talked to
6 him on the day that he looked at these photographs?

7 A. On that day, 8-24-96?

8 Q. Yeah.

9 A. I don't believe I did. Well, wait a minute. I
10 will have to look at the notes on that. 8-24-96; probably
11 so.

12 Q. What notes do you need to look at? I will be glad
13 to show you.

14 A. Well, in the statements that you should have a
15 copy; if I took a statement from Porky Collins, it will be
16 dated and timed.

17 Q. Did you tape him more than once or just once?

18 A. Repeat that.

19 Q. Did you tape Mr. Collins more than once or just
20 once in all the times that you talked to him?

21 A. I have taped him twice.

22 (STATEMENT OF PORKY COLLINS WAS MARKED AS
23 DEFENDANT'S EXHIBIT D-4 FOR IDENTIFICATION TO THE
24 MOTION TO SUPPRESS IDENTIFICATION.)

25 BY MR. LUMUMBA:

26 Q. Do you recognize what has been marked as Exhibit
27 number 4?

28 A. I do.

29 Q. What is that?

1 A. It's a statement of Porky Collins made March 10,
2 '97.

3 Q. Was that taped?

4 A. Yes, it was.

5 Q. And March 10th, '97 is not the date he was shown
6 the pictures; right? He was shown the pictures on 8-24-96;
7 is that right?

8 A. 8-24-96.

9 Q. Right.

10 A. So now--

11 Q. Now do you have any other statement of Porky
12 Collins which is taped other than that statement?

13 A. Yeah, on 8-24-96. I think there may be a--

14 Q. You do?

15 A. I'm not sure. I think maybe there was one.

16 Q. Well, let me ask you this. Did you see a copy of a
17 subpoena when you came here to testify, before coming here to
18 testify?

19 A. No, I didn't look at it, but I knew you had one.

20 Q. You never looked at it?

21 A. Yeah.

22 Q. You never looked at it?

23 A. No, I never looked at it.

24 Q. So you never read here where it says to bring all
25 information related to procedures that were used by Porky
26 Collins to identify Flowers and Doyle Simpson, the photo
27 lineup?

28 A. No, I didn't read that, but I am sure it is there.

29 Q. Okay. Well, how did you know about it?

1 A. One of the girls in the office told me that it was
2 sent in there.

3 BY MR. EVANS: Your Honor, for the record, Mr.
4 Johnson was not served a copy of that, but out of
5 courtesy to the Court, we brought statements. But
6 Mr. Johnson was never served a copy of that.

7 BY THE COURT: Well, I assume the question is
8 was there a transcript of the second tape.

9 BY MR. EVANS: We only know of one tape that
10 was taken, Your Honor. And we have the tapes and
11 the copies here as we have sat down on two
12 different occasions--

13 BY THE COURT: --I understand all that.

14 BY MR. EVANS: --and gone over with opposing
15 counsel.

16 BY THE COURT: But as far as you know, there
17 was just this March.

18 BY MR. EVANS: Just one is the only one that
19 we are familiar with.

20 BY THE COURT: Okay.

21 BY MR. LUMUMBA: Judge, I certainly have never
22 seen another-- I have never seen a copy of any tape
23 other than that one.

24 BY MR. JOHNSON:

25 A. I can see here that the information that you were
26 asking about is in this statement.

27 Q. All right. Well, do you have a tape-- that was
28 taped in '97; right?

29 A. March 10, '97. Yes.

1 Q. Do you have a tape or was there a tape made of 8-24
2 of '96?

3 A. If it was, you know-- it would be, you would have
4 it if there was such a tape. I made notes here, and that may
5 be what I am referring to here, of Wayne Miller was present.
6 I made these notes. I went back and asked him to make a
7 statement in regard to the overall interest of the case, and
8 that was the purpose of this tape.

9 Q. And that was done in '97?

10 A. It was.

11 Q. So you never taped him in '96; is that right?

12 A. Apparently not.

13 Q. You talked to Mr. Collins on several occasions
14 prior to August of '96 or prior to the day that you showed
15 him the photographs; is that correct?

16 A. Repeat your question.

17 Q. Is it not a fact that you talked to Mr. Collins on
18 several occasions prior to the time that you showed him the
19 photograph?

20 A. Sure.

21 Q. All right. And when you talked to him on those
22 occasions, did you ever tape anything that he said about this
23 case?

24 A. No.

25 Q. And now when you, when he came in -- where was he
26 at when you showed him the photographs on August the 24th of
27 '96?

28 A. Inside the DA's office in the Police Department of
29 Winona, Mississippi.

1 Q. Inside of the DA's office?

2 A. Uh-hum.

3 Q. And the Police Department?

4 A. That's right.

5 Q. Is that two different places or the same place?

6 A. The same.

7 Q. All right. Did he come down on his own, or did you
8 go get him?

9 A. I don't remember that.

10 Q. How did he get down there? Did you call him, or
11 did he-- somebody else call him?

12 A. I don't know who called him. I may have called
13 him.

14 Q. So you talked to him?

15 A. I did talk to him on that day, yes.

16 Q. Before he came?

17 A. I don't know about that.

18 Q. Who notified him that you wanted him to be there?

19 A. I don't remember that.

20 Q. You don't know?

21 A. Uh-uh.

22 Q. Do you recall any conversations that you had with
23 him before he saw the photographs?

24 A. No.

25 Q. Did you indicate to him at some point that you
26 wanted him to look at the photographs in order to determine,
27 in order to see if he could pick out the person, in order
28 that he could pick out the person who committed this crime?

29 A. Just before he looked at the pictures, yes.

1 Q. So you told him to see if he could look at the
2 photograph and pick out the person who committed this crime;
3 right?

4 A. Yes.

5 Q. And you indicated that there were a number of
6 people in the photographs and to look at all of them; is that
7 right?

8 A. Sure.

9 Q. Thank you.

10 (Pause while Mr. Lumumba confers with Mr.
11 Freelon.)

12 Q. Did you, did you tell him at any time prior to
13 showing him the photographs that you had a suspect?

14 A. No. That wasn't discussed with him.

15 Q. Was it discussed-- who was it discussed with?

16 A. I think I can clarify that with this statement that
17 is over in the back of that statement.

18 Q. No. I am asking you.

19 A. All right, ask me.

20 Q. Who was the fact that you had a suspect discussed
21 with? Was it discussed with any civilian witness?

22 BY MR. EVANS: Your Honor, that is not
23 relevant who he discussed with other than Porky
24 Collins. He is the one who looked at the photo
25 lineup, and whether he talked with me or other
26 investigators or anybody else about who was a
27 suspect is not relevant to this Motion.

28 BY THE COURT: It's not relevant unless he
29 made some suggestion that made Porky Collins make

1 that identification.

2 BY THE WITNESS:

3 A. There was no suggestion of anything to make him
4 make that selection, no.

5 Q. There were other police officers in the room at the
6 time; is that right?

7 A. No. Well, Wayne Miller with the Highway Patrol was
8 present.

9 Q. How about Mr. Matthews?

10 A. I don't believe he was there.

11 Q. Okay. Did have you a discussion with Mr. Miller
12 about having a suspect?

13 BY MR. EVANS: I object unless he specifies
14 whether he is talking about in the presence of Mr.
15 Collins.

16 BY THE COURT: Well, yeah. You need to lay
17 that predicate.

18 BY MR. LUMUMBA:

19 Q. Did you have any discussion with Mr. Miller in the
20 presence of Mr. Collins?

21 A. No.

22 Q. Pardon?

23 A. No.

24 Q. Did you hear Mr. Miller say anything to Mr. Collins
25 in your presence?

26 A. No.

27 Q. Didn't say anything to him at all?

28 A. Not about Curtis Flowers being a suspect, no.

29 Q. I'm not asking you about Curtis Flowers being a

1 suspect. Did he say anything to him-- well, first of all,
2 did he say anything to him at all at the time of the photo
3 display? Mr. Miller.

4 A. The only conversation was made with Porky was to
5 ask him to tell us what he knew, and then we asked him to
6 look at a photo lineup and see if he could identify the man
7 that he saw in front of Tardy Furniture that morning.

8 Q. To see if he could identify the man he saw in front
9 of Tardy Furniture? Is that what you said?

10 A. We asked him that, yes.

11 Q. Okay. **The** man?

12 A. (Witness nods his head.)

13 Q. Okay. You have got to say yes or no.

14 BY MR. EVANS: What was the comment or
15 question, Your Honor? I didn't hear it.

16 BY MR. LUMUMBA: Well, he has to say yes or
17 no.

18 BY MR. EVANS: Your Honor, I didn't hear the
19 question or comment that was made.

20 **BY THE COURT:** Well, the question--

21 BY MR. LUMUMBA: It was a question.

22 **BY THE COURT:** It was, and I have forgotten.

23 Go ahead.

24 BY MR. LUMUMBA:

25 Q. The question is you asked him to identify the man
26 that he saw in front of the store; right?

27 A. Correct.

28 Q. Okay. Now you did not show Porky Collins any
29 photographs prior on any of the dates that you talked to him

1 prior to 8-24-96; was that right?

2 A. That's correct.

3 Q. Now you are aware, weren't you, that one of the
4 things that is important to identification is how soon the
5 person sees the lineup after the incident; right? You
6 understand that is important?

7 A. I understand that can be a factor, yes.

8 Q. And the longer time it takes, the more chance that
9 they can make a mistake; isn't that correct?

10 A. I think that would depend on the individual and--

11 Q. Well, I know, but you don't, you don't do your work
12 based upon individuals? You--

13 BY MR. EVANS: --Your Honor, this is not
14 relevant.

15 BY THE COURT: That is a jury question that
16 you are asking for.

17 BY MR. LUMUMBA:

18 Q. When you talked with Porky Collins on 7-16-96?

19 BY MR. HORAN: Is that an exhibit? Is that
20 marked?

21 BY MR. LUMUMBA: No. Do you want to mark
22 it?

23 (NOTES CONCERNING PORKY COLLINS' STATEMENT
24 WRITTEN ON 7/16/96 WERE MARKED AS DEFENDANT'S
25 EXHIBIT D-5 TO THE MOTION TO SUPPRESS
26 IDENTIFICATION.)

27 BY MR. LUMUMBA:

28 Q. I am showing you D-5. Tell us what that is.

29 A. The basic note I made on the day of the murders,

1 July the 17th-- 16th, '96.

2 Q. Do those notes concern a conversation with someone?

3 A. Yeah, I guess they do, yeah; Porky Collins.

4 Q. Right. And does it indicate whether or not you
5 showed him a photograph display on that day?

6 A. No, it does not.

7 Q. When did the state police become involved in the
8 case?

9 A. Almost immediately.

10 Q. And when is the first time you asked them to make
11 up a photo spread for Porky Collins?

12 A. We worked jointly involved in this investigation,
13 and I don't know that I particularly asked him to do that,
14 but it was discussed and Mr. Miller furnished one.

15 Q. Do you remember when it was first discussed about a
16 photo spread?

17 BY MR. HORAN: Your Honor, is that relevant to
18 anything as far as Mr. Collins' identification?
19 When they discussed when they wanted the photo
20 lineup?

21 BY THE COURT: It's really not. Let's move
22 on. I think we have pretty well covered this
23 subject with both of these witnesses.

24 BY MR. LUMUMBA: All right. I don't have any
25 further questions.

26 BY THE COURT: How long are you going to be,
27 Mr. Evans?

28 BY MR. EVANS: Brief.

29 BY THE COURT: Okay. I asked Mr. Freelon

1 that, and I didn't get a straight answer.

2 BY MR. EVANS: Of course, if the Court would
3 like to take a break--

4 BY THE COURT: --I'm not going to ask him to
5 estimate time any more.

6 BY MR. EVANS: If the Court would like to take
7 a break, I am definitely ready for one.

8 BY THE COURT: Okay, let's take about ten
9 minutes.

10 (FOLLOWING THE AFTERNOON RECESS ON 1/6/99,
11 PROCEEDINGS CONTINUED IN OPEN COURT WITH THE COURT,
12 ALL COUNSEL, AND THE DEFENDANT PRESENT AND WITH MR.
13 JOHN JOHNSON STILL ON THE STAND:)

14 BY MR. LUMUMBA: Judge, can I ask the witness
15 a couple of short questions?

16 BY THE COURT: Okay. All right, make it two;
17 okay?

18 BY MR. LUMUMBA: All right.

19 CONTINUED DIRECT EXAMINATION BY MR. LUMUMBA:

20 Q. One question is when you went to visit Mr. Porky
21 Collins a couple of days ago as you said, were you by
22 yourself, or was anyone else with you?

23 A. I was by myself.

24 Q. Focusing on Exhibit 5--

25 A. Do what now?

26 Q. Focusing on Exhibit 5, pointing you to the
27 description that was given by Mr. Collins--

28 BY MR. EVANS: I can't hear, Your Honor.

29 BY MR. LUMUMBA: I'm sorry.

1 **BY THE COURT:** I think that is as loud as he
2 can talk. I think he said, "Focusing on Exhibit
3 5," and in that about the description that Mr.
4 Collins gave to, I assume, Mr. Johnson; is that
5 right?

6 **BY MR. LUMUMBA:** Right. Right.

7 **BY THE COURT:** Okay.

8 **BY MR. LUMUMBA:**

9 Q. Did you write down precisely the description that
10 Mr. Collins gave you?

11 A. No, I don't think it was precise, but I wrote down
12 roughly what he told me.

13 Q. What was the difference?

14 A. He indicated one man was taller than the other. He
15 indicated that-- you know, that is basically all he told us
16 that day.

17 Q. Did he tell you, did he tell you both men had
18 medium, both were black men and they had medium complexions?

19 A. That is true. I wrote that down.

20 Q. And did he say that precisely?

21 A. Yes, he said that.

22 **BY THE COURT:** Can I see that? Is that in
23 evidence?

24 **BY MR. HORAN:** Identified.

25 **BY THE COURT:** I move to admit them.

26 **BY THE WITNESS:** This was a--

27 **BY THE COURT:** --Wait a minute, Mr. Johnson.

28 **BY THE WITNESS:** I'm sorry.

29 **BY MR. EVANS:** I don't even know what it is,

1 Your Honor.

2 **BY THE COURT:** It's his notes.

3 BY MR. LUMUMBA: I would move to admit all the
4 exhibits that I marked. Those would be Exhibits 1
5 through 5.

6 **BY THE COURT:** Some of them are already in.
7 Some of them are just marked for identification.

8 BY MR. LUMUMBA: Right. I would move to admit
9 all of them for the purposes of this hearing, 1
10 through 5.

11 BY MR. EVANS: I don't have any objection to
12 this one. I want to see which other ones you are
13 talking about.

14 **BY THE COURT:** Linda, hand me that one that he
15 put on the table.

16 (Exhibit D-5 handed to the Court.)

17 **BY THE COURT:** Okay.

18 BY MR. EVANS: All right, so we are talking
19 about-- what number did you have?

20 **BY THE COURT:** It's back down there. Those
21 two copies are already admitted. The copies of the
22 photographs are already admitted. Everything else
23 is admitted for identification, I think.

24 BY MR. LUMUMBA: Can I make a request?

25 **BY THE COURT:** Uh-hum.

26 BY MR. LUMUMBA: Run off a copy of this.

27 **BY THE COURT:** Of that one?

28 BY MR. LUMUMBA: Yeah.

29 **BY THE COURT:** Yeah. We will put--

1 BY MR. LUMUMBA: And put that in. Is that
2 okay?

3 BY THE COURT: Yeah, and then he can have that
4 one back.

5 BY MR. LUMUMBA: Okay.

6 BY THE COURT: Right. That will be a good
7 deal.

8 BY MR. EVANS: Your Honor, also the back is
9 going to need to be run on this.

10 BY THE COURT: That would be okay.

11 BY MR. LUMUMBA: I would like to substitute
12 this or make this the exhibit.

13 BY MR. EVANS: I don't have any objection to
14 that.

15 BY MR. LUMUMBA: 2A, because we talked about
16 both of them. It would be kind of difficult.

17 BY THE COURT: Okay. Will somebody go make me
18 a copy of that real quick? Let's get that done.

19 BY MR. LUMUMBA: Do you want me to do it now?

20 BY THE COURT: If you don't mind.

21 BY MR. LUMUMBA: Okay. Fine.

22 (After Counsel returned from making a copy,
23 Mr. Horan looked at the copy and determined that
24 the back of it was turned wrong and needed to be
25 restapled.)

26 BY MR. EVANS: Is the copy on the back of it?

27 BY MR. HORAN: I turned it around. Let me
28 see. That is wrong.

29 BY MR. EVANS: That is not right. Are we just

1 going to swap and put it on the correct exhibit
2 numbers, or are we going to redo the numbers?

3 BY MR. LUMUMBA: Maybe we can just put them
4 together as a composite Exhibit 2.

5 BY THE COURT: That will work.

6 BY MR. EVANS: And that exhibit is already in
7 evidence; is that right?

8 BY THE COURT: This?

9 BY MR. EVANS: Yes, sir.

10 BY THE COURT: It hasn't been, but he is
11 asking that it be admitted and I--

12 BY MR. EVANS: No objection. No objection to
13 D-1 being in evidence. No objection to D-4 being
14 in evidence. No objection to D-3 being in
15 evidence.

16 BY THE COURT: And they are all marked now,
17 aren't they? Linda, have you marked them all?

18 BY THE COURT REPORTER: Not those.

19 (WHEREUPON, THE NOTES CONCERNING CHARLES
20 "PORKY" COLLINS PREVIOUSLY MARKED AS DEFENDANT'S
21 EXHIBIT D-3, THE STATEMENT OF PORKY COLLINS
22 PREVIOUSLY MARKED AS DEFENDANT'S EXHIBIT D-4, AND
23 THE NOTES MADE ON 7/16/96 CONCERNING MR. COLLINS'
24 STATEMENT MARKED AS EXHIBIT D-5 WHICH WERE EACH
25 PREVIOUSLY MARKED FOR IDENTIFICATION TO THIS MOTION
26 WERE NOW RECEIVED IN EVIDENCE. THE NEW COPY OF THE
27 PHOTO LINEUP THAT WAS JUST RUN OFF WAS ATTACHED TO
28 DEFENDANT'S EXHIBIT D-2 MAKING IT A COMPOSITE
29 EXHIBIT D-2.)

1 **BY THE COURT:** Mr. Lumumba, are you through?

2 BY MR. LUMUMBA: Yes.

3 CROSS-EXAMINATION BY MR. EVANS: (SPECIFIED BY THE COURT AS
4 NOT ABLE TO ASK LEADING QUESTIONS).

5 Q. Mr. Johnson, on the day that these murders occurred
6 in Winona, I believe Mr. Collins came to law enforcement
7 officials and volunteered that he had seen something down
8 there; is that correct?

9 A. That's correct.

10 Q. I think that initial day he said he saw the face of
11 one of the two people standing in front of the store; is that
12 right?

13 A. That's true.

14 BY MR. LUMUMBA: Can I raise an objection,
15 please? I object to the leading nature of the
16 questions.

17 BY MR. EVANS: No, this is cross-examination.

18 **BY THE COURT:** Oh, he would have to be
19 classified as your witness.

20 BY MR. EVANS: On cross-examination? It can't
21 be my witness on cross-examination. Cross-
22 examination is clear.

23 **BY THE COURT:** That's right, but he is your
24 witness, and that makes him a hostile witness-- I
25 mean--

26 BY MR. EVANS: --It doesn't matter if he is
27 hostile. All that means is that they can get, use
28 direct questioning which I did not object to.

29 **BY THE COURT:** You can't lead him. You are

1 going to have to not lead him.

2 BY MR. EVANS: Your Honor, under what rule?

3 BY THE COURT: Under the rule that he is your
4 witness, regardless of whether he is up here after
5 he testifies or not. He has got him on cross. He
6 is your witness. He is called-- he would be
7 adverse to him where he could lead him with
8 questions, but you can't.

9 BY MR. EVANS: Under that theory, he could
10 call any witness he wanted to, and I couldn't
11 cross-examine--

12 BY THE COURT: --Well, that is my ruling, so
13 just ask him a question.

14 BY MR. EVANS:

15 Q. Mr. Johnson, let's just go through it step by step
16 then. Do you remember the day that you went to Tardy
17 Furniture?

18 A. The day of the murders; yes, sir.

19 Q. Do you remember approximately what time that day
20 you saw Charles "Porky" Collins?

21 A. I don't remember the exact time, but I would say,
22 I'm going to guess at approximately 12:30. It would have
23 been-- I don't remember the exact time.

24 Q. Do you remember basically what he said at that
25 time?

26 A. Basically, that he had seen two individuals in the
27 median area of Front Street, the median in front of Tardy
28 Furniture store; that one of them he indicated had rounded
29 features, his face. He estimated his height at 5 foot 10, I

1 think. He indicated they were standing near a car, but one
2 of the individuals had his head turned to him, and he didn't
3 get a good identification on him. He said he may could
4 identify one of the individuals.

5 Q. And what was that based on?

6 A. Just based on the description or the view that he
7 got of that person in front of Tardy's that morning.

8 Q. All right. We have seen two different photo line-
9 ups that were shown; is that correct?

10 A. Yes, sir.

11 Q. All right. And in evidence is the statement that
12 you took from Mr. Collins; is that correct?

13 A. There is a statement in there; yes, sir. I did
14 take that.

15 Q. Let me hand it back to you, Exhibit D-4?

16 A. (Pause while witness looks at exhibit.)

17 Q. Have you had an occasion today to go back through
18 that statement?

19 A. I haven't read it in detail, but I am basically
20 familiar with it.

21 Q. On the day that the photo lineup was shown to Mr.
22 Collins, who was present?

23 A. Myself and Wayne Miller, Captain with the Highway
24 Patrol.

25 Q. Where was this lineup shown?

26 A. In the District Attorney's Office in the rear of
27 the Winona Police Department.

28 Q. Did you or what, if anything, did you or Wayne
29 Miller or anyone else do to influence Charles "Porky" Collins

1 on who to pick out in the lineup?

2 A. There wasn't any influence, conversation to ask him
3 to pick anyone out other than we asked him to see if he could
4 identify the person he saw in front of Tardy's that morning.

5 Q. And how many different photos spreads was he shown
6 that day?

7 A. Two.

8 Q. And after he had been asked to see if he could
9 identify the person he saw, in the first photo spread did he
10 identify anybody?

11 A. No.

12 Q. In the second photo spread, did he identify
13 anybody?

14 A. Yes.

15 Q. I will hand you the copy that has been made of the
16 second photo spread, which is D-1. This is the color copy.
17 I will first ask you if that is substantially the same as the
18 one that was shown to him that day?

19 A. Yes.

20 BY MR. LUMUMBA: May I see that, please. I
21 haven't seen it.

22 BY THE COURT: This? Yes, sir. You have seen
23 that.

24 BY MR. EVANS: If he hasn't, something is
25 wrong.

26 BY THE COURT: You have seen all of them.

27 BY MR. LUMUMBA: He said D-1. Maybe he meant
28 D-2.

29 BY THE COURT: Of that?

1 BY MR. LUMUMBA: Yeah.

2 BY THE COURT: You can look at it, but you
3 have seen it. You are the one got it up there.

4 BY MR. LUMUMBA: Okay, I'm sorry. He used--
5 what I'm saying that is confusing me, he used the
6 number D-1. For the record, that is actually D-2.
7 Remember, Judge--

8 BY THE COURT: --Well, it was Exhibit number
9 2.

10 BY MR. LUMUMBA: Right.

11 BY THE COURT: It was Exhibit number 2.

12 BY MR. LUMUMBA: Yeah, I was just correcting
13 that; I'm sorry.

14 BY MR. EVANS:

15 Q. All right, but you have seen that exhibit; is that
16 correct?

17 A. This one or one similar, yes, sir.

18 Q. All right. And the original of that exhibit, who
19 did you say prepared it?

20 A. Wayne Miller with the Highway Patrol. He furnished
21 it; I assume he prepared it.

22 Q. Are you familiar with how long it was after this
23 crime occurred before you or Mr. Miller were able to come up
24 with a photograph of the Defendant?

25 A. I don't remember the exact time, but it was, it
26 wasn't immediate. I mean it took some days to get it.

27 Q. Okay, to your knowledge did anyone have a
28 photograph that could be used in a lineup the day of the
29 crimes?

1 A. Not that I'm aware of.

2 Q. In this photo spread, I would like for you to look
3 at it. As far as the parts of the body that are shown in
4 there, are any of those any different?

5 A. I think they have the basic facial features.

6 Q. None of them are full body shots and some head
7 shots; is that correct?

8 A. That's correct.

9 Q. Are all of those people used in those photographs
10 as far as it appears basically the same age?

11 A. They look to be approximately the same age.

12 Q. Are all those people in those photographs black
13 males?

14 A. They are all black males, or appear to be.

15 Q. And is there anything that points out any
16 particular person in that lineup?

17 A. Not that, not to me.

18 Q. Was the Defendant used as number one?

19 A. No.

20 Q. What number was he in that lineup?

21 BY MR. LUMUMBA: Judge, I would have to raise
22 the same objections that were raised to my
23 questions.

24 BY MR. EVANS: Your Honor, the Court let him
25 go deep into this. I just want to go briefly in it
26 to make sure there is a clear record.

27 BY MR. LUMUMBA: Well, that is my objection.

28 BY THE COURT: Okay. Your objection is
29 overruled.

1 BY MR. LUMUMBA: All right.

2 BY MR. EVANS:

3 Q. What number is the Defendant?

4 A. Four.

5 Q. When the second photo lineup that included the
6 photograph of Curtis Flowers was shown to Mr. Collins, what
7 was Mr. Collins' reaction?

8 A. Can I refer to this?

9 Q. Yes, sir.

10 A. To be-- he pointed to number four and said, "I
11 think that is him. He was about my height. I am 5 foot 10.
12 Complexion is also right. I believe that's him. It looks
13 like him." And after he made the identification, I asked him
14 the question, "Do you know Curtis Flowers?" He said, "I
15 didn't know Curtis Flowers then. I don't know Curtis Flowers
16 now." And he went on to say that the man, "The picture that
17 I picked out in that lineup right there was the man that I
18 seen in front of Tardy Furniture Company that day."

19 Q. Okay, and that is in the statement that he gave
20 you; is that correct?

21 A. It is. It's recorded.

22 Q. Did you or Wayne Miller or anyone else tell him to
23 say that?

24 A. Absolutely not.

25 Q. Did anyone in any form or fashion even hint to him
26 who he should pick out in any way?

27 A. No, sir.

28 Q. Was there any hesitance in him when he saw the
29 second lineup in pointing to the Defendant's picture?

1 A. No, sir.

2 Q. You have been asked about the date on this being
3 March 10th, '97, being some time after the initial interview
4 with Mr. Collins. Is this statement substantially the same
5 as what he told you he saw happen on that day?

6 A. It is.

7 Q. Do you remember approximately-- now I'm not trying
8 to be exact, but approximately how long after the call came
9 in that the people were killed before Mr. Collins told you
10 what he told?

11 A. If I could, I don't know if-- in my notes I should
12 have the time, but it would have been a short time. As soon
13 as he heard about what had happened, he came to Tardy
14 Furniture store and volunteered that information to us on the
15 chance that it would be helpful.

16 Q. Would you say that it would be probably more or
17 less than two hours?

18 A. I'm going to say less.

19 Q. Now for the record on this, I want you to describe
20 the front of Tardy Furniture and the road there in front of
21 Tardy Furniture.

22 A. Tardy Furniture was located on the south end of
23 Front Street, downtown Winona. Like most small towns, this,
24 the store fronts face the railroad track. In the middle in
25 front of the store there was a sidewalk and a small median
26 that used to have parking meters and allowed parking both
27 diagonally in front of the store and in the median on both
28 sides, and also some parking next to the railroad when it was
29 available.

1 Q. All right. Did Mr. Collins tell you in which
2 direction he was driving when he saw this person's face?

3 A. As I remember it, Mr. Collins indicated he came
4 down south Front Street, saw the individual, and turned and
5 it got his attention, and he noticed the people as he went
6 back up the street. So to exact angles, I don't know. I
7 know that one individual he did not get a good facial view,
8 but on one he did.

9 Q. All right. I show you Exhibits D-1 and D-2.

10 A. Okay.

11 Q. How many photographs are there on those two
12 exhibits?

13 A. Six each.

14 Q. For a total of twelve?

15 A. Yes, sir.

16 Q. When you talked with Mr. Collins - and I am
17 referring to both right after the crime occurred and at the
18 time that this statement was taken - what was his abilities
19 to recall?

20 A. I thought they were extremely good to detail. You
21 know, he described Ms. Rigby's flipping of the keys--

22 BY MR. LUMUMBA: --Objection.

23 A. --her hair.

24 BY MR. LUMUMBA: Objection.

25 BY MR. EVANS: Wait until the Court rules.

26 BY MR. LUMUMBA: Objection. I believe that it
27 would be impossible for him to sit up here, even if
28 he was an expert, to say that his ability to recall
29 is good. I don't have a problem with him asking

1 what kind of detail he gave him. But that calls
2 for a conclusion which he is not competent to make.
3 First of all, it calls for a conclusion that what
4 he was telling him is actually a recall of what Mr.
5 Collins saw, and I don't think he can make that
6 conclusion. I don't have any problem with him
7 talking about what kind of detail Mr. Collins gave
8 him, so that's my objection. I don't think-- it
9 calls for an opinion which this witness is not
10 competent to make. In fact, no witness is
11 competent to make except Mr. Collins himself.

12 BY MR. EVANS: Your Honor, in response, he has
13 definitely attempted to impeach Mr. Collins on his
14 ability to remember. What I am asking specifically
15 of Mr. Johnson, and he does have the ability to
16 answer this in his opinion; he talked with the
17 witness very briefly after the crime was committed,
18 within two hours. He talked with him again and
19 took a statement on March 10th, 1997, and if these
20 facts that he gave on those two occasions are the
21 same, then his ability to recall is very good. And
22 that's what I am asking.

23 BY MR. LUMUMBA: Well--

24 BY THE COURT: Well, I am ready to rule on
25 this. I take that to be a lay opinion which he is
26 entitled to make, and he can give his opinion.

27 BY MR. EVANS: All right.

28 BY THE WITNESS:

29 A. I think he was very accurate and very descriptive.

1 Q. And Mr. Johnson, to make my question a little
2 broader, I have asked you already about whether anyone
3 attempted to influence Mr. Collins in the photo lineup. Mr.
4 Collins has testified in the previous trial too; is that
5 correct?

6 A. He has.

7 Q. And he has testified here today too; is that right?

8 A. That's correct.

9 Q. Has anybody ever tried to tell him who committed
10 this crime?

11 A. Absolutely not.

12 Q. Has anybody ever tried to tell him what person to
13 identify?

14 A. No.

15 BY MR. EVANS: One moment, Your Honor. That's
16 all, Your Honor.

17 BY MR. LUMUMBA: I just have a couple.

18 REDIRECT EXAMINATION BY MR. LUMUMBA:

19 Q. Mr. Johnson, if I understood it correctly, that
20 when you saw Mr. Collins at this time that you said his
21 recall was perfect. You did take down--

22 A. I don't--

23 Q. I'm sorry. You are shaking your head no. I don't
24 want to say anything that is incorrect?

25 A. Go ahead, sir.

26 Q. What you said, you were impressed by his ability to
27 recall?

28 A. I was.

29 Q. Now at the time that you were talking to them, you

1 were also taking down notes of what he was saying?

2 A. I was.

3 Q. And you are a trained police officer, trained in
4 the art of taking notes of what witnesses tell you?

5 A. True.

6 Q. And you know that it's important when you are a
7 police officer to take down as closely as possible precisely
8 what they tell you when they tell it to you; right?

9 A. It's important; yes, sir.

10 Q. And the reason it's important-- well, first of all,
11 this was a-- this case you were investigating couldn't be any
12 more serious. Not only was it a case that you were
13 investigating and taking down notes on witnesses, but it was
14 a capital murder case; right? Well, it was a murder case.
15 Somebody had been killed; right?

16 A. Four people, yes.

17 Q. Yes. So this was an extremely important case that
18 you were investigating; right?

19 A. Sure.

20 Q. And as an officer, you have been trained that it is
21 extremely important to take down what witnesses tell you
22 about the description of the person who could have been
23 involved with the crime; right?

24 A. Sure.

25 Q. And so if the witness tells you something about
26 that person, you write it down; right?

27 A. Not all the time.

28 Q. Well, let me understand this. If a witness tells--
29 you sometimes tape it; right?

1 A. Sometimes.

2 Q. Did you tape it on 7-16-96?

3 A. No.

4 Q. You sometimes take a videotape?

5 A. Sometimes.

6 Q. Did you take a videotape on 7-16-96?

7 A. No.

8 BY MR. EVANS: Your Honor, this is improper
9 redirect.

10 BY THE COURT: It really is. It is improper
11 redirect.

12 BY MR. LUMUMBA: Okay.

13 BY MR. LUMUMBA:

14 Q. You were asked about, you were asked about a
15 picture of Mr. -- you were asked about a picture of Mr.
16 Flowers; is that correct, by your counsel when he stood up
17 here?

18 A. There has been a lot of questions about pictures.
19 I'm not for sure which one you are talking about.

20 Q. Okay. Well, let's venture back and I'm going to
21 try to ask you a proper question. The Court can tell me if
22 I'm wrong. You have recorded a description because you just
23 were telling the Court about the recall of Mr. Collins and
24 how good it was in your opinion; right?

25 A. That's true.

26 Q. Usually when a witness has good recall, then one of
27 the things that you judge that by is whether they can recall
28 precisely the details of the description of the person they
29 saw; right?

1 A. That can be a judge--

2 BY MR. EVANS: --Your Honor, again, that is
3 improper redirect.

4 BY THE COURT: No, it's not. You asked him
5 specifically that question.

6 BY MR. LUMUMBA:

7 Q. Okay. Isn't that true?

8 A. That can be a judgment of it.

9 Q. Yeah, well, in fact, as far as a description of a
10 person who possibly committed the crime, at that time you
11 didn't know who had committed the crime; right?

12 A. That's correct.

13 Q. And so as a police officer, one of the most
14 important things that you take down details on is a
15 description that might lead you to apprehend a person you are
16 looking for; right?

17 A. It can be true.

18 Q. It was true in this case; right?

19 A. It could be.

20 Q. No, no, no. I mean I don't want to quibble with
21 you, but in this case weren't you trying to find out who had
22 committed this crime?

23 A. At the time this was going on, there were many
24 other things continuing to go on at the same time.

25 Q. No, I'm not asking--

26 A. --I knew Porky Collins. Do you want me to--

27 Q. No. Let me--

28 BY MR. EVANS: --Your Honor, may he answer the
29 question?

1 BY MR. LUMUMBA: Look, I just -- Judge, all I
2 am asking is to answer my question.

3 BY MR. EVANS: And he is trying to if he will
4 be quiet and let him answer it.

5 BY MR. LUMUMBA: I wish he would let me ask
6 the questions.

7 BY THE COURT: Okay.

8 BY MR. LUMUMBA: All I want is an answer, and
9 then an explanation is fine. I haven't gotten the
10 answer yet.

11 BY THE COURT: Okay, well, ask him-- let him
12 answer it yes or no, and then he can explain it.

13 BY MR. LUMUMBA:

14 Q. Okay. The question is that it was very important
15 on this occasion to get as complete a description as possible
16 of the person who could have been connected to the incident;
17 is that correct?

18 A. At that time--

19 BY MR. LUMUMBA: Judge, could--

20 BY THE COURT: --You have got to answer it yes
21 or no; then explain it.

22 BY THE WITNESS:

23 A. Repeat your question.

24 Q. It was important on this occasion as you sat there
25 talking to Porky Collins to get as complete a description as
26 possible of the people that he had saw and particularly, of
27 the man that he said he saw the face of, got a glimpse of?

28 A. No.

29 Q. That wasn't important?

1 A. It is always important, but it wasn't completely
2 important at that time. Can I explain my answer?

3 Q. Go ahead. Certainly, I think you can.

4 **BY THE COURT:** Yes, go ahead.

5 **BY THE WITNESS:**

6 A. Plenty of things were going on. I'm not even sure
7 all the bodies had been carried out of that building at that
8 time. And at that point because two men had been seen in
9 front of the store didn't mean that those two men had
10 committed any particular crime or any one of them. We were
11 talking to many witnesses, and people were coming in. I just
12 scratched down their names, how I could get up with them as
13 who I knew.

14 Q. I understand.

15 A. Well.

16 Q. I understand. Go ahead and finish.

17 A. I am finished.

18 Q. Okay. But I understand all that and, in fact, the
19 fact that two men were in front of the store doesn't mean
20 today that those two men committed any crime; right?

21 A. Not in itself.

22 Q. Okay. But you asked Porky Collins to describe
23 these people to you; right?

24 A. He gave us a rough description and, yes.

25 Q. And he gave you a description?

26 A. Yes.

27 Q. And you wrote it down?

28 A. Part of it.

29 Q. Now this description was given to you way back on

1 7-16-96; right?

2 A. Right.

3 Q. And you are going to tell us today three or four
4 years later that you can remember what you wrote down and
5 what you didn't write down about what he said? Is that your
6 testimony?

7 A. It's pretty obvious. I can remember it if I can
8 look at it.

9 Q. Well, let me show you. No, I am asking you can you
10 remember - and you can use this or anything else you need. I
11 am showing you Exhibit number 5. You are telling us you can
12 remember today what you wrote down and what you didn't write
13 down?

14 A. Yeah, because I have got what I wrote down.

15 Q. On this paper?

16 A. Yes, sir.

17 Q. Okay, this is-- okay, can you tell us what he
18 said? You can tell us what he said about the description
19 that you didn't-- you remember that today?

20 A. These were just my personal notes. Just my general
21 notes, yes.

22 Q. Can you remember today?

23 A. I can remember what I testified to.

24 Q. On these notes that you took--

25 A. Right.

26 Q. --the only thing it says about a description is a
27 black male, medium complexion.

28 A. It says two black males.

29 Q. That's all it says.

1 A. That's all that says, yeah.

2 Q. And that's the only description you got from him at
3 that time; isn't that correct?

4 A. No, it's not.

5 Q. Okay. Well, what other description did you get
6 from him at that time--

7 A. --Like I testified--

8 Q. --that you remember four years later?

9 A. Like I testified earlier, he described one man as
10 having rounded features in his face. Obviously, he mentioned
11 two with medium complexion. I wrote that down. He said one
12 looked a little taller than the other, and that's basically
13 all I remember about that.

14 Q. So that was that complete description that he gave
15 you about, that made you feel that he had good recall, and
16 the only thing that he told you was that the men were both
17 medium complexion, that one had rounded features, and that
18 one was a little taller than the other?

19 A. I didn't say that that in itself was the reason I
20 felt he had good recall.

21 Q. But as to the description, that's the only thing he
22 told you?

23 A. Basically, yes.

24 Q. And you remember today even though that you didn't
25 write it down four years ago, you can remember that he
26 actually told you at this time that the man had rounded
27 features?

28 A. Exactly.

29 Q. Well, rounded features, you have got space here;

1 you could have put that down here; right?

2 A. I have got space there, yeah.

3 Q. My final question is when you write a report of
4 what a witness is telling you, you don't know if the witness
5 is going to remember from the day that he tells you to months
6 or maybe years later when he is called upon to recall what he
7 told you that day. You can't say that, can you?

8 A. I don't think anybody can say that.

9 Q. And that is one of the reasons that they teach you
10 to write a good report and put it down; right?

11 A. When it is available, yes.

12 Q. And you don't really recall, or you may not know
13 when you write the report what you are going to remember?

14 BY MR. EVANS: Your Honor, I object. This is
15 not relevant.

16 BY THE COURT: Well, yeah. I don't understand
17 the point you are trying to make. If you are
18 trying to make the point about his statement about
19 the fellow's recall, that point has been made
20 significant to the Court to understand where you
21 are going with it.

22 BY MR. LUMUMBA: All right, I will withdraw--

23 BY THE COURT: With a jury maybe you could go
24 ahead. With me you're just wasting your time.

25 BY MR. LUMUMBA: I will leave it alone. Let
26 me just make sure I have got all the exhibits.

27 BY THE COURT: Okay.

28 BY MR. LUMUMBA: I am making sure I don't
29 leave one of my copies up here. That's what I am

1 doing.

2 **BY THE COURT:** Well, you might want to give
3 all the exhibits that are marked that you have got
4 up there back to the Court Reporter so she has got
5 them. Okay, thank you, Mr. Johnson. You can
6 step--

7 **BY MR. LUMUMBA:** --I do have one question.
8 Let me admit to you, let me admit something from
9 this Court. This may be considered not to be
10 proper redirect, but it's something I forgot to
11 ask. And it is just one question, and I have no
12 objections to them standing up behind me and re-
13 asking and asking whatever they want about this
14 particular area. Let me ask the question, and then
15 the Court can decide.

16 **BY MR. LUMUMBA:**

17 Q. The question is at any point in time did you
18 attempt, did you ask Porky if he could identify a vehicle?

19 **BY MR. LUMUMBA:** That's the question. I don't
20 know if you will allow it to be asked.

21 **BY THE COURT:** My response to that is it's not
22 relevant because that is not what the Motion is
23 about.

24 **BY MR. LUMUMBA:** All right.

25 **BY THE COURT:** All right, Mr. Johnson, thank
26 you. You can go outside. Who will you have next?

27 **BY MR. LUMUMBA:** Mr. Miller.

28 **BY THE COURT:** Would you send Mr. Miller in,
29 please, sir.

1 BY THE WITNESS: Yes, sir.

2 MR. JOHN JOHNSON LEFT THE COURTROOM.

3 WAYNE MILLER,

4 upon being called to testify as a witness by the Defendant on
5 the Motion to Suppress Identification, having first been duly
6 sworn, testified as follows, to-wit:

7 BY THE COURT: State your name for the record.

8 BY THE WITNESS: Horace Wayne Miller.

9 M-I-L-L-E-R.

10 DIRECT EXAMINATION BY MR. LUMUMBA:

11 Q. Good afternoon, Mr. Miller.

12 A. How do you do, sir.

13 Q. Quite possibly you won't be able to hear everything
14 I say. If you can't hear something, please just ask me to
15 repeat it.

16 A. All right.

17 Q. Okay. You work, I take it, for the state police?

18 A. I am an investigator with the Mississippi Highway
19 Patrol; that's correct.

20 Q. Okay, and you were working in that capacity back in
21 July of 1996?

22 A. That is correct.

23 Q. In fact, how long have you been working in that
24 capacity?

25 A. At the investigative level, I have been working for
26 12 years.

27 Q. Okay.

28 A. For the Mississippi Highway Patrol, I have been
29 working 32 years.

1 Q. Did there come a time when you were called in to
2 help with the investigation of this case, this case being
3 State versus Curtis Flowers?

4 A. Yes, I was.

5 Q. Okay, this was an investigation of some deaths that
6 occurred at Tardy Furniture store?

7 A. That is correct.

8 Q. And when was it that you were called in?

9 A. I probably received the call something around 11
10 o'clock on the 16th of July of '96.

11 Q. Did you become involved immediately?

12 A. Yes. I did become involved in that investigation
13 at that time.

14 Q. Did you have a chance on that day to speak with a
15 gentleman by the name of Collins, sometimes called Porky
16 Collins--

17 A. --I did not myself.

18 Q. You never saw him that day?

19 A. I did not talk to him that day.

20 Q. Okay. Did you see him at all, if you know?

21 A. I probably did see him because I know Mr. Collins
22 and I did probably see him, and I knew who he was.

23 Q. How do you know Mr. Collins?

24 A. Just, I have been in and out of Winona, you know.
25 I am originally from Winona.

26 Q. Is he a friend of yours?

27 A. No, you know, just an acquaintance.

28 Q. Okay.

29 A. Not an enemy, not a friend; just I know him.

1 Q. Okay. Now you had-- did you talk to-- first of
2 all, I'm going to jump ahead a little bit and then go back
3 just a step. At some point you showed him some pictures; is
4 that correct?

5 A. I did, the 24th day of March.

6 Q. The 24th of March?

7 A. I'm sorry. Let me correct that. 24th of August,
8 I'm sorry. 24th of August.

9 Q. Now Investigator Miller, would it be safe to say
10 that the reason you remember that is because prior to coming
11 to testify, you had a chance to look at a report to see--

12 A. I looked over the reports to verify the date and
13 all of that.

14 Q. And one of the reports referred actually to
15 something that happened in March of '97; right? That was
16 when you took a statement from him?

17 A. I was not present at that, no.

18 Q. But in any event, in reviewing your reports, you
19 realized it was on the 24th--

20 A. Of August, right.

21 Q. --of August that you showed some pictures?

22 A. That is correct.

23 Q. Now who was present besides yourself at the showing
24 of these pictures?

25 A. District Attorney Investigator John Johnson and Mr.
26 Collins.

27 Q. Okay. And where did you see Mr. Collins at?

28 A. At the Winona Police Department.

29 Q. Was he there when you arrived, or did he come after

1 your arrival, if you remember?

2 A. I can't remember. I don't know whether he was
3 already there or not. I do not know.

4 Q. Did you have any conversation with him? Let me
5 tell you what my question is directed to.

6 A. All right, sir.

7 Q. Normally - and you correct me if I am wrong -
8 normally when you show a witness any kind of photographic
9 display or live lineup, somebody has got to make contact
10 with the witness to let him know to come down and see one;
11 right?

12 A. Right.

13 Q. So this is where my inquiry is directed. Do you of
14 your own knowledge know who made contact with Mr. Collins to
15 get him to come?

16 A. I did not make contact with him.

17 Q. So it would have had to have been someone else?

18 A. Right.

19 Q. Okay, and it would be safe to say you don't know
20 what him and that somebody else talked about?

21 BY MR. EVANS: Your Honor, that is not
22 relevant.

23 BY MR. LUMUMBA: The suggestion is very
24 relevant.

25 BY MR. EVANS: No, sir. He doesn't know what
26 I was doing at that time, but it has nothing to do
27 with this case.

28 BY MR. LUMUMBA: Judge, that is--

29 BY MR. EVANS: --The only thing that is

1 relevant is his knowledge about this case.

2 **BY THE COURT:** It's really not. His knowledge
3 about this lineup and all, anything that would
4 suggest that something had been suggested to Porky
5 Collins.

6 **BY MR. LUMUMBA:** All right. Now, so you
7 sustained the objection?

8 **BY THE COURT:** Yes, sir.

9 **BY MR. LUMUMBA:** Okay.

10 **BY MR. LUMUMBA:**

11 Q. Okay, now so was Mr. Collins in the presence of the
12 other officer you mentioned, Mr. Johnson, at the time you
13 first saw him on the 24th of August?

14 A. I don't recall if I arrived before Mr. Collins or
15 he came in later. I don't know.

16 Q. Okay, I see. Now you do recall that you had
17 gathered some pictures to show him a display?

18 A. That is correct.

19 Q. Do you also recall-- let me back up a little bit.
20 Did you talk to Mr., did you talk to Mr. Flowers on the 16th
21 of July of 1996?

22 A. Yes. I was-- yes, I did.

23 Q. Who else was present at that discussion?

24 A. Investigator Matthews.

25 Q. Would it be safe to say - I am asking this for
26 purposes of this hearing - that he was a suspect almost
27 immediately?

28 **BY MR. EVANS:** Your Honor, that is not
29 relevant.

1 **BY THE COURT:** Well, it might be. It might
2 be. I will let it in.

3 BY MR. LUMUMBA:

4 Q. Isn't that true?

5 A. Mr. Flowers was developed as a suspect very soon
6 into the investigation. He was.

7 Q. Would it have been safe to say, if you remember,
8 that actually on the very first day?

9 A. I wouldn't say the very first day, no.

10 Q. Okay, do you remember how long it was?

11 A. The more things that started developing, the more,
12 more things that caused him to become a suspect.

13 Q. Okay, well, so you can't give me a day?

14 A. I can't give you a date that it actually, you know,
15 that he was the main suspect.

16 Q. Would it have been within the first week or two?

17 A. Pretty much so.

18 Q. And it would be safe to say when you talked to him
19 on the 16th, you allegedly read him his rights; right?

20 A. That is correct.

21 Q. And you had him sign it?

22 A. He was read his rights, and he did sign.

23 Q. Which is something that you often do for suspects?

24 A. That is correct.

25 BY MR. EVANS: Your Honor, that has nothing to
26 do with--

27 **BY THE COURT:** --Let's move on from this
28 point.

29 BY MR. EVANS: --this motion.

1 BY MR. LUMUMBA: Okay.

2 BY MR. LUMUMBA:

3 Q. Now let me ask you this. Do you recall, where was
4 Mr. Collins-- not Mr. Collins; I'm sorry, but Mr. Flowers at
5 when you saw him on the 16th?

6 BY MR. HORAN: Your Honor, what relevance does
7 that have to whether or not the lineup is
8 suggestive in any way?

9 BY MR. LUMUMBA: I am leading directly to
10 questions about pictures.

11 BY MR. HORAN: Ask him whether or not he took
12 a photograph on that particular day, Your Honor.
13 That is the only relevant question.

14 BY MR. LUMUMBA: I am the examiner here. I
15 can ask questions--

16 BY MR. EVANS: --only if they are relevant.

17 BY THE COURT: I will let you ask it. Go
18 ahead.

19 BY MR. LUMUMBA:

20 Q. Okay, go ahead.

21 A. Ask the question again.

22 Q. Where was Mr. Flowers when you saw him on the 16th?

23 A. There at Greenwood-- I'm sorry. There at the
24 Winona Police Department.

25 Q. Did you ever see Mr. Collins on that day or shortly
26 thereafter in Carroll County?

27 A. No, I did not.

28 Q. Okay. Are you aware of whether or not a picture
29 was taken of Mr.?

1 **BY THE COURT:** Mr. who?

2 BY MR. LUMUMBA: I'm sorry, Mr. Flowers.

3 BY THE WITNESS:

4 A. There was probably some photographs taken of him
5 that day or the next day, and I don't know exactly which day.

6 Q. Either the 16th or the 17th?

7 A. Or maybe a day after that. I don't really know
8 exactly, but within those first two or three days.

9 Q. Early in the investigation?

10 A. Right.

11 Q. Were they taken by you or were they taken by the
12 people in Montgomery County, if you know?

13 A. I did not take the picture.

14 Q. Do you know what department took them?

15 A. I can't answer that.

16 Q. Did you at some point become in possession of that
17 picture?

18 A. Right; I did.

19 Q. And--

20 A. I would say that Investigator Matthews took that
21 photograph.

22 Q. I see.

23 A. Or some photographs.

24 Q. Was this a picture taken on, I assume a 13
25 millimeter camera. Was it a 13 millimeter camera?

26 A. I can't answer that.

27 Q. But it was a camera?

28 A. It was a camera.

29 Q. Did the pictures have to be developed or were the

1 pictures--

2 BY MR. HORAN: --Your Honor. We need to know
3 whether or not this is a photograph that they
4 took. That is the only relevant question that we
5 have here. Whether or not they were developed or
6 not doesn't really--

7 BY THE COURT: --If it's the photograph in the
8 lineup, it has got relevance. If not, it doesn't.

9 BY MR. LUMUMBA: Well, they have argued that
10 there was no picture available. It doesn't make
11 any difference whether it's the photographs in the
12 lineup or not. Their argument was--

13 BY MR. EVANS: --Your Honor, that has nothing
14 to do with this motion.

15 BY MR. LUMUMBA: Excuse me.

16 BY THE COURT: --Wait, wait. Let him finish
17 and I'm going to give you your chance.

18 BY MR. LUMUMBA: I know I am hoarse, so maybe
19 Counsel thinks he has some liberties.

20 BY THE COURT: No, wait a minute. Just talk
21 to me.

22 BY MR. LUMUMBA: Okay, well, look, let me say
23 this. Judge, here is my position. They asked the
24 question of the previous witness-- can we approach
25 the bench on this? I don't want to bias his
26 testimony in any way. Can we approach the bench?

27 BY THE COURT: Uh-hum.

28 (COUNSEL APPROACHED THE BENCH BUT WENT BEHIND
29 THE BENCH TO CONFER WITH THE COURT:)

1 BY THE COURT REPORTER: I'm not going to be
2 able to hear.

3 BY THE COURT: She is not going to be able to
4 hear. (To the witness) Would you step just outside
5 that door? Let's do it that way.

6 MR. WAYNE MILLER LEFT THE COURTROOM.

7 BY MR. LUMUMBA: The question asked of a
8 previous witness, Mr. Johnson, was whether they had
9 any photographs available, or did it take them a
10 while to develop the photograph for this case. And
11 apparently and clearly that was raised to explain
12 why they got a man allegedly saying on the 16th of
13 July that he may be able to identify a person, and
14 they don't show him a lineup until a month later
15 and so, which has a lot to do according to the case
16 law with the reliability of the identification.
17 The question that was asked to Mr. Johnson elicited
18 response that no photograph was immediately
19 available. Now irrespective of whether or not they
20 used it, if they had one that was available, then
21 it is relevant to the inquiry. I'm not going to
22 stay on it forever, but I would just like to know
23 if they had one available. Then he can explain
24 either in my questions or through his why they
25 didn't use it if they didn't. Okay. Why they used
26 another one when it took a long time to develop.
27 Do you understand what I'm saying, Judge?

28 BY THE COURT: I do, but here is the answer to
29 it is. There are different stages, of course, in

1 the trial. There is a stage where that may be
2 relevant. But that, the reliability of the
3 identification, as you know, is a jury question
4 which is not what we are here on today. It's a
5 question of whether or not there was an
6 unconstitutional suggestive lineup and whether they
7 did anything with Mr. Collins to influence him to
8 make that. And this question, those questions in
9 relation to that photograph may very well be
10 relevant at trial, but they are not relevant here
11 today for the determination I have to make.

12 BY MR. LUMUMBA: All right.

13 BY THE COURT: Okay. Y'all can get him if you
14 don't mind. So the objection is sustained.

15 WITNESS RETURNS TO THE COURTROOM.

16 CONTINUING DIRECT EXAMINATION BY MR. LUMUMBA:

17 Q. Did you at some point put a photograph display
18 together with Mr. Flowers in it?

19 A. I did.

20 Q. And did you have a number of pictures to choose
21 from?

22 A. A number of?

23 Q. A large number of photographs of people to put in
24 the display?

25 A. I had several photographs. I don't know whether it
26 would be what you would call a large sum.

27 Q. Well, about how many?

28 A. Probably 15, 20.

29 Q. Okay, and these were all black males?

1 A. Yes.

2 Q. All right. Were you given any direction as to what
3 description had been provided by the witness who was going to
4 look at the display?

5 A. Had I been given any description? No, I had not at
6 that time. No.

7 Q. Okay. When you put the display together, was it
8 your effort out of what you had to get people who were as
9 close in characteristics to Mr. Flowers as possible?

10 A. Of what I had, but I was very limited in what I
11 had.

12 Q. I understand.

13 A. I was trying to stay within the same age groups
14 and...

15 Q. Okay. The pictures that you put together, they
16 have been preserved; is that correct? They have been
17 preserved. We have them?

18 A. Yes. Yes, you do.

19 Q. And I'm going to show you what Exhibit 1, copy of
20 Exhibit 2 which is in a manila folder. Do you recognize it?

21 A. Yes, I do.

22 Q. And did you or was that the photograph display that
23 was shown to him, one of them? Is that one of the ones that
24 was shown to him?

25 A. These are copies of it.

26 Q. Okay, of the one that was shown to him?

27 A. That's correct.

28 Q. Okay. Do the copies look like the originals?

29 A. As well as I can remember, and I don't have the

1 originals to go by but.

2 Q. All right. It's true that in that photographic
3 display one man's head--

4 BY MR. HORAN: --Your Honor, I'm going to
5 object to this line of questioning on the grounds
6 it's not relevant. We have gone over this. The
7 Court can look at these photographs, and the
8 Supreme Court can look at these photographs. This
9 is a question of admissibility, not credibility or
10 reliability of a particular photograph. It's only
11 whether or not these photographs are admissible.

12 BY MR. LUMUMBA: If a picture is in a lineup
13 where one person is distinct amongst the rest and
14 that is the suspect, that is a constitutional
15 question.

16 BY THE COURT: Absolutely, it is and those
17 photographs depict that so I can determine that,
18 and this line of questioning would be cumulative
19 since you have already gone into it with two other
20 witnesses.

21 BY MR. LUMUMBA: All right.

22 BY MR. LUMUMBA:

23 Q. Did you maintain, do you have a record somewhere of
24 who those people are in the lineup?

25 A. Yes. There should be a record in the file.

26 Q. Oh, really? Did you supply that?

27 A. But I don't know. I haven't seen it. I thought it
28 was with the original.

29 Q. Where it lists the people in the lineup; right?

1 BY MR. EVANS: Your Honor, I know this is out
2 of line, but I might can clear something up. I
3 think the originals at the Supreme Court have the
4 names on the back of the original pictures.

5 **BY THE COURT:** Okay.

6 BY MR. LUMUMBA:

7 Q. Do you have records, the records that you are
8 speaking of, do they indicate anything about the age and the
9 height and the weight of the people in the lineup?

10 A. I can't answer that. I don't recall. I don't have
11 that before me, and I can't answer it right now.

12 Q. Do you have such records?

13 A. It should be with that original file.

14 Q. If it's not, would you have a copy of it somewhere
15 else, not necessarily here but somewhere?

16 A. It should be in some of the files that is already
17 here.

18 Q. So that is something that would have been supplied
19 to the investigator?

20 A. As far as I know, yes.

21 Q. Okay, did you tell-- who talked to the witness when
22 he came to look at the photos? Was it you or was it Mr.
23 Johnson?

24 A. I don't know what you are asking now. I'm not
25 understanding you.

26 Q. Was there any discussion with Mr. Collins when he
27 appeared to see the photographs?

28 A. I did not discuss anything with him other than
29 produce the photographs for him to look at.

1 Q. You didn't say a word?

2 A. No. I produced those and let him mark the one and
3 initial the one that he described as, or the one that he
4 picked out.

5 Q. How did he know what to pick out?

6 A. How did he know what to pick out?

7 Q. Yeah. Anybody--

8 A. --I mean he was told that this was a photo lineup.

9 Q. Right. And he was told to look for the person?

10 A. Yeah, but I didn't tell him that. I produced the
11 photos.

12 Q. I'm sorry, but I'm just trying to understand. Did
13 somebody tell him to look for the person that he saw out
14 there that day on the 16th?

15 A. Right. But I was not that person.

16 Q. Who was that person?

17 A. I produced the photo lineup.

18 Q. Who was that person?

19 A. Mr. Johnson was present at that time.

20 Q. And he told him that in your presence?

21 A. That this was, yes. And I produced the photo
22 lineup.

23 Q. All right. And he told him that same thing with
24 two different lineups; right?

25 A. Right. There were two different lineups produced,
26 and this is not the first one. This was the second one.

27 Q. Right. And with the first one he was told that,
28 and with the second one he was told that; right?

29 A. Yes. He understood what he was looking at these

1 photographs for, to determine if any of these people in this
2 photograph resembled the person that he had seen in front of
3 Tardy's on the 16th.

4 Q. Whether they resembled the person; right?

5 A. Yes. There was--

6 Q. And he was trying to pick out the person he had
7 saw; is that right?

8 A. The one he had seen.

9 Q. And that's what he was asked to do?

10 A. That's correct.

11 Q. Now he actually picked out somebody in both
12 lineups; right?

13 A. I'm not hearing you.

14 Q. I'm sorry.

15 A. And I'm really, I am trying to hear you.

16 Q. I understand. I understand. He picked somebody
17 out in both lineups; is that right?

18 A. That's correct.

19 Q. So in both lineups he picked a person out?

20 A. Out of the first one he picked out a possibility of
21 two.

22 Q. Right, well, okay. Go ahead.

23 A. Out of the first lineup he said, well, this one
24 looks like one of the guys, one of the guys, but he wasn't
25 sure. Then he said, but this guy looks like him, and he
26 wasn't sure about that. So he didn't identify anybody of
27 being the second person.

28 Q. Well, in the second lineup, what he initially
29 said--

1 A. --Now we are referring to this as the second line-
2 up? (Holds up exhibit.) Okay.

3 Q. Yeah. What he initially said is that--

4 **BY THE COURT:** --Let the record reflect that
5 Exhibit 2 is the second lineup. Is that right?

6 BY MR. LUMUMBA: That's correct.

7 **BY THE COURT:** Okay.

8 BY MR. LUMUMBA:

9 Q. What he initially said, what initially came out of
10 his mouth is that the person he pointed to looked like the
11 person; isn't that right?

12 A. That's, I think that's correct.

13 Q. So he didn't say it was the person. He said it
14 looked like him?

15 A. He said that looked like him, and then he initialed
16 that as saying that was the person that he had seen out
17 front.

18 Q. So he first said it just looked like him?

19 A. That's correct.

20 Q. All right. I will show you another copy of Exhibit
21 2. Do you recognize that sheet?

22 A. I do.

23 Q. You recognize--

24 A. --Well, I recognize this as being a copy--

25 Q. I understand.

26 A. --of something.

27 Q. Does it have initials on it?

28 A. Right. It has my initial and the date on it.

29 Q. Does it have the witness' initial?

1 A. Yes.

2 Q. Does it say that he is sure that that is the
3 person? Is that what it says there?

4 A. No. It says, this reflects his initials, the date
5 and the time.

6 Q. All right. He initialed the first lineup he saw
7 too. Didn't he?

8 A. I don't know. I don't have the first lineup.

9 Q. We are told we don't have a copy of that here.

10 BY MR. EVANS: Your Honor, the copy is right
11 up there. I don't know how many times we are going
12 to have to go through this.

13 BY MR. LUMUMBA: We don't have the back of the
14 copy.

15 BY THE COURT: Don't have--

16 BY MR. EVANS: --Yes, sir; we do. The back
17 was blank.

18 BY THE COURT: Okay, well, okay.

19 BY MR. LUMUMBA: We don't have the back of
20 it.

21 BY MR. EVANS: Your Honor, that is the back
22 right there.

23 BY THE COURT: Is that of 1?

24 BY MR. EVANS: That is the front. The front
25 has his initials and John's initials. The back is
26 blank.

27 BY THE COURT: Is that number 1? When I say
28 number 1, is that the first lineup?

29 BY THE WITNESS: It is, Your Honor.

1 BY MR. EVANS: And I do need that copy back
2 also, Your Honor. I keep giving him my copies, and
3 I don't have any.

4 BY THE COURT: Well, I think you are supposed
5 to be getting them all back, are you not?

6 BY MR. EVANS: Yes, sir, but--

7 BY THE COURT: --Okay, then you have got them--

8 BY MR. EVANS: --so that this one doesn't get
9 introduced.

10 BY MR. LUMUMBA: This is a much clearer copy.
11 We have never received a copy this clear.

12 BY THE COURT: Well, whatever; I don't think
13 it says on the back, anything on the back though.
14 If you have got no use for it, let him have it
15 back.

16 BY MR. LUMUMBA: All right. Can I get a copy
17 of this?

18 BY THE COURT: Yeah. We will see that you get
19 a copy.

20 BY MR. EVANS: He has got about four of them,
21 Your Honor. How many do I have to give him?

22 BY THE COURT: Well, if it's--

23 BY MR. EVANS: --He has gotten that; yes, sir.

24 BY THE COURT: That is that good?

25 BY MR. EVANS: Yes, sir.

26 BY THE COURT: Okay. Then you don't have to
27 give him any more.

28 BY MR. LUMUMBA: I don't have one that good.

29 BY THE COURT: All right.

1 BY MR. LUMUMBA: It's not true, not true.
2 There would be no reason for me not to use it.

3 BY MR. EVANS: If the Court would like, I will
4 give him another copy, but if he is going to sit up
5 there and start saying untrue, we are fixing to
6 have a battle in here--

7 BY THE COURT: --Well, no, wait a minute.
8 Wait a minute. No, we are not going to have that.
9 It's too late in the day for that. The Judge
10 doesn't want that. There is an original of that,
11 isn't it?

12 BY MR. EVANS: Yes, sir; there is. It's in
13 the Supreme Court.

14 BY MR. LUMUMBA: All right.

15 BY THE COURT: Okay, let's move on. Let's
16 go.

17 BY MR. LUMUMBA:

18 Q. When was the picture taken in Exhibit 2 of the, of
19 Mr. Flowers?

20 A. Well, I think, as I answered while ago, I am not
21 exactly sure when it was taken because I was not the one that
22 took that photograph. But that may have been just a Polaroid
23 that was taken, and I think by one of our investigators, you
24 know, like Mr. Matthews, but I'm not positive of that.

25 Q. But, so the same photograph that you indicated
26 could have been taken on the 16th, 17th, or the 18th is the
27 same photograph that was ultimately used in that display?

28 A. That's correct. That is correct that this was Mr.
29 Flowers at the time that we took the photograph, and I don't

1 know exactly where that was taken, and I can't tell you
2 whether it's a photograph, it's a Polaroid or not because I'm
3 not looking at the original. If I saw the original, I would
4 know.

5 Q. Did anybody make notes of what Collins said at the
6 time of the lineup?

7 A. Mr. Johnson was taking notes.

8 Q. All right, did you take any notes?

9 A. I did not.

10 Q. Was it being recorded?

11 A. With a tape recorder? I did not tape record that.

12 Q. Did he?

13 A. I can't answer that, but I don't think so.

14 Q. Did you have any other conversations with Mr.
15 Collins prior to that day?

16 A. Prior to that day?

17 Q. The 24th of August.

18 A. At some point I did talk to Mr. Collins. He had
19 told myself and Mr. Matthews where he had been prior to
20 seeing these people in front of Tardy's, and that he had gone
21 to the Wal-Mart store to buy some type of something for his
22 automobile or something. He had been by the cleaners. He
23 produced the receipt for the Wal-Mart purchase that he had
24 made, and I asked him for that to establish the time, and he
25 did produce that.

26 Q. Was this conversation prior to August the 24th of
27 the '96?

28 A. Yes, it was.

29 Q. Anyone else present?

1 A. I'm sure that probably Mr. Matthews, and I don't
2 know whether Mr. Johnson was present or not.

3 BY MR. LUMUMBA: No further questions.

4 CROSS-EXAMINATION BY MR. HORAN:

5 Q. Just a few questions, Captain Miller. You made
6 reference to August 24th. That would be 1996; correct?

7 A. That is correct.

8 Q. Some time after, a month and a half after these
9 murders; right?

10 A. That is right.

11 Q. And I believe at some point in time between the
12 16th and that particular day, y'all were attempting to get up
13 with Mr. Collins, were you not?

14 A. That is correct.

15 Q. And did he have some sickness in the family or
16 something like that where he was not available?

17 BY MR. LUMUMBA: Your Honor, excuse me.

18 Leading.

19 BY MR. HORAN: I will rephrase the question.

20 BY MR. LUMUMBA: Leading.

21 BY MR. HORAN: I will rephrase the question.

22 BY THE COURT: Okay, he is going to rephrase.

23 BY MR. HORAN:

24 Q. Was there any particular reason why y'all were not
25 able to get up with Mr. Collins?

26 BY MR. LUMUMBA: It is still leading.

27 BY MR. HORAN: That is not leading.

28 BY MR. HORAN:

29 Q. Was there any particular reason they were not able

1 to get up with him?

2 **BY THE COURT:** Overruled. Go ahead.

3 **BY THE WITNESS:**

4 A. We had attempted several times to get Mr. Collins,
5 and he had a brother-in-law that was near death at one of the
6 hospitals in Jackson. He was having to travel back and forth
7 to Jackson, and we were just unable to get with him.

8 Q. Okay, and if you could have, would you have
9 presented this photo--

10 A. --We would have done that at least two and a half,
11 three weeks earlier.

12 Q. Okay, and that explains the time span?

13 A. That is correct.

14 Q. Okay. The two photograph lineups, I understand the
15 first one which is marked for identification, which is
16 actually the second photograph that was shown to him, that
17 includes the Defendant, does it not?

18 A. It does.

19 Q. Okay, and Mr. Collins identified that photograph
20 after it was presented to him; right?

21 **BY MR. LUMUMBA:** Leading. Leading, Judge.

22 **BY THE COURT:** Don't lead him.

23 **BY MR. HORAN:**

24 Q. Did he identify anybody in that?

25 A. Ask--

26 Q. --Did Mr. Collins ever identify anyone out of that
27 photo array?

28 A. Mr. Collins looked at the photo spread and picked
29 out number 4. I initialed the back of that. Mr. Johnson

1 initialed the back of that, and Mr. Collins initialed the
2 back of number 4 photograph, which is of Curtis Flowers.

3 Q. Okay, and then you testified that the first
4 photograph display or array that was given to him, he noticed
5 some characteristics that were the same?

6 A. Right.

7 Q. He never did positively identify anyone?

8 A. No, he did not.

9 Q. So the photograph lineup of the Defendant was shown
10 to him second?

11 A. That is correct.

12 Q. At any time did you or Mr. Johnson say anything or
13 point to any of the photographs or suggest that he ought to
14 identify the Defendant in any way?

15 A. No, did not.

16 Q. And was the purpose of this particular lineup for
17 Mr. Collins to look at those photographs to see if he could
18 identify the persons that he had seen outside that store?

19 A. That is correct. It was a very simple, look at
20 this photograph and.

21 Q. Procedurally, did you do anything differently on
22 this particular photographic lineup than you had done in the
23 past 12 years or 16 years that you have been a Highway Patrol
24 investigator?

25 A. No, I did not.

26 Q. And I want to clear something up. Did y'all ever
27 tell Mr. Collins that the suspects that y'all had, or if
28 y'all had any suspects, that the suspects were actually in
29 those photographs?

1 A. No, did not.

2 Q. So it wasn't a situation where y'all were saying,
3 We want you to identify the persons in the photographs that
4 were outside the store. You just showed him the photo
5 lineup?

6 BY MR. LUMUMBA: Leading.

7 BY THE COURT: Sustained.

8 BY MR. HORAN:

9 Q. Is that right?

10 A. That is correct.

11 BY MR. HORAN: No further questions.

12 REDIRECT EXAMINATION BY MR. LUMUMBA:

13 Q. I'm going to show you a copy of Exhibit D-3, the
14 second page. Have you seen that before?

15 A. I think these are some notes, I think that Mr.
16 Johnson took.

17 Q. Does your initials appear on them?

18 A. Yeah, I think my initials are on the top up here.

19 Q. All right. Now would it be safe to say that that
20 is a record of what Mr. Collins allegedly said during the
21 time of the identification or notes?

22 A. These are the notes that were taken by Mr. Johnson,
23 yes.

24 Q. At the time that you were looking, that he was
25 looking--

26 A. --that he was looking at the photographs.

27 Q. At the photographs, okay. Is it anywhere on there
28 where it says, "Positive identification made"? Do those
29 words appear on there anywhere?

1 A. When it says--

2 Q. Listen to my question. Does it anywhere appear on
3 there, "Positive identification made"?

4 A. Not the exact words of "positive," no.

5 Q. Well, "positive" doesn't appear anywhere. Does
6 "positive" appear there anywhere?

7 A. No, it does not.

8 Q. Does "certain"? I'm certain that's the man. Does
9 that appear anywhere?

10 A. "Certain" does not.

11 Q. Okay. Now, in fact, you would agree that the first
12 words that appear there with relation to number 4 express
13 some equivocation, lack of certainty. The first words, the
14 first phrase in quotes, read that first phrase to me as it
15 relates to number 4.

16 A. All right. "I believe that is him. It looks like
17 him"--

18 Q. --Okay, well, let's stop there. "I believe that's
19 him." You wouldn't call that a positive identification,
20 would you, at that point?

21 BY MR. HORAN: Your Honor, again, first of
22 all, this is improper, incorrect, improper redirect
23 examination. I just asked him did they do anything
24 to suggest an answer. That's all I went into.

25 BY MR. LUMUMBA: No.

26 BY THE COURT: Let him finish.

27 BY MR. HORAN: That is a procedural matter.
28 Second of all, this has been covered on direct
29 examination, and whatever Mr. Miller's

1 interpretation of what that means means absolutely
2 nothing. That is things he can present to a jury.

3 BY MR. LUMUMBA: No, Judge. They keep asking
4 Mr. Miller over my objection and Mr. Johnson if
5 they may, if he made a positive identification.
6 And at least twice we have gotten the answer yes.
7 Now if they can interpret it as a positive
8 identification, I can go into why they are making
9 that interpretation, so I can--

10 BY THE COURT: --It's not relevant to this
11 hearing. That is a jury question, and that is not
12 what is before me. So the objection is sustained.
13 It's not proper redirect either, but on the
14 substance of it, it's not relevant to this
15 hearing. It may be later.

16 BY MR. LUMUMBA: I don't have any further
17 questions, Judge.

18 BY THE COURT: Okay, thank you, Mr. Miller.
19 Who will you have next?

20 WITNESS STEPS DOWN.

21 BY MR. LUMUMBA: I don't have any other
22 witnesses on this.

23 DEFENDANT RESTS ON MOTION.

24 BY THE COURT: Okay. Has the State got any?

25 BY MR. EVANS: None, Your Honor.

26 BOTH SIDES REST ON MOTION.

27 BY THE COURT: Okay. Argument?

28 BY MR. LUMUMBA: Yes, sir.

29 BY MR. MILLER: Your Honor, are we excused?

1 **BY THE COURT:** Well, how about it, gentlemen?
2 Are they excused?

3 BY MR. EVANS: Yes, sir.

4 BY MR. LUMUMBA: We need to discuss time. Can
5 we do that now?

6 BY MR. HORAN: They need to--

7 **BY THE COURT:** --Well, wait a minute. Just
8 wait a minute, Mr. Horan. Let me see what he has
9 got to say, and then we will go -- why do you want
10 them here?

11 BY MR. LUMUMBA: Because we have also need to
12 have a discovery hearing. This witness has
13 indicated that at least one thing exists that we
14 have never received.

15 **BY THE COURT:** Have you filed a motion to
16 compel?

17 BY MR. LUMUMBA: Filed a motion to compel?
18 Yes, actually we argued it before the Court that we
19 didn't get everything, and they claim we did. I
20 didn't know we didn't have everything. I thought
21 we had. But he has just told me, told us both that
22 they have pictures which appear with the names and
23 the vital information, some of it, of the people in
24 the photographs.

25 **BY THE COURT:** No, no. What he said was that
26 he thinks that exists, and the District Attorney
27 said they are in the Supreme Court. That is what
28 he said. So they are available to you right now.

29 BY MR. LUMUMBA: Well, I don't know that until

1 I see them.

2 BY MR. EVANS: Your Honor--

3 BY THE COURT: --If they are not, then you can
4 file a motion to compel at that time.

5 BY MR. LUMUMBA: Well, Judge, let me just
6 explain. Let's not lose the sequence of this. We
7 raised to the heavens the issue at the last hearing
8 that we needed the specific photographs and the
9 information that was all used relative to the
10 identification. We were told that we were going to
11 be shown of it, and we barely saw some old copies
12 that you can hardly see. And then they said that
13 there was something with the Supreme Court, which
14 the gentleman here indicated that he was going to
15 get back from the Supreme Court.

16 BY MR. HORAN: I never indicated that.

17 BY MR. LUMUMBA: He specifically said that in
18 your presence.

19 BY THE COURT: Okay, but here is the point.
20 If they are not here and you haven't got them and
21 it's at the Supreme Court, you are entitled to get
22 them, and you are entitled to go look at them. If
23 I have to furnish an order to get that where you
24 can do that, I'm going to do that. But I can't
25 produce them today.

26 BY MR. LUMUMBA: No, no. All I'm saying, I'm
27 not asking the Court-- I hope they are not here
28 today or else they would give them to me. All I'm
29 saying is we need to get a clear statement before

1 this gentleman leaves on what the record with the
2 Supreme Court says. Does it, in fact, have names,
3 addresses, date of births, and that kind of
4 information with it?

5 **BY THE COURT:** He has testified that he has at
6 some place, it's either on the back of those
7 photographs or in his possession, a record
8 somewhere that he has information concerning those
9 individuals that are in the lineup. Would the
10 State agree that that is true?

11 **BY MR. EVANS:** Your Honor, whatever we have
12 got is the original photo lineups. They were
13 introduced into evidence, or they were introduced
14 at least for identification. The Supreme Court has
15 them. They were brought back to Tupelo last time.
16 We had so many days we had to get them back to the
17 Supreme Court. Whatever is on the back of them is
18 what we have got.

19 **BY THE COURT:** Okay, so you don't know; is
20 that your answer?

21 **BY MR. EVANS:** I can't remember. It seems
22 like there may have been some names on the back of
23 them, but I cannot remember.

24 **BY THE COURT:** If they are not on that item,
25 do you have them at all?

26 **BY MR. EVANS:** No, sir.

27 **BY THE COURT:** Does Mr. Miller have them at
28 all?

29 **BY MR. EVANS:** Not to my knowledge.

1 BY MR. LUMUMBA: Well, Mr. Miller has just
2 told us they exist.

3 BY THE COURT: Okay, let's get Mr. Miller back
4 up here just a second.

5 BY MR. HORAN: Your Honor, can I say
6 something?

7 BY THE COURT: I hate to get out of order.

8 BY MR. HORAN: If they will look at the
9 supplemental report of Mr. Miller on the photo
10 lineup, I think in the discovery material that
11 stuff is in there in the typed report.

12 BY THE COURT: Okay, well, that's fine. If
13 they have got it, I'm not going to make you produce
14 it again. I have just got to know what's what.

15 BY MR. HORAN: I'm not sure.

16 (MR. MILLER RETURNS TO THE COURTROOM.)

17 BY THE COURT: Okay, Mr. Miller, I have got a
18 couple of questions I want to ask you.

19 BY MR. WAYNE MILLER: All right.

20 BY THE COURT: You have indicated that there
21 does exist a record of these people describing who
22 they are, what their physical characteristics are,
23 and stuff like that available to the people that
24 were in that lineup; is that right?

25 BY MR. MILLER: Yes, sir.

26 BY THE COURT: Do you know where those records
27 exist?

28 BY MR. MILLER: I thought it was on the back
29 of those photographs.

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

1 **BY THE COURT:** Do you have those records other
2 than that?

3 **BY MR. MILLER:** No. I do not have any records
4 with me today.

5 **BY THE COURT:** No, do you have those records
6 other than that?

7 **BY MR. MILLER:** I probably would have a copy
8 some place of that same photo spread that should
9 have that. I don't know. I will have to look.

10 **BY THE COURT:** Okay, you think they are on the
11 ones at the Supreme Court?

12 **BY MR. MILLER:** Right. I think that's
13 correct.

14 **BY THE COURT:** Okay. Here is what you have
15 got to do. If you need an order to this effect, I
16 will give you an order to this effect. You are to
17 check with the Supreme Court within the next week
18 and see if that exhibit is there, examine that
19 record or have somebody from your office examine
20 that record, and see if those items exist on that
21 thing. If they are not there, then you need to
22 contact the Court. I will give you an order
23 directing Mr. Miller to find those records and
24 supply them to you. Is that fair enough?

25 **BY MR. LUMUMBA:** Yes, that is good, Judge, on
26 that issue.

27 **BY THE COURT:** Now.

28 (PHONE or beeper of some sort was going off in
29 the courtroom.)

1 **BY THE COURT:** You have got me. It's probably
2 the alarm telling us we have got to go.

3 (Laughter.)

4 **BY MR. LUMUMBA:** We were told that-- and,
5 Judge, I don't want to, I just wanted to state for
6 the record we are getting a lot of noise from the
7 audience. I'm not objecting to it, but I'm saying
8 it has been going on the entire hearing. And I
9 think I recall the Court scolding some of the
10 Defendant's relatives at a prior hearing for that.

11 **BY THE COURT:** Well, there has been nothing
12 here to disrupt this court. Let's go ahead and
13 argue.

14 **BY MR. LUMUMBA:** Okay, I wanted to make a
15 record in case it happens again.

16 **BY THE COURT:** I understand. Okay.

17 **BY MR. LUMUMBA:** Okay, now--

18 **BY MR. EVANS:** --Your Honor, can this witness
19 leave?

20 **BY MR. LUMUMBA:** Counsel-- let me just say
21 Counsel is telling us that there was a supplemental
22 report filed by Mr. Miller with that information in
23 it.

24 **BY MR. HORAN:** I'm not saying that, Your
25 Honor. I said if they will look at it, I think
26 there is a reference to the photo lineup in a
27 supplemental report, and it names the names, I
28 believe, of the individuals. I'm not positive.

29 **BY THE COURT:** Okay, I made a ruling that

1 ought to cover this already on that, and Mr.
2 Lumumba, it's on you if you need the order, to get
3 an order directing that. As to any other motion
4 for discovery, there is, I have granted at least
5 two orders ordering them to discover stuff to you.
6 If you have specific items that you know that they
7 have not produced and you want to file a motion to
8 compel, I will hear that at that time.

9 BY MR. LUMUMBA: Okay.

10 **BY THE COURT:** But if it's not anything, if
11 there is not a motion to compel this afternoon, we
12 are not going to hear it this afternoon.

13 BY MR. LUMUMBA: Can we have an order to
14 review their entire file and all the exhibits that
15 they have in their possession? I would like to do
16 that to make sure that we have everything. I don't
17 see why we can't do it. I'm not asking to review
18 their questions or attorney work product, but
19 everything created by the investigation itself, I
20 am asking to have an opportunity to review.

21 **BY THE COURT:** Well, I have got discovery
22 orders already in place on that, and if they have
23 complied with those, then they have complied with
24 them.

25 BY MR. LUMUMBA: We don't know, Judge, unless
26 we can see the file.

27 **BY THE COURT:** Well, you had opportunity to
28 see it because I have given you two orders giving
29 you the right to see anything that is

1 discoverable.

2 BY MR. LUMUMBA: Okay.

3 BY THE COURT: If you didn't see it, that is
4 not my fault. All right, you are free to go.

5 BY MR. MILLER: Thank you.

6 BY THE COURT: So are the others. Now I will
7 hear argument.

8 BY MR. MILLER: The others are free?

9 BY THE COURT: Yeah.

10 (Mr. Millers leaves the courtroom.)

11 BY MR. LUMUMBA: We have a case of Stanley Ray
12 Ellis v. State of Mississippi, which is located at
13 667 So.2d 599, Mississippi, 1995. And we also have
14 the case of, we have an en banc decision in 125-
15 96. I would have to get the actual cite as it
16 appears today, but what we have is a published
17 opinion. We don't have the actual publication. We
18 have the copy that comes from the Court before it
19 is published.

20 BY THE COURT: Well, what is the style?

21 BY MR. LUMUMBA: Slip opinion, slip opinion.
22 It is called Rodney Gray v. State of Mississippi.

23 BY THE COURT: Is that G R E or G R A?

24 BY MR. LUMUMBA: G-R-A-Y.

25 BY THE COURT: Okay.

26 BY MR. LUMUMBA: It's 96-- in the Supreme
27 Court, it's 96 DP00241SCT. It was entered--

28 BY THE COURT: Is there a hyphen in there?

29 BY MR. LUMUMBA: Yes, a hyphen, yeah.

1 BY THE COURT: After 96?

2 BY MR. LUMUMBA: Yeah.

3 BY THE COURT: All right, let me see if I have
4 got it--

5 BY MR. LUMUMBA: --a hyphen after D P.

6 BY THE COURT: It's 96-DP-00241SCT?

7 BY MR. LUMUMBA: Hyphen S C T.

8 BY THE COURT: Okay, all right.

9 BY MR. LUMUMBA: And then you have got the
10 date of judgment is 1-25-96. The date of judgment is
11 1-25-96. In the Gray case it indicates the reliability has
12 been deemed the lynch pin of determining the admissibility of
13 identification testimony. And they cite Manson v.
14 B-R-A-T-H-W-A-I-T-E at 432 US-98 114, and it's a 1977 case.
15 They also cite a Mississippi case, Nathan v. State, 552 So.2d
16 99, a 1989 case.

17 Several things they look at in determining whether
18 an identification is reliable. Now first of all, we would
19 point out to the Court that the photo display is suggestive
20 on its face. The photo display is suggestive in looking at
21 Exhibit number 2 because Mr. Flowers is put at number four
22 spot, and in number four spot his photo makes him stand out
23 from all the other persons on this sheet. His head appears
24 to be much larger. His face seems to be closer to the front
25 of the photo, lacks the depth that the other photos have, and
26 with respect to several of the photos - I would suggest all
27 of them, with the possible exception of one - he looks older
28 than the other people displayed. His complexion is darker,
29 and that is one of the things that the witness claims he was

1 focusing on, the darkness of the complexion, than everybody
2 in this spread with the exception of maybe one other person.
3 And it's probably easier to see there than it is on this, but
4 that is the case.

5 There is no way and I would be-- that the people
6 displayed in exhibits 1, 2, or 6 are anywhere close to the
7 age of Mr. Flowers. Now when I say close, five to ten years
8 I don't think is close. I mean I guess, you know, the
9 question becomes what you consider as close. But when you
10 start getting those kind of differentiations, clearly a
11 person is going to stand out over somebody else.

12 Moreover, what we have here is people in five and
13 three are totally different than anything described,
14 allegedly described by the witness. He is looking for a
15 receding hair line. Neither one of those people have it. He
16 is looking for a dark skinned person. Neither one of those
17 five or three are dark skinned, and yet still their hair is,
18 both of them may be braided. One of them clearly is braided,
19 and here again, they are pushed to the front. He is pushed
20 to the front. They are in the back.

21 Now I don't know -- well, and so those are the
22 characteristics which make it a suggestive display. I would
23 also argue that I really don't think any of these people have
24 a round face, but since the Defendant's face is bigger in
25 this photo, it would have to look rounder than any of the
26 other people in it. Actually, to be honest, neither one of
27 them have a round face. But the Defendant's is clearly the
28 rounder than anybody else.

29 So what we look at is the questions which have to

1 do with the reliability of the identification. The case law
2 said one of the things to be considered is the opportunity to
3 view the accused at the time of the assault or the alleged,
4 person who is alleged to be the accused at the time of the
5 assault. You have cases where they have seen a person 10
6 minutes, 15 minutes, all that kind of stuff.

7 In this particular case, they saw him for 15
8 minutes in the Ellis v. State case. In this case you are
9 only talking about a glimpse is all the witness saw.
10 Degree-- and I also point out that there is no history of
11 seeing this man, and there is no history of seeing him even
12 after the incident.

13 Degree of attention. The description, the degree
14 of attention, I'm sorry; degree of attention refers to
15 whether there was a spectacular event which drew the
16 attention. It would be one thing if he testified that he saw
17 somebody running out of the place with guns. The testimony
18 here is that he saw somebody doing something which he thought
19 was an argument. When he glimpsed at them and then bothered
20 to turn around, which apparently he was trying to get a good
21 look according to him, he never saw the face again. The
22 degree of attention does not help the identification here.

23 Accuracy of prior description. I don't know how
24 accurate the description-- I mean I don't know many black men
25 there are who are medium complexion. And in fact, this is
26 one black man that is not medium complexion. He is dark.
27 But I don't know how many black men you have who are medium
28 complexion. There is an officer in here who is medium
29 complexion sitting to my right. There is other black men

1 here who are darker than I. But this man is clearly not
2 medium complexion. He is of dark skin by anybody's
3 understanding.

4 But in any event, accuracy of prior description -
5 no eyes, no bone structure, no height in the original notes,
6 no-- and then according to officer, he didn't give a height
7 in the original notes he said. One man was taller than the
8 other. If you notice, as Johnson said, one man was taller
9 than the other one. I don't know how that is supposed to
10 help. But, and no other indicia of identification, no other
11 description that really helps.

12 The round face. There has got to be at least a
13 million faces rounder than the one, than any of those
14 actually on that, including the Defendant's.

15 Level of certainty, that's a good one. "I think,"
16 "I believe"; also the duration of time between the incident,
17 the viewing and the identification, over a month. It doesn't
18 really matter why it took that long. It's still a factor to
19 consider. Like the Court has said, this is not an inquiry,
20 and we will accept that for purposes of this discussion, into
21 whether they intended to call something. It's just an
22 inquiry into whether the circumstances presented problems
23 with identification: Over a month to identify a person that
24 you have never seen before in your life, who you have got a
25 very vague description of, who you have never seen since or
26 before the incident, and it takes a month for them to show
27 you a display. And we have got allegations here that even
28 when he saw him, he didn't express certainty. He never said
29 he was certain, never said he was positive.

1 And in fact, even though the last statement which
2 is allegedly recorded, after they said that he made an
3 identification or after they put down, pointed to 4, said
4 something about do you know Curtis Flowers, a name which has
5 been bandied about by that time, but even forgetting that,
6 No, I don't know Curtis Flowers, but I know the man that I
7 saw is the man that was outside. After he had done said, "I
8 believe," "looks like," and expressed on various levels of
9 uncertainty, uncertainty which not only gripped him then, but
10 uncertainty that gripped him at the time of the initial
11 incident.

12 He said at that time, according to the officer, may
13 be able to make an identification, not that he could or that
14 it was positive or certain. And then finally, up until the
15 last trial, the man was "looked like," and even here he has
16 never said he is positive. He left here saying, I believe he
17 is the person. Asked several times whether he was positive
18 by his own, by the attorney on the other side, who he
19 pretends to be testifying to and who he will talk to out of
20 the courtroom and won't talk to me; his best response is "I
21 believe." "I will believe it," and the question is, is he
22 certain of it? He may believe it for a number of reasons.
23 It might have nothing to do with what he perceived.

24 And he didn't say that at the time of the trial,
25 and all the incidents that I quote, "look like," "man was a
26 little darker," and various other kinds of descriptions which
27 did not say that he could positively identify the person.
28 This person's identification reeks with uncertainty, and just
29 because the question tries to dress it up by making it an

1 identification when virtually the same language is used in
2 the first lineup when he identifies somebody else, that
3 doesn't change the character of what actually occurred.

4 So what I would say to the Court is that this is
5 not an identification which should come before a jury.
6 Perhaps the gentleman has other things to testify to, but not
7 to identification lawfully and legally, and I don't think it
8 will pass the legal threshold of being worthy to be accepted
9 as a reliable identification. So that is my objection.

10 I would suggest this too - is that after one of the
11 things that you see used to determine whether the lineup is
12 suggestive, suggests something that wasn't there prior to the
13 time of seeing the lineup is whether the lineup makes him
14 more certain than he was before. There is absolutely no
15 certainty expressed by this gentleman, and the description
16 does not bear forth any certainty prior to the time of the
17 lineup.

18 He sees a lineup of a big headed individual, the
19 only one in the lineup; darker skin, older person. Then what
20 he does, he expressed equivocation as he is standing there,
21 and not until another question is asked him about the
22 Defendant's name at the end of the display does he express
23 anything that even says I know it is the person, still
24 without using the words "positive" or "certain." So I think
25 it is bolstered. It's-- so a degree, the degree of his
26 identification was bolstered by the lineup which was
27 suggestive.

28 **BY THE COURT:** Okay. Mr. Evans.

29 **BY MR. EVANS:** Thank you, Your Honor.

1 Your Honor, to start with, I think it is very
2 obvious that this witness attempted to make absolutely sure
3 that everything he said was exactly right. He has explained
4 in detail to both the officers and to the Court at a previous
5 trial exact details of where he was that morning, who he saw,
6 what he saw them doing. He specifically went through details
7 about all of that.

8 He has testified and give statements that at the
9 time he passed by Tardy Furniture, he saw two black males
10 standing outside arguing. That's what brought it to his
11 attention is that they appeared to be arguing, so he paid
12 attention to them. Not only did he pay attention and look
13 and see the face of the one that he has identified, but it
14 got his attention to such an extent that he made the block
15 and came back to get another look at them. He was paying
16 attention. He was looking because they had gotten his
17 attention because it appeared that they were arguing.

18 He didn't know what has fixing to happen at the
19 store. All he knew was that there were two black males out
20 there that appeared to be arguing, and he was paying
21 attention to them. He said he thought he could identify the
22 person. He wasn't coming up there saying, Oh, I know I can
23 identify somebody. He said, I think I can identify the
24 person.

25 I think it is very important that they showed him
26 two separate photo lineups. If this were a person that was
27 attempting to come in and just say I saw who did it, when
28 they showed him that first lineup, he would have picked
29 somebody out and said, that is him. He didn't do that. He

1 looked at one and said, this person has some of the same
2 characteristics. He did not say that was the person. He
3 said they had some of the same characteristics.

4 He was shown the second lineup which had this
5 Defendant's picture in it, number 4, a random number in
6 there. He wasn't put number one or anything like that to try
7 to draw attention to him. Mr. Collins went straight to that
8 picture, and he said, "I think that's him. It looks like
9 him," and he later said, "That is the person that I saw in
10 front of Tardy Furniture." And he told this Court that that
11 is the person, and he will always believe that that is the
12 person that he saw in front of Tardy Furniture. If that is
13 not positive, I don't know what could be.

14 The courts on many occasions in reference to photo
15 lineups have said that there is no such thing as a perfect
16 photo lineup. We have even had cases where we had one person
17 in a photo lineup that had initials carved in the back of his
18 hair. You can't find somebody identical to that to put in a
19 photo lineup. So as Wayne Miller attempted to do, he took
20 the photos that were available to him, attempted to get black
21 males that were similar in as much characteristics as he
22 could put them, and of basically the same age, which if there
23 is any age difference in these people, I can't tell it by
24 looking at it because I can't tell what any of the ages of
25 the people in these photographs are. It's not something
26 obvious where you have got a 20 year old and an 80 year old.
27 It's not anything that would bring attention to any one
28 person in there.

29 As a matter of fact, if you wanted to, you could

1 say that any one picture in that might could bring attention
2 to somebody else. One may be a little closer up. One may be
3 a little further away. Nobody indicated you are supposed to
4 pick out the one that is the closest. Nobody in any way
5 attempted to influence him, which John Johnson testified that
6 they never in any way attempted to do that. Wayne Miller
7 testified that they never attempted in any way to do that,
8 but what is the most important is that Porky Collins, Charles
9 "Porky" Collins testified that they never tried in any way
10 to influence him on who to pick out. As a matter of fact, as
11 he specifically said up here today, it wouldn't have done any
12 good if they had because he wasn't going to do what somebody
13 else told him to do. He was going to do what he saw, and
14 that is exactly what he did. He, as he explained today,
15 identified this Defendant from being able to see his face in
16 front of Tardy Furniture.

17 That is just one element. He is not sitting up
18 here testifying I saw him kill four people. He is saying
19 this is the person, one of the two people I saw in front of
20 Tardy Furniture, and that is all that he is testifying to.
21 He is not trying to add anything to what he saw. There is
22 absolutely nothing in this trial, either from the photo
23 lineup or the testimony, that even indicates remotely that
24 anyone tried to influence him on who to pick out of that
25 lineup.

26 Almost immediately, while the investigation was
27 still going on - and it was while the bodies were still in
28 the store - Porky Collins told law enforcement officials what
29 he had seen. They made some notes of it at that point, but

1 as Mr. Johnson testified, at that point nobody knew what was
2 relevant and what wasn't. They were trying to get bits and
3 pieces to put together a picture and see who the suspect
4 would be. Nobody was trying to point a finger at this
5 Defendant. Nobody was trying to point the finger at anybody,
6 just trying to find out what happened.

7 This was one piece of evidence that they followed
8 up on. They showed him the photo lineup as soon as they
9 could, and he identified this person. And in the courtroom
10 today he has identified this Defendant. He has said that
11 that person is the person that he saw in front of the store,
12 and he will believe that for the rest of his life. And
13 there is no indication that anybody has influenced him.
14 There is no indication that that identification is from
15 anything other than his ability to observe the Defendant and
16 see his face at that time. There was a high level of
17 certainty in that.

18 There was also an indication that he had a reason
19 to be paying attention. We are not talking about somebody
20 just driving down the road and glancing and saying, well, I
21 saw somebody out of the corner of my eye, but I didn't pay
22 any attention to what was going on. He noticed them because
23 of a specific incident. If they had not been arguing or what
24 he thought was an argument, he may have not paid enough
25 attention to be able to identify him, but he did.

26 As he clearly testified and given statements all
27 along, he did not see the face of the other person. He did
28 not identify the other person, and he is not sitting up here
29 trying to tell us who the other person was. All he is

1 telling us is what he knows.

2 I think it is very clear that as far as what we are
3 on here today, the elements of attempting to suppress a
4 statement are clear. Was this identification made because of
5 some undue influence? Did somebody, as some cases show, did
6 somebody say, that's the person right there? Did somebody
7 put a black male in a lineup with five white males? Is there
8 anything that would stand out that would point to him? And
9 this was not an in person lineup, but if it was, was one of
10 them six feet tall and the rest of them three feet tall?
11 None of this is there, and the photos, I have seen plenty of
12 photo lineups where they could not find all head shots. Some
13 of them would be full body shots. Some would be head shots.
14 That I don't think is anything that would hurt, but in this
15 case all of these are head shots. I think this was a very
16 fair photo lineup. He was shown two separate photo lineups,
17 and the key to the whole thing is his testimony that he is
18 identifying him because of his ability to observe him, that
19 that is the person that he saw.

20 Thank you, Your Honor.

21 BY MR. LUMUMBA: Counsel made no reference to
22 any of the points that the case law indicate need
23 to be considered and satisfied. I already listed
24 those: Opportunity to view the person at the time
25 of the event, degree of attention, accuracy of
26 prior description, level of certainty, and time
27 elapsed. Now he may, time elapsed-- I don't know
28 if I mentioned time elapsed, but it makes a
29 difference.

1 **BY THE COURT:** Let me see that. I'm going to
2 give it back.

3 BY MR. HORAN: What is the cite on that? It's
4 the same elements. What is the cite?

5 **BY THE COURT:** Well, I just want to take a
6 look at it.

7 BY MR. LUMUMBA: 667 So.2d.

8 BY MR. HORAN: It's Gray?

9 BY MR. LUMUMBA: No, it's not Gray. That is
10 not the Gray case. This is Gray right here.

11 BY MR. HORAN: All right. Let me see it.

12 BY MR. LUMUMBA: May I go to the rest room?

13 **BY THE COURT:** Go ahead because I'm going to
14 read this real quick.

15 (Off the record while the Court read cases
16 furnished by Mr. Lumumba.)

17 **BY THE COURT:** Okay, Mr. Lumumba, I'm ready.

18 BY MR. LUMUMBA: That is essentially my
19 argument.

20 BY MR. HORAN: Is that all you have?

21 Your Honor, I have one thing I wanted to point
22 out to the Court's attention. Those factors that
23 he is considering and he is talking about aren't
24 factors that this Court is to consider as to
25 whether or not a photo lineup is suggestive or
26 not. Those are factors that the Court has to
27 consider if the Court were to find it was a
28 suggestive photo lineup and determine whether or
29 not the in court identification would be proper or

1 not.

2 **BY THE COURT:** But doesn't one lead to the
3 other?

4 BY MR. HORAN: No, not necessarily. Whether
5 or not the time, the amount of time that he had to
6 look at this individual, all of that kind of stuff
7 has absolutely nothing to do with whether or not
8 there is a constitutional problem with the photo
9 lineup. The Court could hold that it was an
10 impermissible photo lineup and still not suppress
11 the in court identification based on those five
12 factors. That's what those factors are for. In
13 fact, some courts allow jury instruction as to
14 those particular factors. That has nothing to do
15 with-- that law has something to do with an in
16 court identification.

17 **BY THE COURT:** You are correct in that.

18 BY MR. HORAN: Whether or not it was an
19 illegal show or something like that. That is not
20 what we are here about today.

21 **BY THE COURT:** Okay. The Court finds that
22 there has nothing been done by the officers
23 involved, Mr. Johnson or Mr. Miller, which are the
24 only officers who have testified. There is no
25 evidence either from them or Mr. Collins that would
26 indicate that they influenced this identification
27 at all, and so there has not been that type of
28 influence on it. Mr. Collins was presented with
29 two lineups which amounted to, I believe, a total

1 of twelve people. In that, on the first lineup
2 which did not include the Defendant, he found that
3 there was a person of, that he had said had some of
4 the characteristics. And then on the second lineup
5 he, according to the testimony, immediately
6 identified Mr. Flowers as being the person that he
7 thought was the one that was at the scene.

8 The second lineup consisted of six
9 individuals, five of which are of lighter skin
10 complexion than Mr. Flowers, so he is distinctive
11 in that regard. However, the description that was
12 given to the officers was of one of a light
13 complexion, and therefore, if there was any
14 suggestion in this lineup, it would be a lineup
15 that would suggest that Mr. Flowers was not the
16 one.

17 So there is nothing by these pictures that
18 suggests that. And therefore, I don't place any
19 credibility on that. The other things about his
20 head, the facts are just not, they are not borne
21 out by the exhibit or by the photographs that I
22 have got.

23 He obviously had an opportunity to view this
24 person as about the time the event occurred. He
25 not only viewed him once; he rounded the corner and
26 viewed him twice. His degree of attention was
27 certainly such-- when he made the second trip
28 around, that answers the degree of attention
29 question.

1 I don't know if he had any prior
2 identification. I don't think that may be relevant
3 to this hearing anyhow, but he had no prior
4 identification. His level of certainty was that he
5 immediately picked out this person when he saw the
6 second lineup as opposed to what he did when he saw
7 the first lineup. And the length of time, I don't
8 think is a factor in this particular case.

9 Based on these, on the evidence that is before
10 the Court, the Court finds that the Motion to
11 Suppress the out of court identification is not
12 well taken and should be overruled. And there is
13 certainly a question as to whether or not his
14 credibility or reliability which can be presented
15 to the jury, and that certainly will be opportunity
16 for the Defendant to do that at trial. But I
17 overrule that Motion, and the State can submit an
18 order to that effect.

19 BY MR. LUMUMBA: I have got--

20 BY MR. EVANS: Is that all?

21 BY MR. LUMUMBA: No, just a short, short.

22 BY THE COURT: Okay.

23 BY MR. LUMUMBA: I do have the jury
24 questionnaire from Hinds County.

25 BY THE COURT: Okay. Would y'all, could y'all
26 quickly look at that and see if y'all can agree on
27 that? And we will be through. Mr. Freelon, I will
28 give you that back.

29 (Counsel discussed the questionnaire with each

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other off the record and then with the Court.
There were no further proceedings on the record on
this date of 1/6/99.)

1 (THE FOLLOWING IS A MOTION TO SUPPRESS STATEMENTS
2 HEARING ON MARCH 26, 1999, DURING THE TRIAL OF FLOWERS II IN
3 GULFPORT, MISSISSIPPI, WITH THE STYLE AND APPEARANCES AS
4 HEREIN NOTED:)

5 BY THE COURT: Okay. Ladies and gentlemen,
6 this is a matter I have to hear outside y'all's
7 presence. You will need to go to the jury room.

8 JURY LEAVES THE COURTROOM.

9 BY THE COURT: State your objection for the
10 record, Mr. Lumumba, if you will.

11 BY MR. LUMUMBA: Okay, my problem was that we
12 have raised a Motion to Suppress statements that
13 they allegedly took from the Defendant, and we
14 were, the Court indicated that we would have a
15 hearing. So that is what I would like to have is
16 a, an admissibility hearing.

17 BY THE COURT: Okay, and you filed a written
18 Motion to Suppress, and that written Motion to
19 Suppress based on the illegality of the arrest; is
20 that correct, or if there was an arrest, that it
21 was illegal?

22 BY MR. LUMUMBA: Right. Right.

23 BY THE COURT: Did I misstate that?

24 BY MR. EVANS: I can't even remember what the
25 grounds of the Motion were.

26 BY MR. LUMUMBA: It was the arrest for sure.

27 BY THE COURT: Well, isn't there a debate as
28 to whether there was an arrest when this took
29 place?

1 BY MR. EVANS: Yes, sir. Right.

2 BY MR. LUMUMBA: Right.

3 BY THE COURT: Okay, that's what I am saying.

4 If there was an arrest, you say it was illegal.

5 BY MR. LUMUMBA: Right.

6 BY MR. EVANS: May I proceed, Your Honor?

7 BY THE COURT: Yes.

8 JACK MATTHEWS,

9 a white male previously called to testify as a witness by the
10 State and having been previously sworn, now testified on
11 behalf of the State on Defendant's Motion to Suppress with
12 the JURY OUT as follows, to-wit:

13 DIRECT EXAMINATION BY MR. EVANS ON MOTION TO SUPPRESS: JURY
14 OUT.

15 Q. Mr. Matthews, at the time that you talked to Curtis
16 Flowers, was he under arrest?

17 A. No, sir. He was not.

18 Q. Was he free to leave?

19 A. Yes, sir; he was.

20 Q. Did he, in fact, leave after you interviewed him?

21 A. Yes, he did.

22 Q. Now at the time that you talked to him, did you, in
23 fact, advise him of what is commonly called his Miranda
24 rights?

25 A. Yes, sir. He was brought to the Winona Police
26 Department at our request. He came voluntarily, but because
27 he was at the police department, we told him that we were
28 going to read him his rights and that we wanted to talk to
29 him about his employment at Tardy Furniture Company.

1 Q. I will hand you Exhibit 67 and ask you if you can
2 identify this, please.

3 A. That is his warning and his waiver of rights that
4 we gave to him on the 16th of July. This waiver was signed
5 at 1:30.

6 Q. At the time he was asked to come to the police
7 department, was he even considered a suspect?

8 A. We knew that, we had had information that he had
9 been employed at Tardy Furniture Company and had been
10 recently let go, and we wanted to talk to him about that.

11 Q. But he was not under arrest and was not even
12 officially considered a suspect at that time; is that
13 correct?

14 A. No, sir, not at that time.

15 Q. The rights form that is in front of you, is that
16 the same rights form that you used to advise the Defendant of
17 his rights?

18 A. Yes, it is.

19 Q. And who was present when you advised him of those
20 rights?

21 A. I was present and John Johnson.

22 Q. Is that form in the same condition now as it was in
23 at the time you advised him and as y'all-- other than the
24 fact that it now has y'all's signatures to it?

25 A. Yes, sir.

26 BY MR. EVANS: I offer this form into
27 evidence, Your Honor.

28 BY THE COURT: Any objection to that?

29 BY MR. LUMUMBA: No, sir.

1 **BY THE COURT:** Let it be marked into
2 evidence.

3 (WARNING AND WAIVER OF RIGHTS SIGNED ON
4 7/16/96 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-67
5 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

6 BY MR. EVANS:

7 Q. Mr. Matthews, did you, in fact, advise the
8 Defendant of the rights that are contained on that form?

9 A. Yes, I did.

10 Q. Did he appear to understand those rights?

11 A. Yes, he did.

12 Q. Did you use any pressure or any type of coercion to
13 get him to talk to you?

14 A. No, sir. I did not.

15 Q. Did you make any force or use any threat of force
16 to get him to cooperate with you?

17 A. No, sir.

18 Q. Did it appear to you that he understood that he was
19 free to go and that he had a right to talk to you if he would
20 like to, but he didn't have to talk to you?

21 A. That's correct.

22 Q. Once he had signed that form stating that he wished
23 to waive his rights and talk to you, did he, in fact, talk to
24 you?

25 A. Yes, he did.

26 Q. Did he, in fact, make a verbal statement to you
27 that day?

28 A. Yes, he did.

29 Q. And did he on another day come up there on his own

1 and make another statement?

2 A. Yes, sir; he did.

3 BY MR. EVANS: Tender the witness.

4 CROSS-EXAMINATION BY MR. LUMUMBA: JURY OUT.

5 Q. Mr. Matthews, my understanding is that Mr. Curtis
6 Flowers was taken into the, or that he was, you saw him-- did
7 you go to his home, or did you see him somewhere else that
8 day on the 16th?

9 A. The first time I saw Mr. Flowers was at the Winona
10 Police Department.

11 Q. Okay. So he was at the police department; is that
12 correct?

13 A. I was already there when he came.

14 Q. Okay, and did some officers come with him?

15 A. I believe that's correct.

16 Q. In fact, the highway patrolman by the name of
17 Dennis Woods and Officer Townsend were with him. Is that
18 true?

19 A. I know Mr. Woods was with him. I don't know about
20 the other officer.

21 Q. So you don't know what Mr. Woods and Mr. Townsend
22 told him prior to him coming, do you?

23 A. (No audible response.)

24 Q. Do you know what Mr. Woods and Mr. Townsend told
25 him?

26 A. No, sir.

27 Q. But they are the ones that escorted him to the
28 police department?

29 A. Yes, sir. I know what he told me but-- I mean I

1 know what Officer Woods told me but.

2 Q. All right, but you don't know what he told Mr.--

3 A. No, sir.

4 Q. Mr. Flowers; is that correct?

5 A. That's correct.

6 Q. Okay. Now let me ask you this. So you really
7 don't know what he was told that caused him to leave his home
8 with them; is that true?

9 A. (No response.)

10 Q. You don't know what he was told to cause him to
11 leave his home with them?

12 A. I know that they asked him to come up to the police
13 department.

14 Q. Well, you don't--

15 A. --I know that part.

16 Q. You weren't there, so you don't know.

17 A. Well, that is true.

18 Q. Okay. So but you do know that they came in, and he
19 didn't come in by himself. He came in with two officers;
20 isn't that true?

21 A. I know they drove him up there; yes, sir.

22 Q. And now as far as the facts that you had under your
23 disposal at this time, this was on July the 16th, 1996. Is
24 that true?

25 A. That's true.

26 Q. At that time you had not gathered any kind of
27 physical evidence which in any way pointed to Mr. Flowers,
28 had you?

29 A. No, sir.

1 Q. It would be safe to say that you didn't have any
2 witnesses who were saying that Mr. Flowers was involved;
3 isn't that true?

4 A. Not at that time, no, sir.

5 Q. And in fact, that never changed. You never did get
6 a witness that said that they saw Mr. Flowers in the store
7 doing anything on that day, did you?

8 A. That's correct.

9 Q. Now in fact, you never did get a witness that said
10 that they saw Mr. Flowers--

11 BY MR. EVANS: --Your Honor, that is not
12 relevant to this motion.

13 BY MR. LUMUMBA: I think it is.

14 BY THE COURT: State your question again.

15 BY MR. LUMUMBA: Maybe a word of explanation
16 might help him. Me and the counsel were talking,
17 and we thought that maybe we would deal with -- I
18 think they may tend to-- they may want to introduce
19 more than just one statement, and maybe if we can
20 cover all the statements--

21 BY THE COURT: Yeah, if we are into more than
22 one statement, I want to cover them all with this
23 motion at one time.

24 BY MR. EVANS: That is still-- that is fine,
25 Your Honor. That's what I thought we were doing.

26 BY MR. LUMUMBA: Okay, well, that is why my
27 question is the way it is.

28 BY THE COURT: Okay, I did not understand your
29 question. Restate it.

1 BY MR. LUMUMBA:

2 Q. My question is at this time, first of all which
3 would have been the 16th, you didn't actually have any
4 witness who said that they actually saw Mr., Mr. Flowers
5 doing anything wrong anywhere, either in Tardy's or anywhere
6 else, did you?

7 A. No, sir.

8 Q. And you never did come up with a witness that
9 actually said that they saw Mr. Flowers doing anything wrong
10 in Tardy's or anywhere else, did you?

11 A. No, sir.

12 Q. Now and you never came up with any physical
13 evidence that, like fingerprints or anything which positively
14 placed him in the store. Isn't that true?

15 A. No, sir.

16 Q. Now let me ask you this. At the time that you--
17 you didn't even have a shoe box at the time that you sat down
18 with him on the 16th; is that correct?

19 A. I didn't understand that question.

20 Q. On the 16th of July, you didn't even have a shoe
21 box; is that correct? You hadn't taken any shoe boxes from
22 his home, had you?

23 A. No, sir.

24 Q. Okay, and you hadn't taken any, any other kind of
25 evidence from his home at that point?

26 A. The first time I saw Mr. Flowers that day was at
27 the Winona Police Department. I never did go to his home.

28 Q. Okay. When I said you, I'm talking about as far as
29 to your knowledge, the police hadn't taken anything to his

1 home at least -- no police agency had taken anything from his
2 home which they had brought to your attention?

3 A. On the 16th I wasn't aware that anybody had been to
4 his home.

5 Q. Well, you knew somebody went to his home to talk to
6 him to bring him up there; isn't that correct?

7 A. I don't think they located him at his home.

8 Q. Okay. Okay, now let me ask you this. So you
9 pretty much told us what you had or basically what you didn't
10 have on the 16th. Now by the way, did you do anything to
11 record electronically the advice of rights on the 16th?

12 A. No, sir.

13 Q. Did you do anything to record anything he told you
14 on that date?

15 A. No, sir.

16 Q. At the time that he was there, was he the only
17 person that was there, or were there other people who were
18 being taken in as suspects?

19 BY MR. EVANS: Your Honor, I object. He said
20 he was not taken in as a suspect, and that is an
21 improper statement.

22 BY THE COURT: Well, the jury is not here. Go
23 ahead.

24 BY MR. LUMUMBA: Right.

25 BY MR. LUMUMBA:

26 Q. Were there other people there?

27 A. There were-- Mr. Johnson was there, and I was
28 there, and Mr. Flowers was there. There were some other
29 people in the police department there.

1 Q. Was Mr. Doyle Simpson there?

2 A. I don't know that he was there at that time.

3 Q. Did he get there before Mr. Flowers left?

4 A. We talked to him some time, and I'm not sure as to
5 the sequence of when he got there as compared to when we
6 talked to Mr. Flowers.

7 Q. At that moment in time he didn't say anything to
8 you which suggested that Mr. Flowers had done anything
9 illegal; isn't that right?

10 A. Who are you referring to?

11 Q. Doyle Simpson.

12 A. No, sir.

13 Q. And they could have been there at the same time is
14 what you are telling me; is that correct?

15 A. It's a possibility they could have been in the
16 building; yes, sir.

17 Q. Okay, now that was the first date. Now when is the
18 second date that you-- did you do anything to record what
19 your conversation or your interview or interrogation with Mr.
20 Flowers included? Did you do anything to record that on the
21 16th?

22 A. On the 16th?

23 Q. Yeah.

24 A. No.

25 Q. Did you do-- you didn't write it down or anything?

26 A. No, sir.

27 Q. Now on the next day that you were present that he
28 actually was interviewed or interrogated, what day was that?

29 A. The next time I talked to Mr. Flowers was on July

1 the 18th.

2 Q. And were you the only one that was talking to him?

3 A. No, sir. Myself and DA Investigator, John Johnson,
4 and the MHP Investigator, H. W. Miller.

5 Q. About what time was that?

6 A. I don't remember the exact time.

7 Q. And do you know at that moment in time on the 18th,
8 would it be safe to say that you didn't have any other
9 physical evidence that you didn't have, that you hadn't --
10 you didn't have any more physical evidence than you did on
11 the 16th. Isn't that true?

12 A. We had done some investigating, and we had talked
13 to some people, and we wanted to talk to Curtis again, and at
14 that time we recorded his statement.

15 Q. Okay, well, let me ask you this. First of all, I
16 don't think that, and I'm not complaining but I would just
17 like to get it. That is interesting to know also, but had
18 you any other physical evidence other than what you had on--
19 you already stated you didn't have any physical evidence that
20 implicated him on the 16th. You have already said that;
21 right?

22 A. Yes, sir.

23 Q. Did you have any physical evidence that implicated
24 him on the 18th? That was my question.

25 A. No, sir. We didn't have any physical evidence.

26 Q. Now how did he get to the station on the 18th?

27 A. I'm not sure.

28 Q. You didn't bring him?

29 A. I didn't bring him myself; no, sir.

1 Q. And was he advised of any rights on the 18th?

2 A. Yes, sir. We advised him of his rights.

3 Q. And you have that in writing?

4 A. Yes, sir.

5 Q. And let me ask you this. On the 16th when he was
6 advised of his rights, did he sign that?

7 A. Yes, sir.

8 Q. Okay, can I see it, please?

9 A. Yes, sir.

10 Q. Now you said that on the 16th that he was supposed
11 to be free to leave. That's what you said; right? You just
12 testified to that?

13 A. Yes, sir.

14 Q. Okay, well, let me ask you this.

15 A. He did leave when we got through talking.

16 Q. He left when you got finished talking; right?

17 A. Yes.

18 Q. Which does not necessarily mean that he would have
19 been free to leave before you talked; right?

20 A. He was free to leave at any time.

21 Q. But the fact that he left when you got finished
22 talking and a person leaves when you get finished talking
23 does not mean that you haven't told them that they have to
24 stay until you talk, does it?

25 A. I never told him that.

26 Q. Well, do you understand my question?

27 A. No, sir.

28 Q. Well, leaving at the end of the conversation does
29 not prove that he was free to leave at the beginning of the

1 conversation, does it? In and of itself?

2 A. I don't follow that.

3 Q. Okay. You didn't record what you were telling him,
4 did you? Did you record anything that you said to him that
5 day?

6 A. When?

7 Q. On the 16th. That's the day we have just been
8 talking about.

9 A. No, sir. I told, I answered that while ago. I
10 didn't, we didn't tape record anything, and we didn't record
11 anything. I didn't.

12 Q. When he walked in the door, you didn't say, "You
13 are free to leave," did you?

14 A. No, sir. I didn't say that.

15 Q. And you don't know of your own knowledge what the
16 other officers had told him. So you didn't tell him he was
17 free to leave; isn't that correct?

18 A. I know no officer in the room that was there said
19 anything, made that statement.

20 Q. But you were in-- no officer who was in the room
21 made the statement, "You are free to leave." That's true;
22 right?

23 A. We told him, we read him his rights, and it says in
24 here that, you know.

25 Q. In the rights?

26 A. That he could, that the rights form, that he could
27 stop talking at any time.

28 Q. The rights form doesn't say, You are free to leave,
29 does it?

1 A. No, sir. It doesn't say that, but it says you can
2 stop talking at any time.

3 Q. And in fact, the rights forms are usually read to
4 people who are suspects; right?

5 A. Well, we made it clear that he was there
6 voluntarily, that we wanted to talk to him and what we wanted
7 to talk to him about.

8 Q. All right, did you tell him he was free to leave?
9 That's what I'm trying to get to, this voluntarily stuff?

10 A. We told him that he was, that we would like to talk
11 to him. We would like to talk to him about his employment at
12 Tardy Furniture, and if he would agree to talk with us, and
13 he voluntarily agreed to talk with us.

14 Q. Right. And that is all he voluntarily agreed to
15 do, right, is to talk to you; right?

16 A. He talked to us; yes, sir.

17 Q. Right. And so you tell people who are there and
18 locked up and who can't leave, you read them the same rights
19 form, don't you?

20 A. That's correct.

21 Q. And it says the same thing about they can
22 voluntarily stop talking to you?

23 A. At any time they want.

24 Q. So it's nothing in the rights form that tells him
25 he is free to leave and not under arrest? That is nothing in
26 there that says that; right?

27 A. We told him in the beginning he was not under
28 arrest.

29 Q. Okay. Oh, you said that, did you?

1 A. Yes, sir.

2 Q. Okay, who said that?

3 A. I said it.

4 Q. You said, "You are not under arrest"?

5 A. Yes, sir.

6 Q. Okay. And you said, but you didn't say you were
7 free to leave?

8 A. I don't remember that I said that.

9 Q. Well, when he came into the door, how did you
10 confront him? Did you say anything to him or approach him or
11 greet him in any way?

12 A. I introduced myself to him.

13 Q. Did anybody else there introduce themselves?

14 A. Mr. Johnson.

15 Q. Okay, how many of them-- there was three. I think
16 you have already said it was three of them; is that right?

17 A. I know Mr. Johnson and I were there on the 16th.

18 Q. Okay. But you didn't greet him in any kind of way
19 other than just say hello?

20 A. I just, I introduced myself to him. I told him
21 who I was, and I told him why, you know, that I wanted to
22 talk with him, and I asked him if he would agree to talk with
23 us.

24 Q. Now normally when you-- did you make him at home to
25 the extent that you shook his hand?

26 A. No, sir. I did not shake his hand.

27 Q. And Mr. Johnson didn't shake his hand?

28 A. Not that I know of.

29 Q. Okay, so you didn't greet him? You didn't make him

1 feel that welcome, did you?

2 A. Well, no.

3 Q. Okay, and would it be safe to say that the others
4 didn't, or you didn't see that either?

5 A. I didn't see anybody shake hands with him; no, sir.

6 Q. Okay, and you don't know whether or not the other
7 people let him know that they weren't arresting him, Mr.

8 Townsend and Mr. Woods. You don't know that they shook--

9 A. --I don't know; no, sir.

10 Q. That wouldn't be unusual to shake a person's hand
11 that you are getting ready to interview, would it?

12 BY MR. EVANS: Your Honor, that is not
13 relevant to what we are here on.

14 BY THE COURT: Well, you have established that
15 point. Let's move on.

16 BY MR. LUMUMBA: Okay.

17 BY MR. LUMUMBA:

18 Q. Now let me ask you this. So in any event, you were
19 in the police station?

20 A. Sir?

21 Q. You were in the police station?

22 A. Yes, sir.

23 Q. What room were you in in the police station?

24 A. They have a room there that DA investigators
25 occupy, and that's the room we were in.

26 Q. About how big is that room?

27 A. Probably, maybe 15 by 15, I would say.

28 Q. Okay.

29 A. Approximately.

1 Q. And he didn't have anybody in there with him other
2 than, that was not a police officer?

3 A. There was Mr. Johnson, myself and Mr. Flowers.

4 Q. On the 18th -- did you talk to him on the 17th
5 also?

6 A. No, sir. I didn't talk to him.

7 Q. Were you advised as to whether or not he had been
8 talked to on the 17th?

9 A. No, sir. I don't know that he had been talked to.

10 Q. On the 17th where did you interview him at?

11 A. I didn't interview him on the 17th.

12 Q. On the 18th where did you interview him at?

13 A. In the same place.

14 Q. Same room?

15 A. Same room.

16 Q. Same people?

17 A. Same people. Officer Miller was there that day
18 also.

19 Q. You interviewed him again on the 23rd; is that
20 correct?

21 A. No, sir. I didn't interview him on the 23rd.

22 Q. Okay. Did anybody interview him on the 23rd in
23 your presence?

24 A. No, sir.

25 Q. On the 23rd-- do you recognize this document here?
26 It has your name on it?

27 A. (Pause while witness looks at document.) This is on
28 the 16th.

29 Q. I am just asking you do you recognize the document?

1 It has your name on it.

2 A. It's the first time I have seen it.

3 Q. Okay, so you don't, you also don't recognize then
4 this page here which says July 23rd at 12:12 hours at the
5 Winona Police Department? The Defendant was given his
6 Miranda warnings which were signed at 12:15, and he further
7 signed the rights form at 12:15. The waiver was witnessed by
8 Jack Matthews. Are you Jack Matthews?

9 A. I am Jack Matthews.

10 Q. So you don't know anything about being on the 23rd,
11 witnessing that?

12 A. I don't know what this document is. It's the first
13 time I have seen it.

14 Q. Okay, so if there is a waiver form signed on the
15 23rd, you don't know anything about it; is that right?

16 A. No, sir.

17 Q. And you didn't see him on the 23rd to the best of
18 your knowledge?

19 A. I might have, but I don't remember if I did.

20 BY MR. HORAN: Mr. Lumumba, can I see the
21 document?

22 (Document handed to State's Counsel.

23 Defendant's Counsel confer briefly.)

24 BY MR. LUMUMBA:

25 Q. On the 16th, do you recall who supplied the
26 instrument in which he signed the rights waiver form with? A
27 pen or a pencil or whatever it was. Was it a pen or pencil,
28 or do you know?

29 A. It appears to be a pen. I'm not, I don't know who

1 supplied it.

2 Q. You do have pens at the station for that purpose?

3 A. I am sure they do.

4 Q. So how long did you spend with him on the 16th
5 before you, before he left that building?

6 A. We were there probably somewhere in the
7 neighborhood of thirty minutes.

8 Q. How much time was he in that room on the 18th?

9 A. Probably about the same amount of time, maybe a
10 little bit longer.

11 Q. Was he taken anywhere else by you or by anybody
12 else on the 18th other than the police station?

13 A. Seems like on the 18th we gave him a ride back to
14 his house.

15 Q. There was a guy by the name of Robert who conducted
16 some kind-- Jennings who conducted some kind of exam on the
17 18th; is that correct?

18 A. Yes, possibly so, yeah.

19 Q. Pardon?

20 A. I think so; yes, sir.

21 Q. Did you take him to that Robert, or did Robert come
22 to him?

23 A. He was there at the police department.

24 Q. And who is he?

25 A. He is an investigator with the DA's office.

26 Q. Did you talk to Mr.-- did you talk to Mr. Flowers
27 on any other days other than the days that we have talked
28 about to this extent, to this point?

29 A. I talked to him on the 16th and on the 18th.

1 Q. Any other days?

2 A. Possibly I did, but I don't recall.

3 Q. And on neither one of those days are you the one
4 that actually escorted him or carried him into the station;
5 is that true? On neither of those days did you actually
6 bring him to the station?

7 A. No, sir.

8 Q. And on neither of those days do you have any
9 personal knowledge as to whether or not the person who
10 brought him to the station, you don't know what they said of
11 your personal knowledge?

12 A. I was not there with them; no, sir.

13 (Defense Counsel confer briefly.)

14 Q. Okay, a final question at this time, when he came
15 in on the 16th, did you have any gloves on?

16 A. On the 16th?

17 BY MR. EVANS: Your Honor, that hasn't got
18 anything to do with what this motion is about.

19 BY THE COURT: No, it's not. You can get into
20 that later. I know where you are going with it.

21 BY MR. LUMUMBA:

22 Q. Did you have any, did you have a weapon?

23 BY MR. EVANS: That also has nothing--

24 BY MR. LUMUMBA: --Well, that does have
25 something to do with it because it has something to
26 do with whether--

27 BY THE COURT: --That could be. I will allow
28 that.

29 BY MR. LUMUMBA:

1 Q. Did you have a weapon?

2 A. Was I wearing a weapon?

3 Q. Yes. Did you have a weapon in your possession on
4 the 16th?

5 A. No, I did not.

6 Q. Okay, where was it at?

7 A. In my vehicle.

8 Q. And had you at any point in time had that weapon in
9 his presence?

10 A. No, sir.

11 Q. How long had it been in your vehicle?

12 A. Years.

13 Q. I'm talking about that day. You don't ever carry a
14 weapon on your person?

15 A. Sometimes. I didn't that day.

16 Q. Okay. And do you know whether Mr. Johnson had a
17 weapon?

18 A. I don't know.

19 Q. And do you know whether Mr. Miller had a weapon?

20 A. I don't know either.

21 Q. He was there though; right, at some point in time?

22 A. He was there on the 16th, but I don't think he was
23 at the interview that we conducted that day with Mr.
24 Flowers. I think he was in the area or may have been in the
25 police department.

26 BY MR. LUMUMBA: I don't have any other
27 questions of this officer at this time.

28 REDIRECT EXAMINATION BY MR. EVANS: JURY OUT.

29 Q. Mr. Matthews, you did, in fact, advise the

1 Defendant before you started that he was not under arrest; is
2 that correct?

3 A. That's correct.

4 Q. And in fact, he did leave at the end of that
5 interview?

6 A. That's correct.

7 Q. He came back to the police department several times
8 on his own, did he not?

9 A. Yes, he did.

10 Q. And in those times, sometimes y'all talked to him--
11 and Your Honor, for the record I want to make sure the record
12 is clear that the jury is not present. One of those times he
13 came in--

14 BY MR. LUMUMBA: Excuse me. Can we get a
15 question instead of leading questions, please?

16 BY THE COURT: The jury is not in here. I
17 want to hear what is going on. Go ahead.

18 BY MR. EVANS: Thank you, Your Honor.

19 BY MR. EVANS:

20 Q. One of those times he even voluntarily came up
21 there on his own and submitted to a polygraph test, did he
22 not?

23 A. That's correct.

24 Q. And these occasions he knew and none of these
25 occasions he was under arrest; is that right?

26 A. That's correct.

27 Q. And on all these occasions he was free to go after
28 that was over?

29 A. That's correct.

1 Q. And it was approximately a year later before he was
2 arrested?

3 A. Yes, sir.

4 BY MR. EVANS: Your Honor, at this point...

5 (Pause while State's Counsel confer.)

6 Q. Just to make sure that the record is clear and that
7 the Judge knows what is going on, the 23rd-- wait, let me get
8 this other document too so you can look at it.

9 BY MR. EVANS: May I have this item marked for
10 identification, Your Honor?

11 BY THE COURT: Yes.

12 (CONSENT FOR POLYGRAPH TEST WAS MARKED AS
13 STATE'S EXHIBIT S-106 FOR IDENTIFICATION. NOTE:
14 JURY IS STILL OUT.)

15 (Exhibit S-106 shown to Mr. Lumumba.)

16 BY MR. EVANS:

17 Q. I show you Exhibit 106 and Exhibit 66. And I will
18 just ask you if the 23rd is, in fact, the day he voluntarily
19 came in and took the polygraph test?

20 A. Yes, sir. I was under the mistake that he had
21 taken it on the 18th, but it was the 23rd.

22 Q. And the 18th was the day that he came back in on
23 his own, and you took the taped statement; is that correct?

24 A. That's correct. Yes, sir.

25 Q. And actually in neither the initial interview that
26 you just interviewed him or the statement did he incriminate
27 himself, did he?

28 A. No, sir. He did not.

29 BY MR. EVANS: That's all, Your Honor.

1 TESTIMONY ON BEHALF OF THE STATE ON MOTION WAS
2 CONCLUDED, BUT WITNESS REMAINED ON THE STAND.

3 BY THE COURT: Do you have any other witnesses
4 on this point?

5 BY MR. LUMUMBA: Yes.

6 BY THE COURT: Well, I am asking him.

7 BY MR. EVANS: Not at this point. We would
8 like for him to proceed at this point, and we
9 will--

10 BY THE COURT: Well, I hold that the State has
11 established a prima facie case to this point. Do
12 you have any witnesses on this?

13 BY MR. LUMUMBA: Yeah, I have one at this
14 time. Let me ask you; these two officers who the
15 officer claims transported him to the station, they
16 are not here right now, are they?

17 BY MR. EVANS: No.

18 BY MR. LUMUMBA: Okay. Yeah, we do have a
19 witness on this point, but I also want to submit an
20 exhibit. Do you have the-- I know it's an exhibit
21 in evidence here already, I believe. It's the test
22 - what do you call it? - residue test done.

23 BY THE COURT: It is there. I remember him
24 having it on the--

25 BY MR. EVANS: --Gunshot residue?

26 BY THE COURT: Yeah.

27 BY MR. LUMUMBA: Yeah, where is that?

28 BY MR. EVANS: It's right here.

29 BY MR. LUMUMBA: Okay, is this it? I believe

1 there is a document that comes with this that is
2 signed by the Defendant. Do we have that?

3 BY MR. HORAN: It may be inside.

4 BY MR. LUMUMBA: May be inside?

5 (Pause while Mr. Lumumba examines Exhibit
6 S-86.)

7 BY MR. LUMUMBA: Judge, I would recall Mr.
8 Matthews in my case to start off with on this issue
9 and just ask him a couple of questions.

10 BY THE COURT: Yeah, but we are on the
11 statement now. We are not on the--

12 BY MR. LUMUMBA: No, this is just the
13 statement. This is the statement. And it's
14 definitely, this has to do with the statement of
15 whether he was-- can I ask the questions?

16 BY THE COURT: Sure.

17 **JACK MATTHEWS,**
18 a white male again called to testify, this time on behalf of
19 the Defendant on his Motion to Suppress, having been
20 previously sworn, testified further with the JURY OUT as
21 follows, to-wit:

22 DIRECT EXAMINATION BY MR. LUMUMBA:

23 Q. You indicated that Mr., Mr. Flowers was not a
24 suspect on that day; is that correct?

25 A. No, he was not on that day.

26 Q. Okay. Now let me see. I'm going to show you a
27 document which is actually marked. I don't think we have to
28 have it remarked. It is part of Exhibit S-86, and ask you
29 what date that was?

1 A. That is on the 16th.

2 Q. Who is that signed by?

3 A. That is signed by me.

4 Q. Okay, and I want to refer you to this line here in
5 this document, and what that is is an official document about
6 the gunshot residue test, but it was taken on that same day?

7 A. That's correct.

8 Q. Okay. And you indicated he left and he wasn't a
9 suspect; right?

10 A. (No response.)

11 Q. I am asking you what you indicated before. You
12 just told me he wasn't a suspect?

13 A. Yes, sir. He was not a suspect.

14 Q. Right here it says, "Suspect was at his residence
15 prior to questioning. Activities unknown." Isn't that what
16 it says?

17 A. That's correct.

18 Q. And the suspect you were talking about, isn't that
19 the same as Curtis Flowers?

20 A. Yes, sir.

21 Q. And then right up here it says, "Suspect is living"
22 or I guess this is supposed to be living or dead, but you
23 checked "living"; is that correct?

24 A. Yes, sir.

25 Q. "Suspect is right handed." Is that correct?

26 A. That's correct.

27 Q. Now the thing where it says suspect up here, it
28 also says "Suspect's full name." And whose name did you put
29 in there?

1 A. Curtis Flowers. This is the only form that comes
2 with this evidence kit, and this is the only thing that we
3 have to go by to--

4 Q. --Okay, well, you know more, you know how to use
5 more words than "suspect." You could say Flowers. You know
6 how to write "Flowers" as opposed to "suspect" yourself;
7 right? You know how to do that?

8 A. I just filled in the blanks on the form; yes, sir.

9 Q. Well, yes, but you wrote the word "suspect," didn't
10 you?

11 A. Yes, sir.

12 Q. There is nothing about the form that requires you
13 to write the word "suspect" here, does it?

14 A. Well, it asks for suspect information. So.

15 Q. But if he wasn't a suspect, you certainly could
16 have just said Flowers; is that right?

17 A. I guess I could have.

18 Q. Did you?

19 A. No, sir. I believe I wrote "suspect," didn't I?

20 Q. Okay. And if he was not a suspect, there is
21 nothing also that required you to use this form; isn't that
22 correct?

23 A. Well, I had to use that form. It's the only form
24 we have for gunshot residue.

25 BY MR. LUMUMBA: Is this in evidence?

26 BY MR. HORAN: Look at the tag.

27 BY THE COURT: I don't think it is.

28 BY MR. LUMUMBA: For purposes--

29 BY THE COURT: --The fact is I know it's not.

1 BY MR. LUMUMBA: For purposes of this hearing,
2 I would move for its evidence admission, just for
3 purposes of this hearing.

4 BY MR. EVANS: No objection.

5 BY THE COURT: Okay.

6 BY MR. EVANS: We can go ahead, if you don't
7 have any objection, we can go ahead and just mark
8 the whole thing into evidence anyway.

9 BY MR. LUMUMBA: Well, I do have--

10 BY THE COURT: --He is going to have another
11 objection to that.

12 BY MR. LUMUMBA: I will have an objection to
13 that, okay. Okay, so I have--

14 BY THE COURT: --Wait a minute. Let's mark it
15 as evidence for this hearing. Did you do that?

16 BY THE COURT REPORTER: Put another sticker on
17 it?

18 BY THE COURT: It needs a sticker showing it
19 has been marked as an exhibit to this hearing as an
20 exhibit on the Motion to Suppress.

21 BY THE COURT REPORTER: Give it a new number?

22 BY THE COURT: Well, your sticker should read
23 that it is a D-1 on the Motion to Suppress would be
24 my idea how it ought to be.

25 BY MR. EVANS: It might be a little simpler,
26 Your Honor, if she would just put this sticker on
27 the form he is talking about instead of the
28 package. That way we won't have a different
29 sticker on the package.

1 BY MR. LUMUMBA: That would be okay. It
2 doesn't really matter to me, Judge. I don't have
3 any problem.

4 (GUNSHOT RESIDUE TEST WHICH WAS ALSO MARKED
5 AS STATE'S EXHIBIT S-86 FOR IDENTIFICATION WAS
6 REMARKED AS DEFENDANT'S EXHIBIT D-1 IN EVIDENCE TO
7 THE MOTION TO SUPPRESS. HOWEVER, AS WILL BE SHOWN
8 DURING THE NEXT DAY OF TRIAL, THE DEFENDANT'S
9 EXHIBIT STICKER WAS REMOVED FOR THE BENEFIT OF THE
10 JURY SEEING THE PACKAGE AND SHOULD BE REPLACED UPON
11 APPEAL.)

12 BY THE COURT: Well, it is marked. Now let's
13 go on. Any more questions for him?

14 BY MR. LUMUMBA: I have no other questions of
15 this witness.

16 BY THE COURT: Do y'all have any questions of
17 him at this time?

18 BY MR. EVANS: No.

19 BY THE COURT: All right, Mr. Matthews you
20 will have to go back to the witness room right now.

21 WITNESS LEAVES COURTROOM.

22 BY MR. LUMUMBA: We would call Mr. Flowers.

23 BY THE COURT: Okay. Mr. Flowers, I can't
24 remember; were you sworn at the first of this
25 trial?

26 BY THE DEFENDANT: No, sir.

27 BY THE COURT: Raise your right hand.

28 (Defendant was sworn by the Court.)

29 BY THE COURT: Have a seat up there. Can I

1 see y'all at the bench first. This is on an
2 administrative matter. It has nothing to do with
3 this. I don't need this on the record.

4 (Off the record.)

5 **BY THE COURT:** All right, Mr. Lumumba you may
6 proceed.

7 **CURTIS GIOVANNI FLOWERS,**
8 a black male called to testify as a witness in his own behalf
9 on Defendant's Motion to Suppress, having first been duly
10 sworn, testified with the JURY OUT as follows, to-wit:

11 DIRECT EXAMINATION BY MR. LUMUMBA: JURY OUT.

12 Q. Mr. Flowers, I just want to ask you a few questions
13 here. I want to call your attention to July the 16th, 1996.
14 At some point in time did you see any police officers that
15 day?

16 A. Yes, I did.

17 Q. And where were they at?

18 A. At my home.

19 Q. And tell me who they were?

20 A. Highway Patrolman Dennis Woods and Officer Townsend
21 with the Winona Police Department.

22 Q. With the Winona Police Department?

23 A. Yes, they were.

24 Q. And you were at home when you saw them?

25 A. Yes.

26 Q. And could you tell me if they -- what happened?

27 A. Well, they pulled up in the Highway Patrolman's
28 car, and they come up and knocked on the door, and I let them
29 in, and we spoke and shook hands. And Dennis Woods, Officer,

1 State Highway Patrolman Dennis Woods told me that I needed to
2 come with them.

3 Q. He said you needed to come with them?

4 A. Yes, he did.

5 Q. Did he give you any options or tell you you didn't
6 have to come?

7 A. No, he didn't.

8 Q. And so did you interpret that as, that you had to
9 go?

10 A. Yes.

11 Q. Did you go?

12 A. Yes, I went.

13 Q. Did you ever arrive at the police station?

14 A. Yes, I did.

15 Q. And at any point in time did anybody at the police
16 station tell you that you didn't have to stay or you could
17 leave?

18 BY MR. HORAN: Objection, Your Honor. He is
19 leading his witness.

20 BY MR. LUMUMBA: Okay. I have no problem with
21 that.

22 BY THE COURT: Sustained.

23 BY MR. LUMUMBA: I am just trying to get right
24 to the point.

25 BY MR. LUMUMBA:

26 Q. But at the police station did you-- was anything
27 said to you at the police station?

28 A. Yes. They took me in the back room where Mr. John
29 Johnson came out and spoke to me, and we shook hands. We

1 went back in the back, and he introduced me to Mr. Matthews
2 and Mr. Miller. Well, Mr. Matthews because Mr. Miller wasn't
3 there that day, and I shook his hand, and we went on in the
4 room and sat down.

5 Q. At any point in time did any of these gentlemen
6 indicate anything to you about whether you could be, whether
7 you had to stay there or not?

8 A. No.

9 Q. Okay. Was it your-- what was your view about
10 whether you had to stay there or whether you could leave?

11 A. I felt that I had to be there.

12 BY MR. LUMUMBA: I have no further questions
13 at this time. Hold it one second.

14 (Mr. Lumumba confers with Mr. Freelon
15 briefly.)

16 BY MR. LUMUMBA:

17 Q. Okay. I just want to move to the 18th quickly
18 because we are supposed to be dealing with all this. How did
19 you get to the police station on the 18th if you did get
20 there?

21 A. Well, I went to the store in my sister's car, and
22 by the time I come back by the house, Officer Jerry Yates
23 come by the house in K-9 truck, and he told me that I needed
24 to come down to the station. They wanted to talk with me. I
25 told him I was baby sitting, and he told me that I had to
26 bring the kids with me, but I needed to come down.

27 Q. Did you go?

28 A. Yes, I did.

29 Q. And on that time on the 18th, did anyone at the

1 station say anything one way or the other as to whether you
2 had to remain?

3 A. No, they didn't.

4 Q. Okay. And did you have an opinion as to whether
5 you had to be there?

6 A. Yes.

7 Q. What was your opinion?

8 A. That I had to be there.

9 Q. Okay. On the 23rd, did you ever go to the police
10 station or anywhere else?

11 A. Yes, I did.

12 Q. And where was that?

13 A. At the Winona Police Department.

14 Q. Okay, and at any time on the 23rd-- how did you get
15 there on the 23rd?

16 A. Uh.

17 Q. You had already been there twice; right?

18 A. Yes.

19 Q. At least. Did you go more than twice or just
20 twice?

21 A. I was, I was dropped off down there on the 23rd by
22 Troy Yates.

23 Q. Okay, and why did you come?

24 A. They wanted to talk to me and give another
25 statement, and then they took me to Carrollton to do a
26 fingerprinting.

27 Q. Okay. And how did you get to Carrollton? What
28 kind of transportation?

29 A. Mr. Matthews and Mr. Miller.

1 Q. Okay. What was your feeling as to whether or not
2 it was in your discretion to refuse to come down there for
3 the fingerprinting?

4 A. Well, I was told I had to come.

5 Q. And on the 23rd, was there at any time when someone
6 was asking you questions about whether you went to, had been
7 by Anguilla-- what do you call it? Anguilla?

8 A. Angelica.

9 Q. Yeah, Angelica factory.

10 A. Yes.

11 Q. And who was asking you those questions?

12 A. Mr. John Johnson and Mr. Matthews.

13 Q. Okay, and at that particular time on the 23rd, did
14 either one of them indicate to you that you didn't have to be
15 there or you were free to leave?

16 A. No, they did not.

17 Q. Were you in the police station or somewhere else?

18 A. In the police station.

19 Q. Then when you went to Carrollton, were you also in
20 a law enforcement facility?

21 A. Yes, sir.

22 BY MR. LUMUMBA: I have no further questions
23 on that issue.

24 CROSS-EXAMINATION BY MR. HORAN: JURY OUT.

25 Q. Mr. Flowers, you admit here today that when the two
26 officers arrived, that they did not read you your rights, and
27 they did not arrest you at that time, did they?

28 A. Well, they did not read me my rights.

29 Q. They didn't tell you that you were charged with

1 murder or anything like that--

2 A. They just told me that I had to come with them.

3 Q. They asked you to come down there, did they not?

4 A. They didn't ask me. They told me I had to come
5 with them.

6 Q. And when you got down there, you say you greeted
7 some people there?

8 A. Yes.

9 Q. And Mr. Matthews and Mr. Johnson are two of those
10 individuals that--

11 A. --That's correct.

12 Q. And they told you you were not under arrest. At
13 that time you were not served with a warrant, were you?

14 A. No, they just told me they wanted to talk with me.

15 Q. And after they talked to you, they let you go?
16 They told you you could leave?

17 A. Yes, they did.

18 Q. Did they inquire as to whether or not you needed a
19 ride or not?

20 A. No, they didn't. I walked back home.

21 Q. Okay, well, you didn't ask--

22 A. --I asked for a ride. But he told me they had to
23 go somewhere else, that I had to walk.

24 Q. And on the 18th -- you went home and two days later
25 they called your residence or got up with you; right?

26 A. On the 18th?

27 Q. On the 18th.

28 A. No, they did not.

29 Q. How did they get up with you?

1 A. Jerry Yates. Officer Yates came by.

2 Q. Jerry Yates, was he an officer at that time?

3 A. Yeah, he was in the K-9 field for that time.

4 Q. And yeah, that's right. Jerry Yates, and that is
5 Troy Yates' brother; right?

6 A. That's right.

7 Q. And your daddy at that time worked for Troy Yates?

8 A. That's correct.

9 Q. You knew Jerry Yates; right?

10 A. I knew Jerry, yeah; Troy too.

11 Q. And it would be safe to say that Jerry would know
12 your whereabouts at that particular time. If he got up with
13 Troy and said--

14 A. --no, he wouldn't--

15 Q. --you know where Curtis is, don't you?

16 A. They don't know my whereabouts. They just know me.

17 Q. But Jerry, it would be safe to say that Jerry would
18 have some information about you that some of the other
19 officers may not have because of--

20 A. --well, Jerry--

21 Q. Please let me finish, and then we will go from
22 there?

23 A. Okay.

24 Q. Jerry is Troy's brother. Troy employed your
25 daddy. I mean it is quite possible that they contacted
26 Jerry Yates because they felt like - that is not uncommon -
27 that Mr. Yates may have more information where you were on
28 that particular date?

29 A. No.

1 BY MR. LUMUMBA: Objection. I don't think he
2 could read anybody else's mind.

3 BY MR. HORAN: I said safe to say, and this is
4 cross-examination.

5 BY THE COURT: I will allow it.

6 BY THE WITNESS:

7 A. Repeat the question.

8 Q. I mean it's not, it wouldn't be unusual for, if I
9 was trying to get up with you, that I would find someone that
10 may know your whereabouts on that particular day; right?

11 A. Well, yes, if they knew my whereabouts, but Jerry
12 didn't know my whereabouts. Neither did Troy.

13 Q. Okay. But on the 18th, they told you that you
14 would have to bring your children with you?

15 A. That's correct. That's what Mr. Yates told me.

16 Q. And you did that?

17 A. And he said, "I will watch them." Yes, I brought
18 my stepson with me.

19 Q. And you didn't think that you were under arrest at
20 that time, did you?

21 A. I didn't know what was going on. All he was doing,
22 he just told me they needed me down at the station.

23 Q. And they let you go on that particular day, did
24 they not?

25 A. Yes, they did.

26 Q. And on the 23rd, they let you go?

27 A. Yes, they did.

28 Q. And you were not arrested until what day? What day
29 were you actually picked up and served a warrant?

1 A. January the 13th of '97.

2 Q. And these two officers, they greeted you there at
3 your residence. That's your testimony?

4 A. Which two officers?

5 Q. The two officers the first day.

6 A. Yes, they did.

7 Q. Who were they?

8 A. Officers Woods and Officer Townsend.

9 Q. And they did not handcuff you?

10 A. No, they didn't.

11 Q. You did not get handcuffed on the 18th?

12 A. No, I didn't.

13 Q. And you did not get handcuffed on the 23rd?

14 A. No, I did not.

15 Q. The officers did not threaten you in any way on the
16 16th, did they?

17 A. No, they did not.

18 Q. And you are not telling this Court that that was
19 not a voluntary statement that you made. I mean you signed
20 that waiver?

21 A. Yes, I did.

22 Q. You read that waiver?

23 A. Yes, I did.

24 Q. You understood that waiver?

25 A. Yes, I did.

26 Q. You were not coerced at that time. It's your
27 testimony that you weren't coerced into making the statement?

28 A. No, I was not.

29 BY MR. HORAN: No further questions.

1 BY MR. LUMUMBA: I have none.

2 BY THE COURT: Okay, you may return to your
3 seat.

4 DEFENDANT RETURNS TO COUNSEL TABLE.

5 BY THE COURT: Have you got any further
6 witnesses on this Motion?

7 BY MR. LUMUMBA: No, sir. I just have a brief
8 argument. The only one who would know what
9 happened when he was confronted by police officers
10 on the 16th for the first time has testified that
11 he was told that he needed to come to the station
12 by a person who is a law enforcement officer who
13 then proceeded to take him to the station.
14 Actually, he said it was two of them. He said that
15 he had no-- his view was that he had to come.

16 Miranda does not require that you be formally
17 put under arrest. It requires that you be in
18 police custody, and many cases have held that a
19 formal arrest is certainly not necessary in order
20 to bring about the rights that you have not to be
21 subjected to an illegal arrest. I think that he
22 was arrested even though-- if you are not free to
23 leave, you are arrested, and he was not free to
24 leave. He was told that he had to-- in one
25 instance he was even told that he had to bring the
26 children with him. So in neither situation was he
27 free to leave or given the impression that he was
28 free to leave.

29 As to what was said at the police station, one

1 officer has just testified, Mr. Matthews - who
2 can't remember that he was there on the 23rd
3 although we have just seen evidence that he was
4 present on the 23rd, so his memory apparently is
5 failing him a little bit on this issue - has
6 testified that he was told that. However, the
7 Defendant has clearly said he was not.

8 It is the State's burden whenever we challenge
9 a constitutionality of any particular arrest or
10 evidence or any other kind of procedures to prove,
11 it is their burden to show this Court that the
12 challenged evidence was taken legally. I think
13 they have failed this burden given the evidence in
14 question.

15 And then a final thing I would say is I wanted
16 the Court to keep in mind Brown v. Illinois which I
17 have a book here that cites, but Brown v. Illinois
18 says that the giving of Miranda rights, even if
19 they are voluntarily given and the statement is
20 voluntarily taken, does not vindicate or does not
21 alleviate the illegality of the arrest. Brown v.
22 Illinois is a very, is a case that made a pretty
23 clear pronouncement on the old fruit of the
24 poisonous tree doctrine which has been generated
25 long ago, I think in Wong Sun and all those other
26 cases that you read about in law school. But Brown
27 v. Illinois is a case of vintage sometime in the
28 60's or the 70's - I can't remember-- no, actually
29 -- no, I was practicing law when it came out. So

1 it had to be in the, like in the 70's or the 80's.
2 And Brown v. Illinois clearly states, and it's a
3 case where a person was given Miranda rights, no
4 question that he was given them, that he gave a
5 statement. And because the arrest was illegal, -
6 they didn't have enough information to arrest him
7 on at the time - they ruled that the, in the Brown
8 v. Illinois case, that the case, that the statement
9 had to be suppressed.

10 And one final thing I would point out. What
11 officers used to do a lot of times is they would
12 arrest you for an investigation of murder or
13 investigation of this and investigation of that.
14 And what they have-- and there was a ruling that
15 arresting somebody for the investigation of
16 something was totally illegal. And so what-- but
17 the same thing is accomplished if you take somebody
18 into custody, tell them they have to go or need to
19 go and that you are going, and you don't give them
20 a right or tell them that they have a right to
21 leave. The same thing is accomplished, so at that
22 point whether they arrest him for investigation or
23 not officially, it's still the same effect. And no
24 case has ever ruled that they have to officially
25 arrest you.

26 In fact, I'm not even sure; I think the
27 Miranda case is to the contrary. I don't even
28 think the person was arrested in the Miranda case
29 officially. If it was arrested officially in the

1 Miranda case, I know that there are several other
2 cases in the Miranda progeny where people were not
3 arrested. They were just detained.

4 **BY THE COURT:** Right. "Arrest" is not a magic
5 word. I understand that.

6 BY MR. EVANS: Your Honor, to start with, in
7 this particular case the evidence is clear from
8 Jack Matthews that this Defendant was not under
9 arrest. He was not in custody. As a matter of
10 fact, the officers said that he specifically told
11 him that he was free to leave at any time he wanted
12 to. He was not under arrest.

13 Now the law is clear in this state that when a
14 person is not in custody, his rights do not have to
15 be advised to him at all. Of course, we are not
16 even on rights because he has freely and
17 voluntarily admitted in open court under oath that
18 he freely and voluntarily waived all of his
19 rights. He freely and voluntarily made these
20 statements. So to start with, he is not under
21 custody. He is not under arrest. He is free to
22 leave at any time. He is told he is not under
23 arrest. He was only there for a short period of
24 time, and all we had was a situation where officers
25 were trying to gather information from anybody
26 around town that they could that morning that had
27 any information that might point them in the right
28 direction. He happened to be one of the people
29 they talked to. He was not under arrest.

1 Even assuming, which he was not, but even
2 assuming the other things, the statements that he
3 gave are non-incriminating. Conner itself says
4 that if a statement is non-incriminating, none of
5 these apply anyway. But the main issue and the one
6 that I think is the one here before the Court today
7 is he was not under arrest.

8 He was not in custody. He was free to leave.
9 I think that is clearly proven by several facts.
10 One, the officer told him that; the other he was
11 only there for a few minutes. He left and he came
12 back several times on his own and talked to them at
13 different times and left after those times.

14 BY MR. LUMUMBA: Judge, my other rejoinder is
15 I also want to remind the Court that although the
16 officer says that he was free to leave and that he
17 wasn't suspect, the form that he signed says he was
18 a suspect. And there is no magic requirement to
19 use that form, and whenever I use a form which is
20 inapplicable to what I am doing, I just scratch out
21 the term that is inapplicable for the record and
22 put down what is applicable. And what would have
23 been applicable at that time is Curtis Flowers did
24 this; Curtis Flowers did that.

25 I have often seen polygraph tests where they
26 don't put the term in suspect. What they do is
27 they put in the term reflecting what the person's
28 name is or examinee or something of that nature.

29 But in any event, so I think that that is

1 where we have contrary evidence. So as to the
2 16th, I think it is a very powerful indication that
3 he was not free to go. And I don't know of any law
4 that says -- if they are using, if they are using
5 the statements against him in this trial, that is a
6 pretty good indication that they are
7 incriminating. Now they may not have been
8 statements of what we have termed quote, unquote
9 confessions, but any statement is privileged and is
10 not-- and the Fifth Amendment doesn't just protect
11 things that where you are consciously incriminating
12 yourself. The Fifth Amendment protects all
13 statements because the Fifth Amendment, as you well
14 know, the police can use statements in a variety of
15 ways in order to create the impression of guilt.
16 And for that reason it is pretty comprehensive in
17 that regard. I don't know of any law which has
18 said that that has been compromised.

19 **BY THE COURT:** All right, in the Court's
20 opinion this is not really a close call. The
21 Defendant has taken the stand and admitted that his
22 statement was, statements were freely and
23 voluntarily given. Even if the arrest were
24 illegal, Brown holds that that does not necessarily
25 automatically vitiate the confession. It goes into
26 the officer's misconduct. It has to take the test
27 of whether he was given his rights, and you go into
28 a lot of tests. Just the fact that an arrest is
29 illegal or a custodial thing, being taken into

1 custody was illegal, an illegal detention does not
2 in and of itself throw it out. There are other
3 factors that have to be considered.

4 I hold that one, he was not in custody. They
5 asked him or maybe told him to come to the police
6 station and picked him up, took him there. He was
7 only there 30 minutes. They let him leave after he
8 talked. He did not make an incriminating statement
9 on that day according to the testimony that is
10 before this Court. He was read his rights. Two
11 days later he was read his rights again. He also
12 made another statement. I don't recall there being
13 any testimony as to how long that statement took,
14 but anyhow apparently it was not incriminating.
15 And he himself testified that nobody told him he
16 could not leave, and apparently when it was over,
17 he left. And he apparently did that a third time
18 on the 23rd when he took a polygraph test. And
19 after that was over and I assume after the results
20 were read, he was once again released. And then he
21 was not arrested until, I believe the testimony -
22 y'all correct me if I am wrong - about 18 months
23 later. It was a substantial time after that.

24 So I hold he was not in custody. But I also
25 hold that if, in fact, he was in custody and if it
26 was illegal, the statement was still freely and
27 voluntarily given, and there is no law enforcement
28 misconduct that would invalidate the confession.
29 So the Motion to Suppress is overruled.

1 BY MR. EVANS: Before the jury comes back in,
2 Your Honor, I know you had ruled that you were
3 going to take another expert out of order.

4 **BY THE COURT:** No, I didn't.

5 BY MR. EVANS: Oh, okay.

6 **BY THE COURT:** We are going to do it Monday.

7 BY MR. HORAN: Is he available Monday?

8 **BY THE COURT:** Yes. That's what he has told
9 me.

10 BY MR. EVANS: Okay.

11 **BY THE COURT:** Let's take a break.

12 (MOTION HEARING OF 3/26/1999 WAS CONCLUDED.)

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11/29/07 Melissa Schoene

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

v. CAUSE NO. 2003-0071-CR

CURTIS GIOVANNI FLOWERS

TRANSCRIPT OF THE TESTIMONY OF MELISSA SCHOENE HAD BEFORE THE
HONORABLE C. E. "CEM" MORGAN, III, CIRCUIT JUDGE, FIFTH
CIRCUIT COURT DISTRICT OF THE STATE OF MISSISSIPPI, AND A
JURY OF TWELVE MEN AND WOMEN DULY IMPANELED AND SWORN, DURING
THE TRIAL OF FLOWERS IV WHICH COMMENCED ON NOVEMBER 26, 2007.
THIS TESTIMONY OF MELISSA SCHOENE WAS HAD DURING THAT TRIAL
AND WAS ON THE 29TH DAY OF NOVEMBER, 2007.

THIS TESTIMONY IS INCLUDED IN THE RECORD OF THE
CURRENT TRIAL OF CURTIS FLOWERS PURSUANT TO DEFENDANT'S
DESIGNATION OF RECORD AND THE SPECIFIC MENTION OF THIS
TESTIMONY IN THE COURT'S ORDER STRIKING PARTS OF DEFENDANT'S
DESIGNATION OF RECORD.

APPEARANCES:

Present and Representing the State:

HONORABLE DOUG EVANS

HONORABLE CLYDE HILL

HONORABLE MIKE HOWIE

District Attorney and Assistant District Attorneys

P. O. Box 1262

Grenada, Mississippi 38902

11/29/07 Melissa Schoene

1 Present and Representing the Defendant:

2 HONORABLE RAY CHARLES CARTER

3 HONORABLE ANDRE DE GRUY

4 Office of Capital Defense Counsel

5 510 George Street, Suite 300

6 Jackson, Mississippi 39202

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8 Reported by Linda F. Burchfield, CSR #1019

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11/29/07 Melissa Schoene - DIRECT
(FOLLOWING THE AFTERNOON RECESS ON NOVEMBER 29,

2007, TESTIMONY CONTINUED IN OPEN COURT WITH ALL COUNSEL, THE
DEFENDANT AND THE JURY ALL PRESENT.)

BY THE COURT: Who will you have next?

BY MR. HILL: Melissa Schoene.

BY THE COURT: Melissa Schoene.

(Witness enters the courtroom.)

BY THE COURT: She has not been sworn.

BY MR. HILL: No, sir. She has not been. She
didn't arrive until just a little while ago.

MELISSA SCHOENE,

upon being called to testify as a witness by the State of
Mississippi, having first been duly sworn, testified as
follows, to-wit:

BY THE COURT: State your name, please, ma'am.

BY THE WITNESS: My name is Melissa Schoene. My
last name is spelled S-C-H-O-E-N-E.

DIRECT EXAMINATION BY MR. HILL:

Q. Good afternoon, Ms. Schoene.

A. Good afternoon.

Q. If you don't mind, we will start out with you
telling the ladies and gentlemen of the jury where you
reside, what you are doing now, where you are and what you
are doing if you don't mind.

A. Currently, I live in Atlanta, Georgia. I teach
chemistry and forensic science at Georgia Perimeter College.
Prior to that, I was employed by the Mississippi Crime
Laboratory in the capacity of a forensic scientist and crime
scene analyst.

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1 Q. Ms. Schoene, if you will, would you tell the
2 ladies and gentlemen of the jury about your educational
3 background, please.

4 A. Sure. I earned a Bachelor's degree in criminal
5 justice from the University of Alabama and a Master's degree
6 also from the University of Alabama in the field of organic
7 chemistry.

8 Q. And would you tell us how you were employed back
9 in July of 1996?

10 A. Yes, sir. In July of 1996, I was employed as a
11 forensic scientist and crime scene analyst with the
12 Mississippi Crime Laboratory in Jackson.

13 Q. How long in July of '96, how long had you been
14 working with the crime lab?

15 A. In July of '96, I had been with the crime lab for
16 approximately five years, and prior to that, I was with the
17 Alabama Department of Forensic Science and Medical Examiners
18 Office for approximately two years.

19 Q. And what was your area of expertise in July of '96
20 at the Mississippi Crime Lab? What was your duty assignment
21 and specialty there?

22 A. I was assigned to the trace evidence section, and
23 I was also assigned to, as a member of the violent crime
24 scene response unit.

25 Q. And had you had any training and on the job type
26 training, seminars and that stuff? In addition to your
27 formal education, had you had any specific training in the
28 area of crime scene response and trace evidence? And if so,
29 would you kind of lay that out for us, please?

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1 A. Yes, sir. My training consisted of an
2 apprenticeship type training program where I worked very
3 closely with a senior scientist in the crime laboratory,
4 somewhat on the job training. In addition to that, I was
5 required to pass a series of proficiency tests in various
6 areas of evidence collection and evidence examination. I
7 have also attended numerous seminars and workshops
8 specifically geared toward evidence documentation,
9 collection and preservation.

10 Q. Now back in July of '96 as a member of the violent
11 crime scene response unit, had you participated in death
12 investigations before that time?

13 A. Yes. Prior to 1996, in addition to my crime
14 scenes and death scenes worked with the Alabama Department
15 of Forensic Science, that combined with my experience with
16 the Mississippi Crime Lab, I had worked approximately 500
17 violent crime scenes.

18 Q. Have you ever been qualified as an expert in the
19 area of forensic science and in crime scene investigations?

20 A. Yes, sir. Numerous times.

21 Q. Could you just give us a smattering of where, what
22 state-- courts in Mississippi, I take it?

23 A. Yes.

24 Q. Circuit Courts in the State of Mississippi?

25 A. Yes, Circuit Courts in Mississippi as well as in
26 Georgia.

27 **BY MR. HILL:** Your Honor, at this time I would
28 tender this witness as an expert in crime scene
29 investigation and forensic science.

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1 **BY MR. CARTER:** One moment, Your Honor. No

2 objection.

3 **BY THE COURT:** The Court accepts her as an expert

4 in that field.

5 **BY MR. HILL:**

6 Q. Okay, Ms. Schoene, would you tell us whether or
7 not you recall receiving a request to come to Winona,
8 Mississippi, on July 16, 1996, to assist in an investigation
9 here?

10 A. Yes, sir. I do. It was on a Tuesday. It was
11 before lunch time. The Director of the crime laboratory at
12 the time had called me from my office and asked if I could
13 respond and offer assistance to the Winona Police Department
14 and the Mississippi Highway Patrol criminal investigators.

15 Q. Okay, and I took it you traveled by automobile up
16 here from Jackson?

17 A. Yes.

18 Q. About what time did you arrive, please, ma'am?

19 A. I left the crime laboratory at 11:55 and arrived
20 on scene in Winona, I believe, approximately 1:15.

21 Q. And would you tell us what you did first when you
22 got here?

23 A. Yes. Upon arrival to this particular crime scene,
24 I did what is standard procedure which is speak with the
25 investigators that are on site and that have been there. I
26 spoke with Police Chief Johnny Hargrove briefly, and he
27 escorted me into the Tardy Furniture store past the crime
28 scene barrier. He had told me that, given me the number of
29 people who had been in the crime scene at that time. Then I

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1 walked through the furniture store, and he pointed out
2 various items of evidence, specifically footwear impressions
3 and casings and projectiles that they, that he had already
4 spotted.

5 Q. Okay, you talked about Chief Hargrove escorted you
6 in through the crime scene tape, and I'm going to direct
7 your attention to a -- if I can find it. Ms. Schoene, I am
8 putting a chart up on the board. Can you see that?

9 A. Yes, sir. I can.

10 Q. This is State's Exhibit 2A. Can you tell the
11 ladies and gentlemen of the jury if you recognize that store
12 front?

13 A. Yes, this is the exterior of the Tardy Furniture
14 store.

15 Q. Now you indicated that when you got there, it had
16 a crime scene barrier up?

17 A. Yes.

18 Q. What is it, if you see in that photograph there,
19 that would be what you would refer to as crime scene
20 barrier?

21 A. The yellow crime scene tape that you may be
22 familiar with that was on the outside of the store as well
23 as on the interior of the store.

24 Q. Okay, and you remember that being up when you got
25 there?

26 A. Yes.

27 Q. Also, there is a front door apparently, what
28 appears to be a front door there. Do you recall that as
29 being an entrance way into the store where you were escorted

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1 in?

2 A. Yes. The store was large, and it was divided into
3 two large areas. The north side or the side to the right
4 where you see these doors was where it looked like the
5 majority of business took place. And the other side, there
6 were not front doors that accessed that, and it also
7 contained furniture, but it did not seem to be as available
8 to customers.

9 Q. What else -- you said that Chief Hargrove escorted
10 you in, and he pointed out to you some trace or physical
11 evidence?

12 A. Uh-hum.

13 Q. Did you see anything else in the store? What, if
14 any, victims, crime scene victims did you see there?

15 A. Upon my entry into the store, I could see one
16 white female at the very back of the furniture store. As I
17 proceeded onward towards the center island where the cash
18 register or the cash counter and where the business appeared
19 to be transacted, there were a series of partial bloody
20 footwear impressions, another white female lying on her
21 stomach and a black male lying on his side with his back up
22 against the counter. There was a pool of blood between
23 them. There was also another pool of blood where it
24 appeared that there was at one time a victim, but there was
25 no one there upon my arrival. So I saw three, three
26 deceased victims.

27 Q. Do you recall seeing an article of clothing at the
28 spot where you said it appeared that somebody had been?

29 A. I'm not quite sure. There was, there was a shoe,

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1 and there was various other items of physical evidence, but
2 in particular, a loose item of clothing.

3 Q. Okay.

4 A. I'm not, I don't recall.

5 Q. I'm going to show you another set of photographs.
6 I'm going to put this up on the board, on the easel, and you
7 may need to -- I'm not sure if you can see it from where you
8 are sitting. If you can't, let me know. I may have to turn
9 this around.

10 A. Yes.

11 Q. Do you mind stepping down just a little bit?

12 A. No. (Witness steps down in front of jury box.)

13 Q. Let me check and make sure.

14 A. Would you like me to tell you what I see in these?

15 Q. First of all, do you recognize those photographs?

16 A. Yes. These appear to be enlargements of crime
17 scene photographs that I took upon my arrival at Tardy
18 Furniture. This was probably a good place to start. This
19 is the counter that I had mentioned. May I turn it this way
20 where they can see?

21 Q. Feel free to turn that around.

22 A. Can y'all see that okay? Okay, sorry. This is
23 the counter that I had mentioned. This is the second female
24 victim that I had mentioned. This is the black male with
25 his, lying with his back up against the counter. This is
26 Carmen Rigby and Robert Golden. This is the pool of blood,
27 and this is the baseball cap that presumably came from the
28 fourth victim who was not present when I arrived.

29 Q. That was the article of clothing--

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1 A. Okay, this is the article of clothing. What you
2 can see is you can actually make out a portion of the bloody
3 footwear impression right here. The picture above this,
4 which is State's Exhibit 15A, is a set of car keys that we
5 believe belonged to Carmen Rigby. They were about 6 inches
6 or so from her hand. Here is the pool of blood also.

7 Here is another picture of Carmen Rigby with her
8 keys. You can see the reference there, and these are the
9 feet of Carmen Rigby. This is her, one of her shoes near the
10 pool of blood and the baseball cap.

11 Q. Now you have made reference to this enlargement,
12 State's Exhibit 12A?

13 A. Yes.

14 Q. And you have made a reference to State's Exhibit
15 14A?

16 A. Yes.

17 Q. And I'm going to show you -- I'm going to let you
18 get back on the stand there.

19 **BY MR. HILL:** Your Honor, this witness has
20 identified State's Exhibit 12A and 14A, and I would ask
21 that they be admitted. I don't think I did that
22 earlier. If we did, they haven't been marked, and I
23 would ask they be now marked for evidence.

24 **BY MR. DE GRUY:** No objection.

25 **BY THE COURT:** Okay, let them be marked.

26 (ENLARGEMENTS OF PHOTOGRAPHS MARKED PREVIOUSLY AS
27 STATE'S EXHIBITS S-12A AND S-14A FOR IDENTIFICATION WERE NOW
28 RECEIVED IN EVIDENCE.)

29

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1 BY MR. HILL:

2 Q. Ms. Schoene, I'm going to hand you some additional
3 photographs and ask you to look at them. This is State's
4 Exhibit 11, State's Exhibit 12. This is State's Exhibit 25.

5 A. Would you like to keep these in order?

6 Q. It's not necessary.

7 A. Okay.

8 Q. State's Exhibit 21. This is State's Exhibit 22,
9 and I am also going to hand you State's Exhibit 24, 19, 18.
10 And that is 14; you have already identified that. I'm going
11 to hand you State's Exhibit number 17, State's Exhibit 23.
12 That is 10, State's Exhibit number 10. Do you recognize
13 what is shown in those photographs? As I handed them to you
14 and you looked at them, were you able to recognize them as
15 accurate depictions of the scene that you saw that day?

16 A. Yes. All of the photographs that you handed me
17 are true and accurate depictions of the scene as it appeared
18 in July of '96.

19 Q. Well, the reason I handed that to you, the
20 photographs that we have exhibited there, I don't think they
21 show Ms. Tardy, and I was going to ask you--

22 A. There are some here that do.

23 Q. Right. I was going to ask you about those. I'm
24 going to ask, if you will, to look at the photographs that
25 I'm putting up here for you now, and I will ask you if these
26 photographs show anybody that you were able to identify at
27 that time. And if you would describe if they show-- who
28 they show and where she is located in the store. Would you
29 tell us who those photographs are, what is depicted--

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1 A. -- These five photographs depict Bertha Tardy.
2 She was in the back of the store. As I showed you, the
3 front doors that you walk in, if you were to walk in the
4 front door of the store, if you continued in a straight line
5 back to the back of the store, Ms. Bertha Tardy was located
6 very closely to an office that is back there. And she is
7 lying on the ground face down.

8 Q. Okay. Now I believe you took a majority of those
9 photographs yourself, did you not?

10 A. Yes, sir. I did.

11 Q. Did you do any, what they call a crime scene
12 sketch or a crime scene diagram while you were there to take
13 note of the way the scene looked when you originally
14 observed it?

15 A. Yes, sir. I did. Generally we document crime
16 scenes in three ways. We write a narrative of what we see.
17 We take photographs as you have seen, and the third and
18 final way that we document crime scenes is to draw a sketch.
19 And when we are on scene, we typically draw a fairly rough
20 sketch, the best that we can do there without using
21 templates. We draw what we see, take measurements and
22 reference evidence that is documented and collected on our
23 rough sketch, excuse me, at the crime scene. We document
24 those on the rough sketch.

25 Q. Okay, and you said you prepared one of those?

26 A. Yes, I did.

27 Q. And I believe you have previously furnished us
28 with that; is that correct?

29 A. Yes, I have.

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1 BY MR. HILL: Let me show this to Counsel over
2 here.

3 BY MR. HILL:

4 Q. Ms. Schoene, I'm going to show you State's Exhibit
5 39 and State's Exhibit 51. I'm going to ask you about
6 State's Exhibit 51 first. Would you look at those and tell
7 us if you recognize them and if so, how you recognize them
8 and what they are?

9 A. I do recognize them. State's Exhibit 51 is the
10 rough sketch that was prepared at the crime scene. State's
11 Exhibit number 39 is a more polished sketch that was
12 recreated once I returned to the crime laboratory.

13 Q. Okay. And are those your original drawings or
14 accurate reproductions or copies of them?

15 A. Yeah, these are photocopies of my original
16 drawings, yes.

17 Q. And are they completely accurate as if you had, as
18 when you drew them or had them drawn at that time?

19 A. Well, they are not to scale. Other than that,
20 they are an accurate representation.

21 Q. But you didn't intend them to be to scale when you
22 drew them; is that correct? I mean you just drew them to
23 refresh your memory?

24 A. That's exactly right.

25 BY MR. HILL: All right, Your Honor, this is
26 State's Exhibit--

27 Q. Tell us which one is which here?

28 A. State's Exhibit 51 is the rough sketch. State's
29 Exhibit 39 is the polished sketch.

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1 **BY MR. HILL:** We would ask that they be received
2 into evidence at this time, Your Honor.

3 **BY THE COURT:** Any objection?

4 **BY MR. CARTER:** No objection.

5 **BY THE COURT:** Let them be admitted.

6 (ROUGH SKETCH PREVIOUSLY MARKED AS STATE'S EXHIBIT
7 S-51 FOR IDENTIFICATION AND POLISHED SKETCH PREVIOUSLY MARKED
8 AS STATE'S EXHIBIT S-39 FOR IDENTIFICATION WERE NOW BOTH
9 RECEIVED IN EVIDENCE.)

10 **BY MR. HILL:**

11 Q. Ms. Schoene, I'm next going to hand you State's
12 Exhibit number 40 and ask you to look at that and see if you
13 recognize that, please.

14 A. Yes, I recognize this. State's Exhibit number 40
15 is the key or legend that I typed up to go with the polished
16 sketch.

17 Q. And when you say a key or a legend, that lists out
18 what you had drawn on the sketch?

19 A. Right. For example, when I drew the sketch for
20 the victims at the time, I might have numbered the victims
21 or numbered the evidence. And here I more, have a more
22 descriptive explanation of what the items of evidence are
23 typed up on this piece of paper as they correspond to the
24 sketch.

25 Q. And I also have, I'm going to put this up, I
26 believe, if that won't knock you--

27 A. -- well, we will see.

28 Q. --over. This is State's Exhibit 39A. Can you
29 tell us what 39A is, please?

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1 A. State's Exhibit 39A is an enlargement of my
2 polished sketch.

3 Q. Other than just being enlarged, it's the same as
4 the one the Court just admitted?

5 A. Yes.

6 BY MR. HILL: Your Honor, we would ask that 39A be
7 received.

8 BY MR. CARTER: No objection.

9 BY THE COURT: With no objection, let it be
10 admitted.

11 (ENLARGEMENT OF POLISHED SKETCH PREVIOUSLY MARKED
12 AS STATE'S EXHIBIT S-39A FOR IDENTIFICATION WAS NOW RECEIVED
13 IN EVIDENCE.)

14 BY MR. HILL:

15 Q. Ms. Schoene, if you don't mind, I'm going to ask
16 you if you will, and I apologize; ask you to step down one
17 more time over here to the charts.

18 A. (Witness complies.)

19 Q. I'm just going to hand you this little marker and
20 use that for a pointer if you will, if you need to.

21 A. Okay.

22 Q. While you are there, we have got, we have these
23 enlargements as well. This is State's Exhibit number 40A,
24 and I have a 40B. Would you look at that, Ms. Schoene, and
25 tell us if you recognize that?

26 A. Yes. State's Exhibit 40A is an enlargement of the
27 first page of the key that goes with the polished sketch.

28 Q. Okay, and I have State's Exhibit number 40B.
29 Would you tell us what that is?

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1 A. Yes. State's Exhibit number 40B is the second
2 page of the two pages of the key that go with the polished
3 sketch.

4 **BY MR. HILL:** And Your Honor, before I go further
5 into her testimony about the sketch and legend, I would
6 ask that State's 40A and B be received. That is just
7 simply blow ups.

8 **BY THE COURT:** Let them be admitted.

9 (BLOWUPS OF PAGES ONE AND TWO OF STATE'S EXHIBIT
10 S-40, WHICH IS THE KEY AND LEGEND FOR THE SKETCH IN EXHIBIT
11 S-39, THAT HAD PREVIOUSLY BEEN MARKED FOR IDENTIFICATION WERE
12 NOW RECEIVED IN EVIDENCE AS STATE'S EXHIBITS S-40A AND
13 S-40B.)

14 BY MR. HILL:

15 Q. Ms. Schoene, I'm going to ask you and you can
16 have -- I don't know if you have a copy, but here is your
17 legend that you can hold in your hand. I would ask you, if
18 I could, if you would just describe what this is and what it
19 shows. You have got different numbers on it, and you have
20 got some body figures on it numbered. Would you just kind
21 of go through that.

22 A. You can see this okay? Certainly; I will. What
23 you are seeing here is the north side of Tardy Furniture
24 store. I had said earlier that when you walk in the store,
25 the store is somewhat divided. There is a portion on the
26 left and a portion on the right. This is the portion on the
27 right. This slope downward connects the two portions to one
28 another. Now this crime scene tape here, this crime scene
29 tape barrier is the first thing that you would come to if

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1 you were walking in the front door. Okay, so if you walk in
2 the front door, you will come into the crime-- you will hit
3 the crime scene tape. If you continue onward, there is
4 three partial bloody footwear impressions that I have
5 labeled A, B and C here.

6 Victim number 1 is Robert Golden. Victim number 2
7 is Carmen Rigby. Victim number 3 is Bertha Tardy. Now the
8 other numbers and symbols that you see on the sketch -- 5, 1,
9 2, 3, 4 and 5, those correspond to casings that were
10 collected, casings that ejected from some type of gun. The
11 other -- let's see. 2B, I believe 1B and 2B are projectiles
12 or bullets. The location of 1C and 2C here indicate the
13 position of projectile fragments or pieces of bullets.

14 What else you might, what I have mentioned here, if
15 you continue on back here, this open door, that was the door
16 to Bertha Tardy's office in the very back of the building.
17 And this area here was the white counter that you saw earlier
18 in the photograph. There was a purse, an open purse here in
19 the middle and various, you know, paperwork and drawers and
20 that sort of thing that were located behind the counter.

21 Q. Now you indicated that you saw some footwear
22 impressions. What is a footwear impression?

23 A. Well, a footwear impression is left on a surface.
24 You know, you have positive impressions or negative
25 impressions. This was actually a positive impression. What
26 that means is that I saw evidence of someone walking through
27 a substance, which I believed to be blood, and when they put
28 their foot in that substance, lifted it and placed it back
29 down, then they left a footwear impression. Well, this was

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1 actually a partial footwear impression. None of these were
2 entire, entire impressions. What I mean by partial is it
3 might be half of a shoe impression, but I could distinctly
4 make out at least three different partial footwear
5 impressions.

6 Q. And you labeled those on your diagram?

7 A. Yes, sir. I labeled those A, B and C, with A
8 being the footwear impression that is the closest to the
9 front door, and C being the partial footwear impression that
10 is closest to the pool of blood.

11 Q. Now you have numbers I see circled 1, 2, 3, 4 and
12 5.

13 A. Uh-hum.

14 Q. Can you tell us what those represent, please?

15 A. Yeah, as I said previously, those correspond to
16 casings that were ejected from--

17 Q. --Could you tell us what is a casing?

18 A. A casing is, if you think of a cartridge or a live
19 round, a live round is something that -- the casing holds a
20 bullet. And so if you fire a gun, a casing can be
21 injected-- ejected, excuse me, ejected from the weapon and
22 the bullet or projectile is what I have labeled here, bullet
23 or projectile comes out of the barrel of the weapon.

24 Q. It may be inaccurate, but some people might call
25 those a hull?

26 A. Hull, yes. Hull.

27 Q. And you found five of those?

28 A. Yes, I did. I found five and again, they are
29 labeled here: 1, 2, 3, 4, and 5.

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1 Q. Now you indicated, I believe, that you found a
2 live round or an unspent cartridge or bullet, a live bullet?

3 A. Yes, I did. And that's, I call that a cartridge
4 or a live round. It's a bullet that hasn't been fired, so
5 it has the bullet and the casing with it. That is on this
6 sketch 1A located close to Bertha -- excuse me, close to
7 Carmen Rigby.

8 Q. All right. Thank you, ma'am. You can get back on
9 the witness stand.

10 A. (Witness resumes witness stand.) If I could point
11 something else out that I forgot on this?

12 Q. Yes, ma'am.

13 A. All the evidence that you see here that is on this
14 sketch, I collected it as a part of my analysis of the crime
15 scene. So each of these pieces of evidence that I have
16 labeled on this sketch corresponds to an item of evidence
17 that I placed in a box and sealed, or in the case of the
18 footwear impressions, that I photographed. So all of the
19 evidence that you see here was collected by me and brought
20 back to the crime laboratory for analysis.

21 Q. Okay. Speaking of your work in photographing the
22 footwear impressions, I want to show you another series of
23 photographs if I may. Let me show them to Defense Counsel
24 first.

25 (Pause while Defense Counsel looks at photographs.)

26 BY MR. HILL:

27 Q. Ms. Schoene, first of all, I'm going to show you
28 two small black and white photographs. They are marked
29 State's Exhibit 45 and State's Exhibit number 46 for

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1 identification. Would you look at those, tell us if you
2 recognize them, and what they are, please?

3 A. Yes. Those are both photographs that I took at
4 the crime scene after the victims had been removed. What
5 they depict are the footwear impressions from two different
6 angles of, excuse me, the partial footwear impressions that
7 are on the sketch there as A, B and C. State's Exhibit 46
8 was taken from this ramp so you, to get a reference there.
9 And State's Exhibit 45 was taken from the front of the store
10 where you can see the opening of Bertha Tardy's office in
11 the background.

12 BY MR. HILL: May we have these -- we offer them
13 and ask they be received into evidence, Your Honor.

14 BY MR. CARTER: No objection.

15 BY THE COURT: Let them be admitted.

16 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
17 S-45 AND S-46 FOR IDENTIFICATION WERE NOW RECEIVED IN
18 EVIDENCE.)

19 BY MR. HILL:

20 Q. Ms. Schoene, these are black and white
21 photographs. Is there a reason that you took black and
22 white as opposed to a color photograph of these?

23 A. Yes, there is. Actually I took both. Color
24 photographs are used for general crime scene documentation.
25 When it is necessary to document evidence for comparison
26 purposes, we use black and white film because it's, when
27 you enlarge black and white film, there is much more
28 contrast, so you can see small defects. For example, we
29 would use black and white photography if we were going to

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1 photograph footwear impressions, also bloody fingerprint
2 impressions and any other type of evidence that you can't
3 actually cut and remove and take back to the crime
4 laboratory. So black and white film is used for examination
5 quality photography.

6 Q. And I see that in State's Exhibit 45, you have got
7 these numbered markers or perhaps I should say lettered
8 markers on the floor. And what was the purpose of the white
9 markers at A, B and C?

10 A. The white markers correspond to the three
11 different partial footwear impressions that I observed
12 there.

13 BY MR. HILL: May I have these passed to the jury,
14 Your Honor?

15 BY THE COURT: Yes.

16 (State's Exhibits S-45 and S-46 were passed to the
17 jury.)

18 BY MR. HILL:

19 Q. Ms. Schoene, I'm now going to hand you a series of
20 four exhibits. They are numbered State's Exhibit 47, 48, 49
21 and 50, and I'm going to hand them to you and ask if you
22 would just take a minute to look through them, see if you
23 recognize them?

24 A. Yes. These are all enlargements of the
25 photographs that I had taken of the bloody footwear
26 impressions.

27 Q. Tell us, are they different footwear impressions,
28 all of the same one, or--

29 A. Well, this State's Exhibit 50 corresponds to, I

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1 believe this is footwear impression C. And State's Exhibit
2 47 is impression A.

3 Q. And did you, is there a reason that you took --
4 you took several of these photographs; is that right?

5 A. Yes. Actually, and I did not make these
6 enlargements. These enlargements were made by Joe Andrews,
7 who actually did the footwear comparison.

8 Q. But those are photographs that you took?

9 A. Yes. Well, these are enlargements of photographs
10 that I took.

11 Q. Enlargements of photographs that you took?

12 A. Right. Right.

13 Q. Okay, and do these 48, 49-- I'm sorry; let me see
14 the numbers. 47, 48, 49 and 50, do they correspond to 46
15 and 47 that we just showed, the little back and whites that
16 we just passed to the jury?

17 A. Oh, yes. Yes, they do.

18 Q. These are enlargements of those footwear
19 impressions or some of those footwear impressions?

20 A. Those are enlargements of the same footwear
21 impressions, but those aren't enlargements of the same
22 photographs.

23 Q. Yes, ma'am. Same impressions?

24 A. Right. Yes.

25 Q. So this is, when you look at this, you can see the
26 footwear impression that you photographed in the small
27 photographs?

28 A. Right. These enlargements are used for comparison
29 purposes. This is the result of the examination quality

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1 photography that I had mentioned earlier for using the black
2 and white film so the enlargements, the examiner can see
3 more of a contrast. So that is what these are. Yes, these
4 do correspond to the footwear impressions that are on that
5 sketch.

6 BY MR. HILL: May we have these received into
7 evidence, Your Honor?

8 BY MR. CARTER: No objection.

9 BY THE COURT: Let them be admitted.

10 (BLACK AND WHITE ENLARGEMENTS PREVIOUSLY MARKED AS
11 STATE'S EXHIBITS S-47 THROUGH S-50 FOR IDENTIFICATION WERE
12 NOW RECEIVED IN EVIDENCE.)

13 BY MR. HILL:

14 Q. Okay, Ms. Schoene, you also, you further indicated
15 that in addition to the footwear impressions that you
16 photographed, that you recovered some items of physical
17 evidence. And I think you said there were some casings that
18 you collected if I recall?

19 A. Right. I collected casings, projectiles and
20 fragments.

21 Q. I'm going to hand you, these are five small white
22 boxes. They are numbered for identification as State's
23 Exhibit 88, 89, 90, 91, and 92. I guess I will put them
24 there. If you would examine those, please, ma'am; see if
25 you can identify them, and we will ask you one at a time
26 about them.

27 A. Yes, I can identify each of these by my initials,
28 my handwriting, the Mississippi Crime Laboratory seal, and
29 the Mississippi Crime Laboratory case number.

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1 Q. Okay, and just tell us what they are, the five of
2 them as a group.

3 A. Individually?

4 Q. No, what are they? They are the five casings you
5 recovered?

6 A. Yes. These are, contained in these boxes are the
7 five casings that you see depicted on the sketch -- 1, 2, 3,
8 4, and 5. These five casings correspond to those.

9 Q. Okay. Now I suppose what I need to get you to do
10 is to tell us, is to take, say for instance, let's talk
11 about State's Exhibit number 88. I would like for you, if
12 you can, just to tell us if you would, to come over here to
13 this board, and I will hand these exhibits to you.

14 A. Okay.

15 Q. And just let you point out where you found them if
16 you would.

17 A. Sure.

18 Q. And I'm going to start with 88. I will try to do
19 them in numerical order so we don't get them confused.
20 State's Exhibit number 88.

21 A. So your State's Exhibit 88 is my, is Mississippi
22 Crime Laboratory number 25. This is casing number 1 that
23 was collected from near Robert Golden. This box is this
24 casing.

25 Q. Now did you look at those casings? Could you tell
26 by looking at it what caliber it was?

27 A. What I have written on the box is what the base of
28 the casing says, and it is CCINR .380 automatic.

29 Q. I'm going to hand you next State's Exhibit number

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1 89. I ask if you can tell us what casing that is, please?

2 A. Yes. State's Exhibit 89 corresponds to crime
3 laboratory case number 26. This is casing number 2, which
4 is this casing, that was collected from near Robert Golden
5 as well.

6 Q. So you found two casings near Robert?

7 A. Yes. Well, near Robert and also the missing
8 victim here. There was a fourth victim that was already
9 gone.

10 Q. Right.

11 A. Yes. So in this general area right here, 1 and 2.

12 Q. They are actually though on your map, they are
13 actually closer to Robert?

14 A. Yes, they are.

15 Q. Thank you. That was 88 and 89. I hand you
16 State's Exhibit number 90.

17 A. State's Exhibit 90 corresponds to Mississippi
18 Crime Laboratory case number 27, and this is, this box
19 contains casing number 3, which was this casing. Casing
20 collected from near Ms. Carmen Rigby.

21 Q. Okay. State's Exhibit 91?

22 A. State's Exhibit 91 corresponds to crime laboratory
23 exhibit number 28, and it is on this sketch, casing number
24 4. That was also collected near Carmen Rigby and Bertha
25 Tardy.

26 Q. I hand you, this is State's 92.

27 A. State's Exhibit 92 corresponds to crime lab case
28 number -- I actually can't read that. It looks like 29, and
29 it, this box contains casing number 5 which was collected

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1 near the victim of Bertha Tardy.

2 Q. Now you referred to in your testimony about your
3 crime lab numbers. That is just the way y'all numbered them
4 when you got them into the lab; is that right?

5 A. Right. Every item of evidence that we collect and
6 submit to the crime lab receives its own exhibit number.

7 Q. So our numbers and your numbers are a little off?

8 A. Your numbers correspond to their trial, and our
9 numbers correspond to the crime laboratory.

10 Q. Okay, so you have showed us where you found all
11 those casings. Now you found some other trace evidence as
12 well; right?

13 A. Yes, sir.

14 Q. And I'm going to take these up, and before you sit
15 down, if you don't mind, I will hand you some of these
16 others.

17 BY MR. HILL: I would ask at this time, Your
18 Honor, that these 5 exhibits be received into evidence,
19 the 5 casings that the witness has just testified
20 about.

21 BY MR. CARTER: No objection.

22 BY THE COURT: Let them be admitted.

23 (FIVE SHELL CASINGS IN SMALL WHITE BOXES PREVIOUSLY
24 MARKED AS STATE'S EXHIBITS S-88, S-89, S-90, S-91 AND S-92
25 FOR IDENTIFICATION WERE NOW ALL RECEIVED IN EVIDENCE.)

26 BY MR. HILL:

27 Q. Ms. Schoene, if I could ask you now about, you
28 mentioned that you recovered some projectiles?

29 A. Yes.

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1 Q. I'm going to hand you State's Exhibit number 83,
2 and see if you can identify that for us, please?

3 A. Yes. Your State's Exhibit 83 corresponds to crime
4 lab exhibit number 31, and this box contains projectile 1-B.

5 Q. Would you point out projectile 1-B, where that is
6 located on the chart?

7 A. It's located closest to victim Robert Golden.

8 Q. And as we can see, that is directly across from
9 Ms. Rigby.

10 A. Right. On the other side, that's correct.

11 Q. I hand you State's Exhibit 84 and ask you if you
12 recognize it, please?

13 A. Okay. Your State's Exhibit 84 corresponds to
14 crime laboratory case exhibit number 32, and what is
15 contained in this box is what is labeled as projectile 2-B.
16 It was the projectile that was collected from this position.

17 Q. Okay. Thank you, ma'am.

18 BY MR. HILL: We would ask that these two
19 projectiles be received into evidence, Your Honor.

20 BY MR. CARTER: No objection.

21 BY THE COURT: Let them be admitted.

22 (FIRED BULLET PROJECTILES LABELED AS 1-B AND 2-B
23 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-83 AND S-84 FOR
24 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

25 BY MR. HILL:

26 Q. Ms. Schoene, I'm going to hand you a couple more
27 photographs. These are photographs -- this one is marked
28 State's Exhibit 98. This one is marked State's Exhibit 41.

29 A. Okay.

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1 Q. Would you just look at those and see if you
2 recognize -- do you recognize those?

3 A. Yes, I do. State's Exhibit 98 corresponds to this
4 projectile, 2-B, and State's Exhibit 41 corresponds to
5 projectile 1-B.

6 Q. We would ask--

7 A. -- I believe both of those are photographs that I
8 took.

9 BY MR. HILL: We would ask that these photographs
10 be received, Your Honor.

11 BY MR. CARTER: No objection.

12 BY THE COURT: Let them be admitted.

13 (TWO SMALL PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S
14 EXHIBITS S-41 AND S-98 FOR IDENTIFICATION WERE NOW BOTH
15 RECEIVED IN EVIDENCE.)

16 BY MR. HILL:

17 Q. Ms. Schoene, I'm going to just leave this
18 photograph right there, and I'm going to put this chart
19 here. And I guess that's the way we have got it oriented.
20 State's Exhibit 41 that you just testified about while ago?

21 A. Uh-hum.

22 Q. We have this blow up. Is this an enlargement of
23 State's Exhibit 41?

24 A. Yes.

25 Q. And that is not exactly the same, okay. While I
26 have got this up here, State's Exhibit 28; do you recognize
27 that? Do you recall that photo?

28 A. Yes. This is a photograph of Bertha Tardy's
29 glasses. What you see here are four, excuse me, three

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1 enlargements of victim Bertha Tardy, of the victim that was
2 in the back of the store. What you see here are, I believe
3 it's her glasses.

4 Q. And tell us about if you recognize the
5 photographs; I am showing you 23A, 22A, 21A, and 20A. So
6 it's 20, 21, 22 and 23, and I'm going to just see if that
7 will ride like that.

8 A. This is a photograph of Bertha Tardy's shoulder
9 and head. This is her skirt with her feet. One of her
10 shoes was partially off, and this is an orientation
11 photograph so you can see the location of her body in
12 reference to the rest of the store.

13 Q. Okay. Is that the way it looked when you saw it?

14 A. Yes.

15 Q. When you were working the crime scene?

16 A. Yes.

17 BY MR. HILL: Your Honor, we would ask for the
18 introduction of State's Exhibit 20 and 20A,
19 corresponding 21, 22 and 23.

20 BY MR. CARTER: No objection.

21 BY THE COURT: Let them be admitted.

22 (PHOTO ENLARGEMENTS ON ONE LARGE BOARD PREVIOUSLY
23 MARKED AS STATE'S EXHIBITS S-20A, S-21A, S-22A, AND S-23A FOR
24 IDENTIFICATION WERE NOW ALL RECEIVED IN EVIDENCE.)

25 BY MR. HILL: Also, Your Honor, we previously
26 mentioned, this is State's Exhibit 41A. I think we
27 have already asked that it be received. It is simply
28 an enlargement of 41.

29 BY THE COURT: Let it be admitted.

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(PHOTO ENLARGEMENT PREVIOUSLY MARKED AS STATE'S

EXHIBIT S-41A FOR IDENTIFICATION WAS NOW RECEIVED IN
EVIDENCE.)

BY MR. HILL:

Q. Ms. Schoene, this is State's, I believe Exhibit
number 85 for identification. Could you tell us if you
recognize that, please, and what it is?

A. Yes. State's Exhibit 85 is crime laboratory
exhibit number 33, and this is the fragment collected near
the area of Carmen Rigby. This is fragment 1-C.

Q. Would you point that out on the chart, please.

A. Right here.

Q. And so this fragment was actually found very close
to Ms. Rigby?

A. Yes.

Q. I want to hand you State's Exhibit 93 and ask you
what that is, please?

A. State's Exhibit 93 corresponds to crime laboratory
case number 30, and this is a cartridge on this sketch that
corresponds with 1-A or an unfired round.

Q. And you collected both of these?

A. Yes, I certainly did.

BY MR. HILL: We would ask that these also be
marked, received into evidence, State's Exhibit 85 and
93.

BY MR. CARTER: No objection.

BY THE COURT: Let them be admitted.

(BULLET FRAGMENT NEAR CARMEN RIGBY PREVIOUSLY
MARKED AS STATE'S EXHIBIT S-85 AND LIVE CARTRIDGE LABELED A-1

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1 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-93, BOTH FOR
2 IDENTIFICATION ONLY, WERE NOW BOTH RECEIVED IN EVIDENCE.)
3 BY MR. HILL:

4 Q. Okay, there is-- I'm going to point to the middle
5 of this chart, State's Exhibit 39A, point to the middle of
6 that. Tell us what that represents, Ms. Schoene, please.

7 A. Did you want this admitted? Fragment 2-C?

8 Q. Yes, I do. I think I just overlooked that. We
9 will get to it in a minute.

10 A. Okay.

11 Q. Let's talk--

12 A. --Certainly. Here in the middle of the store,
13 again what you are looking at is the half, the top half of
14 the store. This is the counter. This is the counter that
15 was located in the center of the store where people would go
16 pay.

17 Q. Okay, and what did you say that was in the middle
18 of the counter?

19 A. Well, this is actually floor. It's a two leveled
20 counter. And what you see here in the middle is the floor,
21 and this is where people can walk in and conduct business.
22 This is the purse that had the identification belonging to
23 Carmen Rigby.

24 Q. Was that purse on a table or a counter, or was
25 it -- it looks like it's in the center?

26 A. Yeah, I believe that it was on the floor.

27 Q. Did you take some photographs of that?
28 Specifically, let me refer you to State's Exhibit 28 for
29 identification.

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1 A. Yes. This is the photograph that I took.

2 Q. What is it? A photograph of what?

3 A. This is a photograph of the open purse behind the
4 counter taken from the perspective, I was standing back
5 here. So if you would look at this photograph, you would
6 see this purse and then also the front of the store.

7 Q. Okay. Now again, we are talking about this center
8 aisle and where the, I call that the main desk for the point
9 of reference?

10 A. Main desk is good.

11 Q. Okay. I want to show you State's Exhibit number
12 29 and get you to look at that if you would. Tell us if you
13 recognize what is State's Exhibit 29?

14 A. State's Exhibit 29 is a color photograph of the
15 cash drawer that was behind the desk area. It's in the open
16 position. There is three paper slots in this cash drawer,
17 two of which are empty. One contains white paper.

18 Q. Okay, now when you say paper slots. Is that like
19 when you open a cash register drawer and there is currency,
20 places for different denominations?

21 A. Yes. These are the size of U.S. currency paper,
22 and there is three slots.

23 Q. All right. Now I'm going to hand you State's
24 Exhibit 28 back, and with regard, would you look at State's
25 Exhibit 28 and the cash drawer, and would you just generally
26 indicate on the diagram where that cash drawer is located?

27 A. The cash drawer is located approximately here.

28 Q. And that would be on the inside; is that right?

29 A. On the inside, yes. It's not actually -- there is

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1 not a cash register per se. It's actually more of a cash
2 drawer. It's a drawer that contained cash, but on the top
3 of it there wasn't buttons. It was just the drawer.

4 Q. All right, now let me refer back to State's
5 Exhibit 29 again. You indicated that the first two slots
6 are empty?

7 A. Yes.

8 Q. And the third one has a white paper. Was there
9 any paper money, any currency in the cash drawer?

10 A. There was no paper currency in the drawer. There
11 were several coins in the drawer, but there was no paper
12 currency.

13 BY MR. HILL: Your Honor, we ask that State's
14 Exhibit 28 and 29 be received.

15 (Pause while Defense Counsel looks at the
16 photographs.)

17 BY MR. CARTER: No objection.

18 BY THE COURT: Let them be admitted.

19 (SMALL PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S
20 EXHIBITS S-28 AND S-29 FOR IDENTIFICATION WERE NOW RECEIVED
21 IN EVIDENCE.)

22 BY MR. HILL:

23 Q. Ms. Schoene, I believe for your convenience, I'm
24 going to let you get back on the stand for just a few
25 minutes. We have got a few more questions.

26 A. (Witness resumes witness stand.)

27 BY MR. HILL: Your Honor, I have an enlargement of
28 State's Exhibit 29, just a blowup. I would ask that it
29 be received.

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BY MR. CARTER: No objection.

BY THE COURT: Let it be admitted.

(ENLARGEMENT OF PHOTOGRAPH OF CASH DRAWER
PREVIOUSLY MARKED AS STATE'S EXHIBIT S-29A FOR IDENTIFICATION
WAS NOW RECEIVED IN EVIDENCE.)

BY MR. HILL:

Q. Ms. Schoene, I'm just going to refer you once
again to State's Exhibit 29A, an enlargement of the cash
drawer. That is a photograph that is good enough almost
that you can count the change in the coin slots almost,
isn't it?

A. (Witness nods her head.)

Q. Okay, thank you, ma'am.

A. This-- okay.

Q. Go ahead.

A. I was just going to say this is the cash drawer.
These are the two slots that I referred to that were empty,
and this one just contained white paper.

Q. Next I have 28A, Ms. Schoene. I draw your
attention to this, please. This is an enlargement of the
inside area. I think we decided to call it the main desk.
Is that the purse that you labeled in your drawing over
here?

A. Yes, this is the purse on the floor. It contained
identification for Carmen Rigby. The cash drawer is located
here. This is the cash drawer. And again, this is from the
back of the store toward the front of the store.

Q. And you gestured that that is the front door?

A. Yes, that is the main entrance.

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1 Q. Thank you, ma'am.

2 BY MR. HILL: Your Honor, we ask that 28A be
3 marked for evidence.

4 BY MR. CARTER: No objection.

5 BY THE COURT: Let it be admitted.

6 (BLOWUP OF PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S
7 EXHIBIT S-28A FOR IDENTIFICATION WAS NOW RECEIVED IN
8 EVIDENCE.)

9 BY MR. HILL:

10 Q. Ms. Schoene, how long were you -- just generally
11 speaking, was this a ten minute job for you to diagram,
12 photograph and collect evidence, or about how long did this
13 take you? I am being somewhat facetious. It's not a ten
14 minute job. Tell us about how long that that took you, that
15 you and your team worked there on the premises?

16 A. I arrived on the scene at 1:15. I began
17 documentation at 1:30, and then I left this crime scene at 6
18 o'clock that evening.

19 Q. In addition to working this, were you also asked
20 to process an automobile?

21 A. Not process the automobile per se, but to examine
22 a particular area of the automobile.

23 Q. Okay. I have some photographs I want to show you.
24 I want to show you these photographs right here. These are
25 the photographs that have been marked State's 99, State's
26 99, 100 and 101.

27 A. Okay.

28 Q. And I would ask if you would just look at that and
29 if you could tell us I think kind of just in general terms

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1 what those photographs are, and refer to them by number if
2 you would, please.

3 A. Yes, sir. Both Polaroid photographs which are in
4 State's Exhibit 99 and 100 depict the older model brown
5 vehicle that I was asked to look at. And State's Exhibit
6 101 depicts the glove box of this vehicle.

7 Q. Okay. Who asked you -- do you recall who it was
8 that asked you to take a look at the car, or who you talked
9 to about your examination of that car?

10 A. Investigator Wayne Miller is who initiated the
11 request.

12 Q. Okay, he was with what agency?

13 A. Mississippi Highway Patrol Criminal Investigations
14 Bureau.

15 Q. Okay, did at his request you take a look at that
16 car?

17 A. Yes, sir. He had asked that as soon as I finished
18 at the furniture store, if I could come to this vehicle and
19 process the area around the glove box for latent prints.

20 Q. So you, part of your expertise as a crime scene
21 investigator and crime scene specialist, is knowing how to
22 take latent prints off of objects?

23 A. Yes.

24 Q. And that's what they were kind of asking you to
25 do?

26 A. Yes. He actually requested -- may I read my
27 notes--

28 Q. Yes.

29 A. --from what he requested? My notes reflect that

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1 Wayne Miller requested that uh, that there was a vehicle
2 that, from which there might have been something stolen from
3 the glove box. The windows were down. The individual came
4 back out to the car and found the glove box ajar.
5 Investigator Miller requests us to process the glove box for
6 prints, for fingerprints when we finish here.

7 Q. Now what kind of car was that?

8 A. An older model brown Pontiac.

9 Q. And this particular car, I take it that you had a
10 chance to observe the car as you were walking up to it, the
11 paint job on it and all of that? Did you make any
12 description or take any notes about the condition of the
13 exterior of the car?

14 A. Yes. I arrived at the Winona Police Department at
15 6:04 to dust that portion of the vehicle. The vehicle was
16 sitting outside under a tree. The windows were rolled up.
17 It had been raining that day. The exterior of the car was
18 wet from the rain. I set out to dust the dry areas around
19 the passenger door and the glove box, the latch around the
20 glove box and the console.

21 Q. Okay. So you were going to work the interior?

22 A. A portion of the interior.

23 Q. A portion of the interior. The car was outdoors,
24 and it had been raining.

25 A. Yes.

26 Q. Were you present working the scene when it was
27 raining?

28 A. I was inside for the majority of the time. I
29 really don't know if it rained. I just know the exterior of

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1 the car was wet.

2 Q. The car was wet, okay. And what about the paint
3 job on that car? Did you make any notes as to what the
4 condition -- was it two toned--

5 A. No, it was not two-toned. It was a brown vehicle,
6 just an older model, but it was brown.

7 Q. Do you recall what -- did you take in your notes
8 what make and model the car was?

9 A. Older model brown, white Pontiac-- I mean, excuse
10 me, older model brown Pontiac.

11 Q. And I don't guess you knew whose car it was, did
12 you?

13 A. No, sir.

14 Q. And were you able -- I guess I need to ask this.
15 Were you able to lift any latent prints?

16 A. I did dust the vehicle for latent prints, but I
17 believe that I recovered one lift card. However, the
18 surface, the surface of the interior of the vehicle was
19 somewhat old and dusty, and the vinyl was sort of a rough
20 surface. So it would have been very difficult to -- the
21 best place to get prints in that situation would have been
22 the exterior, which is very shiny and hard and glossy. But
23 I collected what I could off of the door, the latch.

24 Q. Now why did you mention the surface, the type of
25 surface? What difference does it make what kind of surface
26 it is?

27 A. Well, we all leave fingerprints on things that we
28 touch. Some of the receiving surfaces are more appropriate
29 to recover a latent print or fingerprint than others. For

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1 example, if the surface is clean, if it's hard, if it's
2 non-porous like glass or plastic, those types of surfaces
3 are the most conducive to receiving fingerprints and
4 retaining fingerprints.

5 Q. And on this particular glove box, what kind of
6 surface was that?

7 A. The surface of this glove box was rigid and
8 somewhat textured. And it was an older model vehicle, so
9 portions of it were cracked, and it was also fairly dusty.
10 And it is almost impossible to collect a fingerprint off of
11 a dusty surface because when your fingers come in contact
12 with that dusty surface, what you end up doing, instead of
13 depositing your fingerprint, you pull off the dust. You
14 might notice that in the pollen season when you go outside
15 and perhaps touch your car, or you might touch some other
16 dusty surface. And this was a dusty surface, yeah.

17 Q. So that was not a good surface to try to get any
18 prints?

19 A. No, but I like to be optimistic, so I did try, but
20 I was not able to recover. I believe I might have recovered
21 a partial print, but the results were not good.

22 Q. I want to show you also State's Exhibit number 38.
23 I failed to show you this while ago when you were talking
24 about working in the store. Tell us what that is if you
25 know, please.

26 A. This is State's Exhibit 38, and it is a color
27 photograph of the safe which was in Bertha Tardy's office at
28 the back of the furniture store. And the position of the
29 door on the safe is closed. It's not locked, but it is

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1 closed.

2 Q. And how do you know that it wasn't locked?

3 A. Because I could open it.

4 Q. Did you do that?

5 A. Yes.

6 Q. Open it?

7 BY MR. HILL: I offer State's 38.

8 BY MR. CARTER: No objection.

9 BY THE COURT: Let it be admitted.

10 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S EXHIBIT
11 S-38 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

12 BY MR. HILL: May I confer just one minute, Your
13 Honor?

14 (State's Counsel confer.)

15 BY MR. HILL:

16 Q. Ms. Schoene, I'm just going to ask if you would,
17 you have already testified about State's 46 and 47, the
18 black and white photography that you did to show the
19 footwear impressions. And this is State's 45A and 46A, an
20 enlargement of those. Can you tell us simply what is back
21 in this area back here, the back?

22 A. That is the office of Bertha Tardy. That's where
23 the safe was located.

24 Q. And that's the safe that you just identified in
25 State's 38, I believe it was?

26 A. Yes. This photograph was taken of the footwear
27 impressions after the victims' bodies had been removed.

28 BY MR. HILL: Your Honor, we ask that State's 45A
29 and 46A be received.

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1 **BY MR. CARTER:** No objection.

2 **BY THE COURT:** Let them be admitted.

3 (ENLARGEMENTS OF FOOTWEAR IMPRESSIONS PREVIOUSLY
4 MARKED AS STATE'S EXHIBITS S-45A AND S-46A FOR IDENTIFICATION
5 WERE NOW RECEIVED IN EVIDENCE.)

6 **BY THE COURT:** Your Honor, I ask that 99, 100 and
7 101, these are photographs of the car and the
8 photographs of the glove box; ask that they be--

9 **BY MR. CARTER:** Let me see those.

10 (Pause while Defense Counsel views photographs.)

11 **BY MR. CARTER:** No objection.

12 **BY THE COURT:** Let them be admitted.

13 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
14 S-99, S-100 AND S-101 FOR IDENTIFICATION WERE NOW RECEIVED IN
15 EVIDENCE.)

16 **BY MR. HILL:**

17 Q. Ms. Schoene, you just testified about State's
18 Exhibit 99, 100 and 101.

19 A. Yes.

20 Q. This is 99A, 100A and 101A, the blowups of the
21 car?

22 A. Uh-hum.

23 Q. Now do you see this open glove box right there?
24 Did you notice on the lid there a couple of small
25 imperfections on the lid of the glove box above the key way?

26 A. Yes. This picture depicts the state -- is that
27 okay? The state and the condition of the glove box when I
28 arrived to process this area for prints. This is where I,
29 this was where I made the lift from this vehicle. The lip

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1 here of the glove box appeared to have been pried open with
2 some small cylindrical object. I'm not sure, but it does
3 appear to have been pried in that some way.

4 Q. And why did you, how did you reach that
5 conclusion, ma'am?

6 A. You can see the impression marks there, and it was
7 ajar.

8 Q. Now also this car -- this is a picture of the car
9 that you dusted, and you said that it was noted that the
10 windows were down when the officers told you, that they
11 reported the windows on the car were down?

12 A. Yes. When it was reported to them and reported
13 that I requested that I come process the car, they had said
14 that this car had been found and that the windows had been
15 down at the time. Whoever drove the car left the car window
16 down.

17 Q. Now you also said that this car was only a single
18 color. It was not a two tone car; is that correct?

19 A. Right. It was a brown Pontiac Phoenix LJ is the
20 model with the license plate that you see displayed here.

21 Q. Okay. And what, do you have an opinion about why
22 that is -- there appears to be a dark stripe there on the
23 car?

24 A. Well, it is certainly one brown, but the way that
25 this picture is taken with, you know, the curve of a car,
26 with the sun being overheard, it appears, the reflection
27 makes it almost look like there is a white stripe or
28 something there. But no, it's a mono tone brown vehicle.

29 Q. Thank you, ma'am.

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1 **BY MR. HILL:** We would ask that the photos shown
2 100A, 99A and 101A be received.

3 **BY MR. CARTER:** No objection.

4 **BY THE COURT:** Let them be admitted.

5 (ENLARGEMENTS OF PHOTOGRAPHS PREVIOUSLY MARKED AS
6 STATE'S EXHIBITS S-99A, S-100A, AND S-101A FOR IDENTIFICATION
7 WERE NOW ALL RECEIVED IN EVIDENCE.)

8 **BY MR. HILL:**

9 Q. Ms. Schoene, when you, when you scouted this crime
10 scene, did you look at any possible entryways? In other
11 words, I know you went through the front door, you told us.
12 Did Tardy Furniture have any other access ways into the
13 building?

14 A. Yes. There were other doors to the building, and
15 the main entryway appeared to be that front door that came
16 to this portion of the store. Now there was a door in the
17 back of the store, the more warehouse portion that I
18 photographed from the alley way behind the building, and I
19 also photographed that same door from the inside.

20 Q. Okay. Speaking of the inside, did that door
21 appear to be secure to you?

22 A. It was most definitely. The back door -- the only
23 door that was operable was the front entryway. The back
24 door, which I am describing that I photographed from the
25 alley way, had a large wooden--

26 Q. Bar? Board?

27 A. Board, a large wooden board that latched the door
28 shut. You couldn't close it from, you could not -- you had
29 to close it and lock it from the inside.

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1 Q. Okay. I show you State's Exhibit 6 for
2 identification. Is that a picture of what you were just
3 talking about?

4 A. This is clearly and accurately depicts the
5 interior of the back door for the Tardy Furniture store.
6 It's State's Exhibit S-6.

7 Q. And I show you State's Exhibit S-7 inside the side
8 door. Do you recognize that photograph?

9 A. That is the other door. That is from the inside,
10 the side door.

11 BY MR. HILL: I ask that these be received. That
12 is State's 6 and 7.

13 BY MR. CARTER: No objection.

14 BY THE COURT: Let them be admitted.

15 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S EXHIBITS
16 S-6 AND S-7 FOR IDENTIFICATION WERE NOW RECEIVED IN
17 EVIDENCE.)

18 BY MR. HILL:

19 Q. Now these are the last photographs, Ms. Schoene.
20 I want you to, if you will, just look at these. You have
21 mentioned that you photographed the exterior of the
22 building; is that right?

23 A. Yes, sir.

24 Q. The back, which would I guess be the alley behind
25 the building?

26 A. Uh-hum.

27 Q. I want to show you State's Exhibit 8 and 9 for
28 identification. Would you look at those and tell us if you
29 recognize them, please?

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1 A. Yes. State's Exhibit 8 and 9 are both photographs
2 that I took of the alley way or the exterior of Tardy
3 Furniture. This is the back door from the outside.

4 **BY MR. HILL:** I would ask that they be received as
5 well, Your Honor.

6 **BY MR. CARTER:** Could I look at them?

7 **BY MR. HILL:** Yes.

8 (Pause while Defense Counsel looks at exhibits.)

9 **BY MR. HILL:** We offer S-8 and 9.

10 **BY THE COURT:** With no objection, let them be
11 admitted.

12 **BY MR. CARTER:** No objection.

13 **BY MR. HILL:** And Your Honor, we may can-- if
14 Counsel has no objection, we would offer 31, 32, 33 and
15 State's Exhibit 27.

16 **BY MR. CARTER:** No objection.

17 **BY THE COURT:** Let them be admitted.

18 (SMALL PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S
19 EXHIBITS S-8, S-9, S-27, S-31, S-32, AND S-33 FOR
20 IDENTIFICATION WERE NOW ALL RECEIVED IN EVIDENCE.)

21 (Mr. Hill called Mr. Carter up to look at a photo
22 board.)

23 **BY MR. HILL:** Your Honor, I am also going to offer
24 into evidence at this time State's Exhibit 98A and 41
25 that the witness has already testified about as
26 enlargements. I think Counsel has no objection.

27 **BY MR. CARTER:** No objection.

28 **BY THE COURT:** They will be admitted.

29 (PHOTOGRAPH ENLARGEMENTS PREVIOUSLY MARKED AS

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1 STATE'S EXHIBITS S-98A AND S-41B FOR IDENTIFICATION WERE NOW
2 RECEIVED IN EVIDENCE.)

3 BY MR. HILL:

4 Q. Ms. Schoene, I wanted to show you State's Exhibit
5 number 38A. This is the photograph that you talked to us
6 about just a minute ago about the safe in the back office I
7 believe; is that correct?

8 A. Yes. This is the safe that was closed in
9 Ms. Tardy's office at the back of the store.

10 Q. And what is this?

11 A. This is her desk area. Her seat was pushed back
12 as if maybe she had been doing paperwork. There are several
13 various neatly stacked piles of paper of various sizes and
14 sorts on top of her desk. The phone was on the hook. Her
15 adding machine, I believe, was on. And that's a clear, a
16 true and accurate representation of what I saw that day.

17 Q. Thank you, ma'am.

18 BY MR. HILL: This is 38A for identification. I
19 ask that it be received.

20 BY MR. CARTER: No objection.

21 BY THE COURT: Let it be admitted.

22 (BLOWUP PHOTOGRAPH MARKED PREVIOUSLY AS STATE'S
23 EXHIBIT S-38A FOR IDENTIFICATION WAS NOW RECEIVED IN
24 EVIDENCE.)

25 (State's Counsel confer.)

26 BY MR. HILL:

27 Q. Ms. Schoene, I have got one other picture I would
28 just like to ask you. I'm not sure that you will recognize
29 this or not. This is State's Exhibit 95, and would you just

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1 look at that for a minute, and then I will ask you about it.

2 A. I do recognize this photograph. State's Exhibit
3 95 is a color photograph showing a defect to a pillar, a
4 brick pillar that was painted white. This was near
5 Ms. Bertha Tardy's body in the back of the store.

6 Q. Could you point this out to us on the -- I don't
7 know if you can or not.

8 A. I believe it was this pillar, but I'm not certain.
9 But what this shows is a defect as if something hard and
10 fast moving hit this wall, excuse me, this pillar.

11 Q. And what is this-- we will show, we will pass this
12 to the jury in a minute if the Court allows us, but what is
13 this object right beside there?

14 A. It's a mattress wrapped in plastic.

15 Q. And the defect, is there an object pointing to
16 that defect?

17 A. There is a wooden ruler that is pointing to the
18 defect.

19 Q. And you saw that that day when you were there?

20 A. Yes.

21 Q. This is State's Exhibit 95.

22 BY MR. CARTER: Let me see it.

23 BY MR. HILL: We offer it.

24 BY MR. CARTER: No objection.

25 BY THE COURT: Let it be admitted.

26 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S EXHIBIT
27 S-95 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

28 BY MR. HILL:

29 Q. Ms. Schoene, when you were processing this crime

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1 scene, could you tell the ladies and gentlemen of the jury
2 at that time that was, I think you testified that was July
3 the 16th, 1996, and that you worked there until about 6
4 o'clock that day?

5 A. I was at the furniture store until approximately 6
6 o'clock that evening, yes.

7 Q. Had you had any report of autopsy results? Did
8 you have a complete autopsy report at that time before you
9 left?

10 A. No, sir. I did not know what type of projectiles
11 might be in the bodies that were removed at about 3 o'clock
12 that afternoon. I did not know the autopsy results at that
13 time, and we had communicated to the officers when we left
14 to please, that they should keep the scene secure until they
15 obtained the autopsy results.

16 Q. Okay. And so you were looking for any projectiles
17 that might have been in the store, but you didn't know
18 exactly how many you were looking for?

19 A. Right. Right. We had collected five casings, but
20 four projectiles or fragments, and I wasn't sure if there --
21 there perhaps could have been one more projectile still at
22 the scene, or it could have been inside of a victim. And we
23 wouldn't know that until the autopsy results were completed.

24 Q. I take it that y'all did look around on the floors
25 and on the surfaces?

26 A. Yes, sir.

27 Q. Without finding a fifth projectile?

28 A. Right. Right.

29 BY MR. HILL: All right. Your Honor, I need just

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1 one more minute if I may. I think I am about to wrap
2 this up.

3 (AN ENLARGEMENT OF A PHOTOGRAPH MARKED AS STATE'S
4 EXHIBIT S-95 WAS MARKED AS STATE'S EXHIBIT S-95B FOR
5 IDENTIFICATION.)

6 BY MR. HILL:

7 Q. Ms. Schoene, I want to show you what has been
8 marked State's 95 B. This is an enlargement of the
9 photograph that you just testified about.

10 A. Uh-huh.

11 Q. All I would ask you to do, please, is just to
12 point out the defect or the nick on the brick column that
13 you were talking about so that everybody can see it.

14 A. Now this is a nick on the brick column. I don't
15 know what caused this nick, but what I can tell you from
16 observing it and what it looked like at the scene was that
17 something did hit this wall which, excuse me, the pillar
18 which caused the paint to be removed there.

19 BY MR. HILL: This is 95B, an enlargement of 95,
20 Your Honor. I ask that it be admitted.

21 BY MR. CARTER: No objection.

22 BY THE COURT: Let it be admitted.

23 (ENLARGEMENT PHOTO PREVIOUSLY MARKED AS STATE'S
24 EXHIBIT S-95B FOR IDENTIFICATION WAS NOW RECEIVED IN
25 EVIDENCE.)

26 BY MR. HILL: Your Honor, I failed to offer
27 State's Exhibit 40. This is the, I guess you would
28 call it a legend for the diagram that the witness
29 testified to while ago, and I simply failed to offer

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1 it. I would do so now.

2 BY MR. CARTER: No objection.

3 BY THE COURT: Let it be admitted.

4 (KEY FOR SKETCH PREVIOUSLY MARKED AS STATE'S
5 EXHIBIT S-40 FOR IDENTIFICATION WAS NOW RECEIVED IN
6 EVIDENCE.)

7 BY MR. HILL: Court indulge me one minute, Your
8 Honor. I am trying to make sure before I sit down that
9 I don't leave anything undone.

10 BY THE BAILIFF: Your Honor, the juror needs a
11 break.

12 BY THE COURT: We will take a short break.

13 (Off the record briefly until the juror returned to
14 the courtroom.)

15 BY THE COURT: All right, Mr. Hill. You ready.

16 BY MR. HILL:

17 Q. Ms. Schoene, all of this evidence that you have
18 testified about, the casings that you recovered, the
19 projectiles, the fragments, the live rounds, all of that
20 stuff you carried back to the crime lab. Did you transport
21 it?

22 A. Yes, I carried it back with me that evening and
23 submitted it into evidence at 8:15 that night.

24 Q. Okay. Are you the one that put it in these little
25 boxes and sealed it up and everything?

26 A. Yes.

27 BY MR. HILL: Okay. I think that's it, Your
28 Honor. Tender the witness for cross.

29

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CROSS-EXAMINATION BY MR. CARTER:

Q. Okay, now with respect to this car, it certainly looks like it is two colors to me, and I could be wrong. So you are telling me--

A. -- It's one color. It's one; it's brown.

Q. That the shade or whatever is perfectly making it appear that there is a darker color underneath there?

A. That the shade is making it appear as such?

Q. Well, maybe not the shade, but what is it that is making it appear perfectly darker underneath here from here--

A. Yeah, as I said, the sun up is here, and the surface is curved, right? So what you see here is actually a reflection, and this is actually in the shade. So the true color is probably-- this is a flat portion. You know, the back part of a car is flat; it is not curved. This is probably the best representation of the color of the car.

Q. Do you have any other pictures that shows the brown color without the reflection? Did you take this picture?

A. Without seeing the small picture, I don't know if I did take that picture or not. The pictures that I took on the back have the Mississippi Crime Laboratory case number, exhibit number and my initials. And since those are enlargements, I don't know if those actually came from my photographs or somebody else's. But that is the vehicle. That is the tag number, and that is the same vehicle that I processed, and that's the glove box.

Q. Okay, thank you. Were you able to tell what

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1 direction those footprints were going? Were they going
2 outside or inside the store?

3 A. Was I able to tell which direction?

4 Q. Right. The so-called bloody footprints were, what
5 direction the person who made those footprints was going.
6 Were they going inside the store or outside the store?

7 A. They were made inside the store.

8 Q. Right. But based on, I guess the ridges, the
9 characteristics, can you tell whether the person who made
10 them had come from outside the store inside the store, or
11 was leaving inside the store going outside the store?

12 A. I would imagine they came inside the store and
13 then left the store.

14 Q. Okay. The three bloody footprints, you found
15 three; is that correct?

16 A. I found three partial footwear impressions; yes,
17 sir. That's correct.

18 Q. Okay, and of those three partial footprints, are
19 you able to tell -- and I'm trying to be as clear as I can,
20 and if I'm not being clear, it's because I am not able to --
21 can you tell what direction the person who left them were
22 heading?

23 A. After they left the impression, which direction
24 they were going?

25 Q. Right.

26 A. I cannot make that determination without having
27 the shoe. The footwear impression examiner, the person who
28 examined this, could give you that information, but I can't
29 because I didn't perform those examinations.

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1 Q. Thank you. Did you look for fingerprints on the
2 front door?

3 A. Which front door? Oh, to the store?

4 Q. Yes.

5 A. I did not dust the business door for fingerprints,
6 no.

7 Q. And why not?

8 A. Well, that is a high traffic area. The
9 fingerprints, let's see. That area -- so many people touch
10 the entrance of a business similar to the doors that you see
11 here that people coming in and out and the door here, so
12 many people touch it that there is a high likelihood that
13 any finger-- that any impressions, the finger impressions
14 that are there or fingerprints that are there are
15 obliterated due to the presence of so many other
16 fingerprints.

17 Q. So is it customary to just rule out checking the
18 front door, that you just on instincts or training decided
19 not to?

20 A. For high traffic areas such as that, it is
21 customary not to.

22 Q. Okay. You didn't do any tests to determine
23 whether the footprints were, in fact, made by blood, did
24 you? Did you personally do it? Is that something you do?

25 A. Is what something I do? Test footwear
26 impressions?

27 Q. Yeah, to see if-- you said you believed earlier, I
28 believe, that the footprints were left; that substance is
29 blood?

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1 A. Yeah, I suspected it to be blood. It was a very
2 close proximity to two large pooling areas of blood, but I
3 do not know if that is, in fact, blood.

4 Q. Okay.

5 A. If I may offer one of the reasons that I did not
6 collect any of that blood for testing is that it would
7 obliterate -- as an investigator, crime scene analyst, I had
8 a fairly good idea based on what was at the scene that that
9 was indeed blood that the partial footwear impressions were
10 in. But by testing it, by taking a sample, I would have
11 obliterated those footwear impressions.

12 Q. Were all three footwear impressions of the nature
13 that they would be of some kind of value to you? Were you
14 able to get some use from all three?

15 A. Well, at the crime scene, again my task was to
16 document and collect the physical evidence that was there.
17 At the crime scene the value -- the value of those
18 particular footwear impressions or partial footwear
19 impressions are determined by the examiner at the time that
20 the evidence gets back to the crime laboratory in a much
21 more controlled environment where they could be enhanced.

22 Q. Did you ever try to get fingerprints from the
23 safe?

24 A. I did. The surface of the safe, we discussed good
25 surfaces for fingerprints. The surface of the safe was
26 fairly rough, almost like sandpaper but not quite that
27 course. I did dust the safe and the area around it and did
28 not recover any latent prints.

29 Q. Okay, you said earlier that the safe was unlocked.

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1 A. Yes. Well, the door was actually closed, but it
2 wasn't shut all the way, and it wasn't locked.

3 Q. And you have no idea who unlocked it, do you?

4 A. I had have no idea that it was ever even locked.

5 Q. Okay, thank you. Now did you make a list of
6 everyone who came in and out of the crime scene?

7 A. I have a list of investigators that were there
8 while I was there, yes.

9 Q. Okay. Did you receive a list from anyone of who
10 was there before you got there?

11 A. I'm not sure what you mean.

12 Q. Did anyone make a list of what persons had entered
13 the crime scene and exited the crime scene before you got
14 there and actually passed it on to you?

15 A. I believe I was the third person inside the crime
16 scene, if that's what -- Chief Hargrove was there. The
17 gentleman who discovered the bodies was there. Actually,
18 I'm incorrect about that, and also the EMT's were there.
19 And I know this because of those partial footwear
20 impressions. At the time we didn't know who those partial
21 footwear impressions belonged to. The first person on the
22 scene, Chief Hargrove, indicated that they were there when
23 he arrived. But however, I'm not one to just take
24 somebody's word for that. I want to make sure that I have
25 firsthand knowledge of everybody that was wearing shoes that
26 was there before me.

27 So as a result of that, I requested that the EMT's
28 that were on scene before I arrived return so I could look at
29 the tread pattern on their shoes. And if they were even

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1 remotely similar, then I would have collected the EMT's shoes
2 into evidence. I have done that before at crime scenes.
3 It's not a popular move, but it is necessary to include or
4 exclude the EMT footwear, their footwear. I also requested
5 that the gentleman that discovered the bodies return to the
6 scene, and I drew rough sketches of his footwear impressions
7 as well in my notes, in my notes, and his footwear
8 impressions were horizontal bars. And what you see here is
9 somewhat of a, like an enlarged "M" or a Chevron pattern.

10 Q. So did you check the police officers' soles of
11 their shoes also?

12 A. I had checked, yes, sir. I had checked Chief
13 Johnny Hargrove, and to my knowledge, that is all that had
14 been in to the crime scene before I arrived.

15 Q. Now did you seek to get latent prints from the
16 window of Doyle Simpson's car?

17 A. The window was rolled-- it was reported to me that
18 the window was rolled down at the time that it was accessed.
19 So no, I did not.

20 Q. Did you attempt to get some from the counter
21 inside Tardy's where the cash box was?

22 A. Yes. Yes, I did. I dusted that entire surface
23 for latent prints. When I say dust for latent prints, you
24 may have seen this procedure done on television where we
25 take a brush, a long fiberglass brush and dust it in black
26 powder and quite literally just dust the surface. And any
27 recent latent prints, and I say recent because it has to be
28 a fairly moist, somewhat left behind. At any rate I dusted
29 the entire surface. The surface of that counter was not

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1 highly polished. It was fairly scratched. It was a white
2 surface, and I did recover, collect some latent prints from
3 that area.

4 Q. Okay. And you just collect; you don't analyze or
5 do anything at the crime lab with them after that?

6 A. I do examine evidence at the crime lab, but my job
7 at that point was as a crime scene analyst, just simply just
8 to collect the evidence and get it back to a more controlled
9 environment inside the crime laboratory.

10 Q. Now when you went to -- you found Doyle Simpson's
11 car, and by the way, where did you find this car?

12 A. It was at the Winona Police Department under a
13 tree.

14 Q. And you checked the passenger door area, I believe
15 you said; is that correct?

16 A. Yes, the passenger door area. It was reported
17 that -- well, that's what I was asked to examine from the
18 investigator.

19 Q. Isn't the passenger door area a pretty common area
20 where you would find a multitude of different prints?

21 A. If the exterior of car was dry, yes, sir; it
22 probably would have been possible. But the exterior, as I
23 mentioned, was wet. It had rained, and so the rain will
24 likely obliterate any viable prints that were there. The
25 interior of the car, we did do -- the interior of this older
26 model Pontiac was -- it was cloth seats. So we can't dust
27 for prints if there is cloth seats. Also, I had mentioned
28 the dust, the dust issue. That was the majority -- that was
29 my major hurdle as far as dusting for prints in that vehicle

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1 was that dusty console, and also the cracked, rather
2 textured surface of that glove box.

3 Q. Okay, now the passenger door area; I assume you
4 are talking about -- I could be wrong; correct me. You are
5 talking about like the door handle area where you open the
6 door to get in, or are you talking about some other area?

7 A. In regard to what?

8 Q. With respect to Doyle Simpson's car.

9 A. Okay.

10 Q. Did you actually dust near the area where the door
11 handle is, where you open the door?

12 A. On the outside?

13 Q. On the outside; right.

14 A. Yeah, it had been raining, and so I can't. I
15 can't dust the car if it has been raining. It would have
16 washed away the fingerprints.

17 Q. I'm sorry. I understand.

18 A. Oh, that's okay. And then the interior, I did
19 attempt to get some prints from the interior but was not
20 very successful, in my opinion, based on the surface.

21 Q. Now with respect to that wall or what did you call
22 it? A column inside Tardy's.

23 A. Yeah, the defect?

24 Q. Right. Now you are not telling us you have any
25 idea when that defect was made, are you?

26 A. No, sir. That could have been there for a few
27 years. I don't have any knowledge of when that occurred,
28 and I really don't have a test that I can perform to
29 determine what caused it.

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1 Q. Now I just want to make sure I am sure of
2 something. Are you saying that there were three doors to
3 Tardy's Furniture store? There was a front door, a back
4 door and a side door?

5 A. And a side door, yes.

6 Q. That picture that showed the defect to that
7 column, did you take that picture?

8 A. I really again would have to look at the original
9 to make that decision. It does truly and accurately depict
10 the column that was there, but as to whether or not I took
11 that, I truly don't know. There was also other
12 investigators taking photographs after we removed the
13 bodies. So it could have been any number of the
14 investigators.

15 Q. Now did you look for fingerprints also on the cash
16 drawer? Was it the type of surface that you could possibly
17 lift prints?

18 A. Unfortunately not. The cash drawer was painted
19 gray and somewhat worn. And wood is a very porous surface,
20 and the worn wood -- highly polished wood is a good
21 receiving surface for fingerprints. You might think about
22 your dining room table, that if you clean that and you put
23 your hands on there, you get great fingerprints. But if you
24 might think of an old door, an old wooden door that does not
25 have a polished surface, you really won't leave fingerprints
26 there. And unfortunately, that was the surface; that was
27 the way that the drawer was constructed. It was wooden, and
28 it was fairly worn as well.

29 Q. Okay, are you familiar with Dr. Henry Lee?

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1 A. Yes. I have a book signed by him. Yes.

2 Q. You have a book signed by him?

3 A. I certainly do.

4 Q. Have you taken classes that he taught?

5 A. I believe that I have attended a workshop where he
6 spoke.

7 Q. Okay, tell the jury who he is.

8 A. He is a criminalist.

9 Q. One of the renowned and foremost one in the
10 country; is that correct?

11 A. If you follow pop culture, yes.

12 Q. If you follow pop culture?

13 A. Uh-huh.

14 Q. Well, you lost me. What does that mean?

15 A. What does pop culture mean?

16 Q. Yes.

17 A. Popular culture, watch a lot of TV.

18 Q. Oh, okay. I thought you were talking about the
19 music.

20 A. No. He might be that too; I don't know.

21 Q. Okay.

22 A. He is a forensic scientist though, and he teaches
23 at a school in Connecticut.

24 Q. Now is it fair to say that documentation and
25 photographing of imprints or impressions must be done
26 properly and at an optimum or best capability?

27 A. Could you say that again? It sounds right. But I
28 don't want to agree unless I am sure.

29 Q. Okay, is it fair to say that documentation and

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1 photographing--

2 A. Yes.

3 Q. -- of imprints or impressions must be done
4 properly and at optimum or best capability in order to be, I
5 guess the most accurate or reliable?

6 A. Do I agree with that statement?

7 Q. Yes.

8 A. To some extent. I have made positive
9 identifications on footwear impressions that weren't
10 collected under optimal conditions. It would be best, yes.
11 But I mean it is possible, it is possible to go, to
12 accurately perform a forensic investigation even if the
13 evidence that you have is not optimal.

14 Q. Okay. But you would say that it is critically
15 important to do so if you can, to document and photograph it
16 as perfectly as possible in order for it to have the best
17 and most reliable use?

18 A. Yes.

19 Q. Now let me ask you a few things about -- you took
20 the pictures. You took them in black and white?

21 A. I only took, the only impressions that I took in
22 black and white were what are called examination quality
23 photographs. So the black and white photographs only
24 correspond to the suspected bloody partial footwear
25 impressions. The evidence, the general scene documentation
26 is done in color photography. And the reason that I mention
27 that we do use black and white photography in that instance
28 is because once it is enlarged, the greater contrast. If
29 you use black and white film, there is many more-- it is

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1 kind of hard to fathom this, but there is many more shades
2 of gray between pure black and pure white that make
3 examination quality photography, well, to make the use of
4 black and white film necessary for examination quality
5 photography.

6 Q. Did you use a tripod?

7 A. I certainly did. I also used a scale which you
8 see in there and a detachable flash for oblique lighting
9 enhancement, the enhancing the footwear impressions using
10 different angles of oblique light.

11 Q. Did you set the camera up in a way so that the
12 film planing was parallel to the plane of the surface?

13 A. Yes. That's the only reason that we do use a
14 tripod. And the reason for that, if you can imagine, if you
15 have a flat surface, if you don't use a tripod to take
16 examination quality photographs, if you try to -- and you
17 see this on TV; it's not true. If people just stand over it
18 and click, what you are doing, once that is enlarged is what
19 you would create is a footwear impression that is severely
20 distorted. And what I mean by that, if you can picture, if
21 you are driving down the road, and you look way off down the
22 road, it looks like the road gets smaller. Right? It
23 doesn't; it's just your perception. And that's what occurs
24 if you attempt to take examination quality photographs not
25 using a tripod.

26 Q. Did you take only three pictures, or did you take
27 more?

28 A. Of the footwear impressions?

29 Q. Yeah.

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1 A. I took about two rolls of film of just those three
2 footwear impressions.

3 Q. Did you take them from several different angles?

4 A. No, I took --well, I took them from different
5 heights. Now again, angles is not something that's --
6 angles is not something that you can alter when you are
7 taking examination quality photographs. Remember, that's
8 the reason for the tripod. You don't want to take the
9 angle, the camera to different-- excuse me. You don't want
10 the plane of that film to be at a different angle than the
11 surface of the impression, or you will, once it is enlarged,
12 the impression will be distorted.

13 Q. Did you use any kind of chemical or enhancement
14 reagents?

15 A. I have used chemical enhancements in the past.
16 With footwear impressions and bloody footwear impressions
17 and fingerprints, the main chemical enhancement is amido
18 black. What that does is reacts with the protein in the
19 blood and makes that blood a lot darker. So chemical
20 enhancements would have been something that I most
21 definitely would have used if the surface was not black
22 linoleum. Since this was already black linoleum, if I had
23 enhanced it, it would actually probably have decreased the
24 effectiveness of the evidence.

25 Q. In this case all you did was photographed them and
26 sent them to the crime lab? You didn't have any additional
27 responsibility with respect to that, did you?

28 A. With respect to the footwear impressions?

29 Q. Yes, ma'am.

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1 A. No, sir. I am a certified footwear impression
2 examiner. I have had training, and I have also been court
3 qualified as a footwear impression examiner. I have
4 testified as a footwear impression examiner, but in this
5 case my role as far as regarding these footwear impressions
6 were only documentation and collection. Another examiner
7 performed the comparisons.

8 Q. Now did you tell me a few minutes ago you had a
9 list of persons you saw come in and out of the crime scene
10 area?

11 A. I have seen a list. I do not have a list in my
12 notes, but there should have been a list submitted in to --
13 there is a list.

14 Q. Okay. One moment. Did you do the diagram? Do
15 you recall whether you did the diagram of the sketches?

16 A. One of -- I supervised the diagram process, but I
17 did not actually do the diagram, draw the diagram.

18 Q. One moment. Now the damage to the glove box in
19 Mr. Simpson's car, you said it looked like pry marks?

20 A. It looked like to me to be pry marks; yes, sir.

21 Q. Now you don't have any idea when those were made,
22 do you?

23 A. Absolutely no idea.

24 Q. And you don't have any idea who made them, do you?

25 A. No.

26 Q. So it very well could have -- those pry marks
27 could have been made prior to July the 16th?

28 A. I would ask the person that owned the car. I
29 don't know.

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BY MR. CARTER: One moment.

(Defense Counsel confer.)

Q. Ms. Schoene, you testified earlier that you found some casings, and I think you found a live round, at least one?

A. Yeah, one live round, five casings, two projectiles, and two fragments.

Q. With respect to the casings and the live round, isn't it possible to find fingerprints on those in some situations?

A. Yes, it is. Well, it is possible to find fingerprints on those. Those were submitted to the crime laboratory and requested that they be examined for fingerprints.

Q. But you didn't examine them for fingerprints yourself?

A. No, sir. Again, my role at this crime scene was to document the evidence and collect the evidence.

Q. Would dusting them for fingerprints have done any damage?

A. Dusting them, the optimal way to develop fingerprints on casings, hard metal surfaces like that is probably to use super glue, cyanoacrylate fuming. That would be the super glue fuming to raise the fingerprints on casings. That's the way that I have done it in the past. And that is a procedure that is done in the crime laboratory under controlled conditions.

Q. Okay, so you don't do that ordinarily at the crime scene?

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1 A. They do it on CSI at the crime scene, but we
2 really don't. (Laughter.)

3 BY MR. CARTER: Okay.

4 BY THE COURT: Anything further, Mr. Hill?

5 BY MR. HILL: Just one question.

6 REDIRECT EXAMINATION BY MR. HILL:

7 Q. Ms. Schoene, do you happen to know the examiner
8 that did look at the footwear impressions that you took back
9 to the lab and developed?

10 A. I believe that was Joe Andrews.

11 Q. Was he a certified footwear--

12 A. -- Oh, he certainly is. He is very good, yes.

13 BY MR. HILL: Nothing further, Your Honor.

14 BY THE COURT: Is she finally excused?

15 BY MR. EVANS: Yes, sir.

16 BY THE COURT: Thank you, Mr. Schoene. You are
17 free to go.

18 BY THE WITNESS: I appreciate that.

19 WITNESS EXCUSED.

20

21

22 END OF TRANSCRIPT PREPARED BY LINDA F. BURCHFIELD.

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COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI

COUNTY OF MONTGOMERY

I, Mrs. Linda F. Burchfield, Official Court Reporter for the Fifth Circuit Court District of the State of Mississippi, do hereby certify that to the best of my skill and ability, I have reported the proceedings had and done in the proceedings concerning the STATE OF MISSISSIPPI V. CURTIS GIOVANNI FLOWERS, presently being No. 2003-0071-CR on the docket of the Circuit Court of Montgomery County, Mississippi, and that the foregoing pages 3 through 284 contain a true, full, and correct transcript of my stenographic notes and tape taken for the two Motion to Suppress hearings held in cause number B2401-98-00960 in the Circuit Court of the First Judicial District of Harrison County, Mississippi, on the 6th day of January, 1999, and on the 26th day of March, 1999, and the testimony of Melissa Schoene taken during the trial of Flowers IV before a jury in Montgomery County, Mississippi, in the current cause number which resulted in a mistrial.

This is to further certify that I have this date filed the original and one copy along with one CD electronic disk of said transcript in PDF language, for inclusion in the record on appeal with the Clerk of the Circuit Court of Montgomery County, Mississippi, and have notified the attorneys of record, the Circuit Clerk, and the Supreme Court

1 Clerk of my actions herein.

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This the 14th day of October, 2010.

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Linda F. Burchfield

LINDA F. BURCHFIELD, C.S.R. 1019

Official Court Reporter

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Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT #: 2003-0071-CR

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
MISSISSIPPI

STATE OF MISSISSIPPI

VS. CAUSE NO. 2003-0071-CR

CURTIS GIOVANNI FLOWERS

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN
CONNECTION WITH A TRIAL IN THE ABOVE STYLED AND
NUMBERED CAUSE, BEFORE THE HONORABLE JOSEPH H.
LOPER, JR., CIRCUIT JUDGE, FIFTH CIRCUIT COURT
DISTRICT OF THE STATE OF MISSISSIPPI, AND A DULY
IMPANELED JURY OF TWELVE MEN AND WOMEN, ON JUNE
4-19, 2010.

(Appearances noted herein)

REPORTED BY: NOELLE C. SKELTON, CSR 1356
TAMMY L. THOMAS, RPR
OFFICIAL COURT REPORTERS

APPEARANCES :

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(Representing the Defendant)

1 (THE FOLLOWING WAS HEARD IN OPEN COURT ON SEPTEMBER 12,
2 2008, IN THE MONTGOMERY COUNTY COURTHOUSE. MR. EVANS, MR.
3 HILL, MR. CARTER, MR. DEGRUY AND THE DEFENDANT WERE PRESENT.
4 PROCEEDINGS WERE AS FOLLOWS:)

5 THE COURT: We have some motions pending in the
6 State of Mississippi versus Curtis Giovanni Flowers,
7 Cause Number 2003-0071-CR.

8 I know the defense has submitted several motions.
9 And I don't know if the State has got any. If they have,
10 I haven't gotten...

11 Are both sides ready to proceed?

12 MR. EVANS: Yes, Your Honor.

13 MR. DEGRUY: Yes, Your Honor.

14 THE COURT: Which would be the first motion?

15 I will take up the defense motions first. Which one
16 do you wish to call up first?

17 MR. DEGRUY: Your Honor, do you prefer us from
18 the podium or is right --

19 THE COURT: Wherever you want to stand is fine
20 with me.

21 MR. DEGRUY: Okay. Thank you.

22 We will start with the Motion to Bar the Death
23 Penalty Based on Prosecutor Vindictiveness.

24 THE COURT: You may proceed.

25 MR. DEGRUY: Your Honor, the history of the
26 case and how we got here is set forth in, in the motion.
27 I am not going to go back through that.

28 This -- quickly, prior to the fourth trial in this
29 matter, the State announced that it was not going to seek

1 the death penalty. We proceeded to trial in that case.
2 We impaneled the jury. Heard testimony.

3 During the testimony phase a state witness, Melissa
4 Schoene, who was the crime scene analyst, gave some
5 testimony that she had never given previously that was
6 inconsistent with the report she had provided 12 years
7 ago.

8 It was by the end of the trial conclusively proven
9 that Miss Schoene had given false testimony. And she
10 also -- it wasn't just limited to the issue of the color
11 of the car. And I understand this -- the Court has not
12 been on this case as long as, as we have and certainly
13 not as long as Mr. Evans has.

14 The issue of the color of the car is critical
15 because -- or actually, whether it is a two-tone car or
16 monotone car is critical, because from the beginning a
17 defense witness has identified the car, seeing the car at
18 a critical time.

19 And she maintained that that was a two-tone car,
20 which is the description in Miss Schoene's report when
21 she was there present at the car. Her testimony which
22 was -- counts in terms of expert testimony, attempting to
23 explain pictures that clearly indicate a two-tone car.

24 They -- we proceeded on. The end of the trial, it
25 was a centerpiece of our closing argument that this woman
26 came in here and lied. And the jury hung.

27 Had the jury convicted and the case been appealed,
28 there is no question that the Mississippi Supreme Court
29 would have had to have reversed this case, because this

1 is the knowing introduction of false evidence on a
2 material issue.

3 Had that been the case and Mr. Flowers lost his
4 trial, rather than a hung jury, there is no question that
5 at that point the only punishment would have been -- the
6 only crime that could be prosecuted would have been the
7 capital murder with life without parole as the maximum
8 punishment.

9 Mr. Flowers is now in the unique position because he
10 got a hung jury. So he -- to allow the death penalty at
11 this phase, at this stage, would punish him because a
12 significant number of the jurors rejected the State's
13 evidence. Had he lost, he would have clearly won on
14 appeal and never faced the death penalty. That is the
15 argument that we are making in this case.

16 It is clearly set forth again in the motion. And
17 this is obviously -- once this issue is decided, that may
18 answer many of the other motions we have pending.

19 MR. EVANS: That is about as ridiculous a
20 motion as I have ever heard.

21 Melissa Schoene was an expert on crime scene
22 identification or the testimony from the crime scene.
23 The evidence in this case -- and since this Court did not
24 sit on the other cases, I'm sure the judge would not be
25 aware of it.

26 The car that the gun was stolen out of that was used
27 to murder the four people in Tardy Furniture belonged to
28 Doyle Simpson. It was a brown or tannish -- dark,
29 tannish-looking car. There were pictures taken of that

1 car.

2 When Melissa Schoene was testifying at trial, she
3 was shown a picture of that car and specifically tried to
4 be entrapped by the defense by asking her the color of
5 the car. There has never been a question about the color
6 of the car. Doyle Simpson has testified it's his car.
7 He has testified it's a solid-color car.

8 They tried to show her a picture that because of the
9 glare of the sun made it look like a two-tone car. And
10 she testified 12 years later, looking at the picture,
11 it's a two-tone car. That wasn't an issue in question.
12 It has never been in question. The owner of the car says
13 it's one color, and we have always said it was one color.

14 So they are trying to make an issue out of nothing.
15 This case is new before the Court. It is a capital
16 murder case. There was no question. You know, defense
17 has known for a year that we intend to seek the death
18 penalty. We intend to seek the death penalty on this
19 case.

20 There is no prosecutorial misconduct there. I will
21 let him plead today if he wants to plea. I'm not trying
22 to get him the death penalty. But it is a death penalty
23 case. And if we have to go to trial on it, we intend for
24 the jury to determine what the proper punishment should
25 be.

26 MR. DEGRUY: Your Honor, that is a
27 categorically false representation of the record.
28 Whether the car was monotone or two-tone has been at
29 issue since trial one. The sheriff has testified that

1 this was a monotone car in trial number three.

2 Miss Schoene wasn't entrapped into anything. She
3 was asked the questions on direct. She gave her expert
4 explanation for why a picture appeared to be two-tone
5 when, in fact, it was monotone despite the fact that in
6 her original report she said it was monotone. That
7 question was asked by the district attorney, not by the
8 defense. There was no way that she was entrapped. They
9 presented that evidence intentionally to say they always
10 knew.

11 Now, when we asked Doyle Simpson in trial number
12 four the color of the car, he said that it was two-tone
13 brown car. We have pictures before that, I believe, came
14 from Mr. Lumumba that clearly indicated the car was a
15 two-tone car.

16 But in every trial, one through four, the State
17 maintained it was one color. The State asked the
18 questions of Miss Schoene knowing she was going to
19 falsely testify, contradict her own report. That is --
20 that is the true record in this case.

21 THE COURT: I actually have tried to get myself
22 at least up to date on the facts of the case as much as
23 possible, because there are other motions pending today
24 that I felt like I needed to read.

25 So I've read the transcript of Flowers IV, and I do
26 have the testimony. And defense is correct that the
27 question about the color of the car was asked by the
28 State of Mississippi.

29 However, I think it would be totally speculative as

1 to what the Supreme Court of this state would have done
2 if this case had gotten -- if there had been a verdict in
3 this case of guilty. I don't know. It just seems like
4 it was a very minor, immaterial issue as far as her
5 testimony goes.

6 But I don't think it is anyway that you can say with
7 any total certainty that the State of Mississippi, the
8 prosecution, would have been reversed had this case gone
9 to trial. I have seen the Supreme Court a lot of times
10 hold something harmless that if I would have been sitting
11 there, I would have said was reversible. And I have seen
12 a few times when they have reversed things that I would
13 have considered to be harmless. So I can't speculate at
14 all as to what they would have done if this issue had
15 been down there in front of them.

16 I have looked at some law. I know the case of
17 *Sattazahn versus Pennsylvania*. It was a case that was
18 cited by the U.S. Supreme Court in 2003. In that case
19 there was a situation where defendant was tried for
20 capital murder. He was tried and convicted but the jury
21 could not agree on the death penalty.

22 Then Mr. Sattazahn appealed the conviction. The
23 conviction was reversed. Pennsylvania then sought to
24 again seek the death penalty. U.S. Supreme Court said
25 jeopardy did not attach, and therefore they could go
26 forward with seeking the death penalty again.

27 In this case there was not even a verdict on the
28 guilt phase so I do not think jeopardy has attached. And
29 I do not think that I can -- that there is any way to

1 know whether the Court -- the Supreme Court of this state
2 would have reversed this case because of this testimony
3 of Miss Schoene concerning the color of the car.

4 So I am going to deny the motion that is pending
5 that is titled Motion to Bar the Death Penalty Based on
6 Prosecutor Vindictiveness and Misconduct.

7 MR. DEGRUY: Your Honor, I understand the
8 ruling of the Court, and I respect that. But just for
9 the record, I'd like to make two requests.

10 One, that the testimony from the earlier trials is
11 obviously going to be key on any appeal in this issue.
12 And at this time we would move, and certainly when we
13 issue a Notice of Appeal, if we get to that point, and
14 Designation of Record, we would so designate these. But
15 the transcripts of the testimony portion of trials one
16 through four we would like made part of this record for
17 appeal purposes.

18 THE COURT: Well, now you are going to have --
19 if you do that, you are going to have to provide the
20 clerk of this court with what you want made as a part of
21 the record. Because as far as I know, the -- I obtained
22 the transcript of the previous trial, Flowers IV, that
23 was held in November from the court reporters that were
24 here.

25 But as far as I know, those have not been filed with
26 anyone this point. So if there is something that needs
27 to be made a part of the record, then it's going to be
28 your responsibility to make sure the clerk has that,
29 because she would not have it otherwise.

1 MR. DEGRUY: I understand, Your Honor. We will
2 tender a copy from the court reporters in Flowers IV.
3 And of course, one through three are in the clerk's
4 possession.

5 And I would just briefly like to -- I think
6 *Sattazahn* has no application here because when you look
7 at the issue in *Sattazahn*, the State of Mississippi --
8 Pennsylvania was trying him for a death penalty offense.
9 They proceeded. They pursued the death penalty
10 throughout and simply didn't get a conviction on the
11 death penalty.

12 Under the *Ring*, *Apprendi* paradigm capital murder
13 with the death penalty is a different offense. It is
14 additional element of aggravation that isn't in capital
15 murder life sentence. The State in our case was pursuing
16 the lesser capital murder and not the greater capital
17 murder.

18 So in *Sattazahn's* case it wasn't that the State
19 elected not to. And clearly, everyone agrees had
20 *Sattazahn* had a jury unanimously agree he wouldn't get
21 death, then it would have been barred. In this case it
22 was never presented to the jury. Of course, it never
23 would have been had they been seeking death.

24 The distinction between the *Sattazahn* situation and
25 our situation is the crime that we were proceeding on was
26 capital murder life without parole and not capital murder
27 death, which involved an extra element.

28 THE COURT: Well, I, I understood there is a
29 difference.

1 MR. DEGRUY: Your Honor, the second motion we
2 raise is essentially a Motion in Limine. It was filed
3 prior to the last trial. And we, we agreed that it was
4 moot at that point, because the State announced that they
5 were not seeking death. The motion is the Motion to
6 Determine Admissibility of Testimony from an Expert on
7 Eyewitness Identification.

8 As we conceded a year ago in our motion and, and the
9 law has not changed on this. Eyewitness identification
10 expert testimony has not been accepted in Mississippi.

11 Because we are talking about the use of, of public
12 funds to potentially bring an expert witness in is the
13 reason why we filed this as an in limine motion. And we
14 simply -- what we are asking for is the Court to make a
15 ruling on whether or not expert, expert testimony on the
16 problems with eyewitness identification is admissible
17 testimony.

18 Not whether or not -- you know, the jury ultimately
19 will decide whether or not to believe anything the expert
20 has to say, but this is -- the key witness in this case
21 will be -- there is numerous witnesses who identify Mr.
22 Flowers and have done so in past trials and will be
23 called to do so. A key witness is a man named Charles
24 "Porky" Collins, who is the key identification witness,
25 who, who claims to have seen Mr. Flowers and made -- and
26 did a photo line-up selecting Mr. Flowers outside of
27 Tardy furniture store. So he's, he's the key witness.

28 The State we are -- the case we are relying on to
29 secure admissibility is out of the state of Tennessee.

1 Very similar facts. Tennessee changed their previous law
2 on not allowing such testimony and reversed that case and
3 said the trial judge should have allowed the testimony.

4 THE COURT: Are you seeking funds from this
5 Court to bring this witness, or are there funds you have
6 got available of your own? I was not clear on that from
7 what you were just...

8 MR. DEGRUY: We, we are not seeking funds from
9 Montgomery County from the Court to do this. We have
10 funds. But if, if a witness -- if the witness is going
11 to come and be allowed to testify and I'm spending public
12 money, it's one thing. If I'm --

13 THE COURT: Well, when you are referring to
14 public money, you --

15 MR. DEGRUY: It is state funds.

16 THE COURT: Money that has been appropriated to
17 your office.

18 MR. DEGRUY: Right. Money appropriated to us
19 specifically to hire expert witnesses. However, this is
20 a unique situation in that this witness has never -- not
21 only this witness, this expertise has never been
22 recognized in the state of Mississippi. And before I
23 spend state funds on that, I -- that is why I'm raising
24 that as an in limine matter.

25 THE COURT: Well, explain to me why as far as
26 the guilt phase of the trial, the -- it's, it's the same
27 whether the death penalty comes at the end or not,
28 whether there is a possibility. So why is it that it
29 would be necessary for this witness now, when in the

1 previous trial you withdrew that motion?

2 MR. DEGRUY: My position is it would be
3 necessary either way. However --

4 THE COURT: Well, you withdrew it last time.

5 MR. DEGRUY: The Tennessee case specifically
6 relied -- the Tennessee Supreme Court relied specifically
7 on the fact that that was a death penalty case and that
8 the heightened scrutiny, the constitutional standards
9 that apply in death penalty cases mandated the admission
10 of this evidence.

11 And, and concededly, if it were not the death
12 penalty, if it were simply a murder case in Tennessee,
13 you wouldn't be entitled to this expert. Since we are
14 asking this Court as a matter of first impression to
15 follow the Tennessee Supreme Court, we are not asking to
16 go a step beyond. And we weren't asking the Court a year
17 ago to go a step beyond the Tennessee Supreme Court. We
18 were asking to simply follow the Tennessee Supreme Court.

19 The reason we -- we, we didn't withdraw the motion.
20 We agreed it was moot, that the only law we had to
21 support it said the only reason we are doing this is
22 because it is a death penalty case.

23 THE COURT: You did withdraw your motion,
24 because I have got the transcript of that too. And the
25 Court asked are you withdrawing your motion. You said we
26 are not calling it up. Yes, we withdraw it.

27 MR. DEGRUY: We clearly have refiled it.

28 THE COURT: Well, what part of this -- I mean I
29 understand. And I've read *Copeland*, read it more than

1 once. But I still don't see where in *Copeland* it made a
2 distinction between whether it was a death penalty or
3 not. I mean as I just mentioned previous, the guilt
4 phase of the trial is the very same, whether the death
5 penalty is a possibility of possible sentence or not.

6 And I don't -- you know, I'm kind of -- this will be
7 the fifth time this case has been tried. And I'm trying
8 to understand why this witness would be helpful to the
9 fact finder, the jury, when in the previous trials, and
10 especially *Flowers IV*, it was something that you
11 obviously decided would not be helpful to the jury.

12 MR. DEGRUY: We absolutely didn't decide that
13 it wouldn't be helpful to the jury.

14 THE COURT: Well, you withdrew your motion.

15 MR. DEGRUY: This is where we are, Your Honor.
16 This -- I believe *Copeland* is based on the fact that it's
17 a death penalty case. You are telling me I am wrong in
18 that and that it would apply anyway. And that's fine.

19 It doesn't no longer matter because you've just --
20 if it is a death penalty case and *Copeland* clearly
21 applies, we are clearly entitled to call this expert. If
22 it's not a death penalty case and the Court believes that
23 *Copeland* still applies, then we get to call the expert.
24 And we will accept that ruling.

25 THE COURT: Mr. Evans.

26 MR. EVANS: May I, Your Honor?

27 THE COURT: (Nodded.)

28 MR. EVANS: Your Honor, to start with, *Copeland*
29 would not even apply to this case. *Copeland* is a case

1 where there was one eyewitness, no other testimony, no
2 other evidence. And in that case that eyewitness had
3 given conflicting statements.

4 *Copeland* does not stand for what the defense says.
5 And that -- the defense has failed to bring out the
6 *Dotson* case. That was an August of 2008 case which
7 specifically says *Copeland* does not require the admission
8 of the testimony of eyewitness identification expert, but
9 instead holds that such testimony is not per se
10 inadmissible. We are not asking --

11 THE COURT: Which case are you citing? Is that
12 from the Tennessee Supreme Court?

13 MR. EVANS: Yes, sir. This is *Dotson v. State*.
14 It's 2008 Tennessee. It is Court of Criminal Appeals of
15 Tennessee decided August 26 of 2008.

16 Your Honor, what it boils down to, there are some
17 courts in this country that will allow under proper
18 circumstances an expert to be used. Every case that I've
19 ever seen has been one where the whole case relied on one
20 witness. There has never been a case that I know of that
21 the discretion of the Court has been reversed if they
22 find it is not necessary for the jury.

23 In this case there were, as the defense admitted in
24 our previous motion, at least 18 different eyewitnesses
25 which we furnished. And in this case, in the transcript
26 of that particular motion where they withdrew it, Mr.
27 deGruy specifically states in the case of Tennessee there
28 was one eyewitness.

29 As the Court, from the various trials, there could

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1 be in this case up to as many as 18 eyewitnesses, some of
2 which knew Mr. Flowers. There has never been a study or
3 any expert that I'm aware of that can say that people
4 that knew the person they were identifying could be
5 attacked through this method.

6 In this case there is corroborating evidence other
7 than this large number of eyewitnesses by many other
8 factors. You have got a confession that this defendant
9 made to an inmate in the jail. That came out at the last
10 trial. You have got gunshot residue on his hands. You
11 have got bloody shoe tracks at the house that are
12 consistent with a pair of shoes that would have come out
13 of a box that was recovered in the search from his house.
14 There is very much evidence there other than one
15 eyewitness.

16 They want to say that this expert could say that
17 cross-racial identification a jury cannot make a
18 determination. There is a specific case out of Florida
19 the *Green* case, cited October, 2007, where they were
20 claiming ineffective assistance. And the court in that
21 case ruled that it wouldn't have been admitted anyway
22 citing *McMullen v. State*.

23 What they are attempting to do is surpass the
24 ability of the jury to decide what weight and credibility
25 to give witnesses. They want their expert to be able to
26 come in and tell the jury you can't believe any of these
27 mass number of witnesses that are appearing before the
28 court.

29 Another thing that I think is very important in this

1 case, Your Honor - and I don't know if the Court has read
2 the entire transcript or not - but in this case we are
3 not talking about one person that can say they saw a
4 person at a individual place. We are talking about being
5 able to map out his path for that whole morning.

6 We have as many as eight witnesses that have
7 testified about his path from the point he left his house
8 that morning, to how he got to the car that the gun that
9 was used was stolen out of, to him standing beside the
10 car the gun was used out of, to his path going away from
11 the car that the gun was stolen out of, to going back to
12 his house. We can map the entire circle of that route.

13 We also can map the entire circle of the route from
14 him going from his house to the store, to being seen in
15 front of the store, to being seen running away from the
16 store.

17 So it would be absolutely no benefit to the jury to
18 try to put somebody on to say that a witness that sees
19 somebody can't identify them. That, to me, is the same
20 as going in in a chancery matter and saying well, just
21 because the wife or the husband walked in the bedroom and
22 saw their spouse in the bed with somebody, they can't
23 believe their eyes. If you know somebody specifically,
24 you are going to know who they are.

25 In this case, with all of the evidence that's
26 there -- and I'm not going to go through all the list,
27 because I am sure the Court is aware of them. But there
28 are numerous federal cases. There are numerous state
29 cases. None of which go along with the facts of this

1 case. In this case it would be improper for them to be
2 allowed to introduce an expert to try to surpass the duty
3 of the jury to determine what weight and credibility they
4 could give these evidence witnesses.

5 And as the Florida case specifically cited, the jury
6 is fully capable to assess witnesses' ability to perceive
7 and remember, given the assistance of cross-examination
8 and cautionary instructions. And there has been plenty
9 ability for the defense to try to attack these witnesses.
10 As this Court knows, three different juries did not
11 believe them. Three different juries convicted and gave
12 the death penalty based on these same witnesses.

13 THE COURT: Response.

14 MR. DEGRUY: Nothing further.

15 THE COURT: Well, Rule 702 of the Mississippi
16 Rules of Evidence is the rule that the Court has to look
17 at. And basically, if scientific or specialized
18 knowledge will assist trier of fact to understand the
19 evidence and determine the fact in issue, a witness
20 qualified as an expert by skill, experience, training or
21 education may testify to the form of the opinion.

22 There are certain things that must apply though.
23 The testimony is based on sufficient facts and data. The
24 testimony is the product of reliable principles and
25 methods. And the witness has applied the principles and
26 methods to the case.

27 And the *Daubert* case from the U.S. Supreme Court
28 gave additional five factors to look at - whether the
29 technique can be and has been tested; whether it's been

1 subject to peer review and publication; whether there is
2 high known or potential rate of error; whether there are
3 standards controlling the techniques, operation; whether
4 theory or technique enjoys general acceptance in the
5 relevant scientific community.

6 It is kind of difficult for this Court to make
7 preliminary rulings on testimony that has not been
8 proffered. Most of the cases that I have seen such as
9 the *Edmonds*, *Tyler Edmonds* case that was ruled on earlier
10 this year, the Court had the benefit of the proffered
11 testimony of the expert witness. And I do not have this.
12 So it is somewhat difficult. But I do have the benefit
13 of the transcripts of the prior trials of the testimony
14 of the witnesses that would testify.

15 In fact, I mapped out a list on my own notes.

16 James Edward Kennedy was an eyewitness that had
17 known Mr. Flowers. He saw him near Angelica on the day
18 of the murders. And the gun was stolen out of Doyle
19 Simpson's car while parked at Angelica. Catherine Snow,
20 somebody that knew Mr. Flowers, and she saw him near
21 Doyle Simpson's car when it was parked at Angelica.

22 Clemmie Fleming testified that he had known Curtis
23 Flowers all his life and saw him near the Tardy furniture
24 store on the morning of the murders. Mary Janette
25 Fleming, known Mr. Flowers for many years. She saw him
26 near the Tardy furniture store on the morning of the
27 murders. In fact, she spoke to him as they passed each
28 other on the street.

29 Patricia Hill lived next door to Mr. Flowers. So

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1 she had known him for a long time. She testified that
2 she saw him wearing Fila Grant Hill tennis shoes on the
3 morning of the murders. And, of course, that was
4 important, because the shoe print found at the scene of
5 the crime was found to be of that type shoe.

6 Edward Lee McChristian, known Mr. Flowers and saw
7 him near Angelica on the morning of the murders. Beneva
8 Henry knew Mr. Flowers, saw him walking toward Tardy
9 furniture store on the morning of the murders.

10 And then Porky Collins is the only person that
11 testified that did not actually know Mr. Flowers. And
12 after reading his testimony, I do not think that he made
13 an emphatic eyewitness identification. He did not make
14 an unequivocal one. He stated throughout that was
15 someone he believed to be Mr. Flowers. And he said he --
16 I believe his testimony was I'll always believe that was
17 Mr. Flowers.

18 But, you know, here we are dealing, with the
19 exception of Mr. Collins, individuals that had known Mr.
20 Flowers all of his life or had known -- not necessarily
21 all of his life, but they had known him for an extended
22 period of time. Collins was the only one that had not
23 known Mr. Flowers previously.

24 But I read the transcript, and Mr. Collins'
25 testimony will be by transcript. I understand that he
26 died somewhere -- I guess it was after Flowers II, but
27 I'm not really sure on that.

28 But I know that his prior testimony will be what
29 will be offered. And he was extensively cross-examined,

1 even into the most minute detail about issues concerning
2 what path he took driving around town that morning. He
3 stated in his testimony that he had a brief glimpse of
4 who he believed to be Mr. Flowers.

5 There was -- he was cross-examined about his ability
6 to remember things. He was cross-examined about whether
7 he had had difficulty with memory problems in the past.
8 I mean I do not think there could be a more thorough
9 cross-examination of a witness than was done with Mr.
10 Collins.

11 So I think given extensive cross-examination of Mr.
12 Collins and because all other witnesses knew Mr. Flowers
13 on sight, I do not believe an expert on witness
14 identification would assist the jury in the least bit in
15 this case.

16 I'll also note that some of the things that Mr. --
17 this witness, Dr. Neuschatz, would testify about are so
18 common sense things, such as if you are wearing a cap it
19 is harder to identify you; or if you see somebody, the
20 longer you see somebody, the more likely you are to
21 identify them, are such common sense things that that
22 certainly wouldn't assist a jury in anyway.

23 And again, I'll come back around to the idea that I
24 was questioning counsel about earlier that, you know,
25 that this wasn't important enough a witness to call when
26 it was just strictly a non-death penalty case. And so
27 I'm of the opinion the defense didn't value the testimony
28 of this witness very much or they would have sought to
29 call him in November.

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1 Further, though, I think aside from the fact that I
2 do not think this would assist the trier of fact, I do
3 not think all the *Daubert* principles have been shown to
4 the Court to apply to this testimony.

5 The defense has not offered to this Court this idea
6 that the theories the defense would testify to or the
7 area of expertise proffered are generally accepted. I do
8 not know whether the testimony has a potential or known
9 high rate of error. I do not have anything about that.
10 I do not know anything about the principles and methods
11 used to come to conclusions.

12 And basically, the witness did not apply the
13 principles and methods to the facts of this case. He
14 made broad generalizations in the document that was
15 submitted, but he did not specifically apply those
16 principles and methods to the facts of this case.

17 So for all these reasons, I do not think that this
18 witness testimony would be appropriate, and I am going to
19 deny the testimony of this witness.

20 MR. DEGRUY: Your Honor, just for clarity of
21 the record, the report from Dr. Neuschatz that the Court
22 was referring to, of course, we disagree on whether or
23 not it meets the standards; however, it is a, a sworn
24 affidavit. So just as in the *Edmonds* case where there
25 was testimony, there is testimony in this case.

26 THE COURT: Well, I got the impression from
27 reading *Edmonds* that the witness had actually been
28 present in court and subject to cross-examination before
29 the witness was, was called.

1 MR. DEGRUY: That, that is correct, Your Honor,
2 but we produced testimony. The State hasn't produced
3 anything in rebuttal. Simply argued; that is not our...

4 But I, I understand the ruling of the Court, and I
5 respect it. As long as the record just needs to be
6 clear, we're -- if I am mistaken that, that I am not --
7 that I was still entitled to this expert if this was a
8 non-death penalty case then that was an error on my part
9 that would now be moot in that we both going back for it
10 at this point as if this case is, is in original motion.
11 So the fact that we withdrew is of no consequence.

12 THE COURT: Okay. What would be the next
13 motion?

14 MS. STEINER: If the Court please, the next
15 motion we would call up is our Motion to Bar the
16 Prosecution from Exercising Peremptory Strikes at all or
17 at Least From Exercising Them Against Non-White Venire
18 Members During Jury Selection or in the Alternative to
19 Bar the Seeking or Imposition of the Death Penalty in the
20 Event of Conviction. Mr. deGruy has asked that I argue
21 this, because I did the research upon which it is based.

22 We are not dealing with a case here where we are
23 looking at first impression. We are not looking at what
24 Tennessee would say or what Florida said or what some
25 federal court said. We are looking at black letter
26 Mississippi Supreme Court law that is not only black
27 letter Mississippi Supreme Court law, it is the law of
28 this particular case. And that is the decision in
29 Flowers III reversing one of the three convictions,

1 again, on shortcomings of the prosecutor not corrected by
2 the trial court.

3 I mean I have to say that it's rather bold to argue
4 that juries that convicted or entered a death sentence
5 that the Supreme Court has found prosecutorial misconduct
6 was sufficiently prejudicial that that conviction and
7 sentence was a product of that is not, I think,
8 appropriate here. And I think we are on the high ground
9 here.

10 Not only did the Supreme Court in Flowers III find
11 Batson misconduct, they found that after Judge Morgan in
12 Flowers II had already found two jurors as to whom
13 pretextual reasons had been offered and actually did not
14 permit -- and forced the seating of one of those jurors
15 specifically because of a Batson violation. And that
16 ruling apparently had no effect on the prosecution,
17 because Flowers III was ultimately reversed by the
18 Mississippi Supreme Court for that same violation.

19 And the black letter law in that case, I think it is
20 clear. And, you know, I have to say, when I got involved
21 in this case the first thing I did was read the prior
22 decisions.

23 And I was struck by the fact that the plurality
24 basically said we are very troubled by the whole pattern
25 here, not just the prima facie case. But we are
26 concerned that even some of the things we decided the
27 trial court had the discretion to rule on, if we had been
28 trial judges we might have found differently,
29 particularly abusing the information that comes out in a

1 death penalty voir dire.

2 And in the last case the patterns that so troubled
3 the Supreme Court in *Flower* three persisted. Every
4 single strike that the State exercised was exercised
5 against an African American juror.

6 Now, as I've set forth in some detail in the -- in
7 the motion, the luck of where the order in which people
8 were drawn really had made it improbable that unless
9 everybody in that panel who had already passed
10 qualification became disqualified that that the jury was
11 going to look pretty much what it looked racially. And I
12 don't believe -- I don't believe a *Batson* was even
13 imposed. Because I think it is interesting --

14 THE COURT: That is *Flowers IV* you are --

15 MS. STEINER: In *Flowers IV*. I mean it is very
16 interesting. I spent the first 25 years of my law
17 practice practicing employment discrimination law and
18 notions of, you know, there are some things that are just
19 so self-evidenced that this back and forth and pretext
20 and, and everything doesn't happen.

21 And the other thing, the other black letter law that
22 I think is the law of this case, as well as the
23 Mississippi Supreme Court, has basically said judges who
24 hear this case need to look at this history and that the
25 job of judges, and they call it a very difficult and
26 sensitive area, because, you know, proving, proving this
27 sort of thing is never pleasant or easy.

28 And they have basically said we have to put a stop
29 to this. The remedy is difficult. We are not going to

1 take extreme actions of precluding use of peremptories.
2 But they have said if this continues to be a problem and
3 I believe, Your Honor, if there is a case in which this
4 has continued to be a problem, this is the case. And
5 that this Court certainly is empowered in its ability to
6 regulate this courtroom.

7 And I think that the duty of us all as officers of
8 this court -- and, of course, you're the chief. You're
9 the person who makes the decisions when it's the
10 Fourteenth Amendment, when it's racial discrimination,
11 that our duties here are when there is a basis for
12 predicting that it is going to happen again and
13 particularly, when the death penalty is sought, because
14 it is the excuses about feelings on the death penalty and
15 apparently differential treatment of white and black
16 venire members with respect to peremptory strikes that
17 this Court has the power to and should exercise its power
18 here to restrict the State from employing peremptory
19 strikes.

20 The only statutory thing in the state of Mississippi
21 regarding peremptory strikes in capital cases is that a
22 certain number are accorded. I think the Fourteenth
23 Amendment could trump the applying that statute or not --
24 or letting him have it.

25 But even if this Court were to feel that the State
26 had to have its 12 peremptories, it could as a narrower
27 remedy say that the State simply cannot peremptorily
28 challenge African-American venire members. The State --
29 the Court has done -- in the past has done individual

1 voir dire.

2 I am understanding the Court is planning to do
3 individual voir dire prior to peremptories that can root
4 out genuine cause-based type things, particularly with
5 respect if the death penalty were permitted. And that in
6 this instance this Court can prevent misconduct that has
7 happened in the past, has happened in the past despite
8 judicial orders and findings that it has happened and
9 cautions to this very state prosecution team that they
10 shouldn't do it anymore. And it has continued doing it.
11 And I think it has to stop here.

12 And particularly with the Court's ruling that there
13 is no legal impediment to their seeking the death penalty
14 that either they need to be constrained from abusing this
15 again or the Court can then determine that the death
16 penalty is not at issue. At which point death penalty
17 voir dire won't happen.

18 We won't have the opportunity, as I think the Court
19 calls it, for pretextual and discriminatory
20 justifications. And we would therefore move under the
21 state and federal authority cited and the facts cited
22 that this case, as a remedy for the discrimination that
23 has occurred and persisted, despite judicial review, that
24 the State be precluded here from either exercising
25 peremptories or certainly from exercising peremptories
26 against persons of color, or in the alternative that the
27 death penalty be barred. And then should a Batson
28 problem arise, it can be dealt with at the time. But we
29 are bringing up pretrial, because we think it is so

1 important in the death penalty context.

2 MR. EVANS: Your Honor, it is very difficult to
3 be respectful to a response to something like that, but I
4 am going to try. To start with, as defense counsel
5 knows, there was nothing like what the Supreme Court
6 found that happened in Flowers III.

7 Part of the problem has always been that we try to
8 do things as fast as we can in this district. I think we
9 were given maybe 20 or 30 minutes after four days of voir
10 dire to go through our notes and find our reasons for our
11 strikes.

12 One juror, it's very possible that we may have
13 written a comment down on the wrong list. But as the
14 Court is aware, and apparently some people are not, we
15 don't have the luxury of spending months or years trying
16 to go through voir dire and trying to mark down exactly
17 which juror says what.

18 It is very possible that one of us may have written
19 down that a different juror said something than did. But
20 if it happened -- and I still think that that juror did
21 say that. Because if it did happen and it was a mistake,
22 not only did I have it wrong, but the Court had it wrong,
23 and the defense had it wrong, because nobody pointed that
24 out. It was only after a transcript was prepared and
25 going through the record.

26 As this Court well knows, there are comments. There
27 are gestures. There are things that jurors do that no
28 attorney is going to leave them on the stand. We had
29 jurors in this case that were making facial gestures,

1 that were doing different things that I will never leave
2 any juror that's doing that on a case.

3 Now, in this particular case there has never been
4 any attempt to strike any juror other than the ones that
5 there was a reason for. Now, are there going to be more
6 strikes by the prosecution of blacks? Possibly. But not
7 for non-racial reasons.

8 This witness -- this defendant is related, as the
9 prior voir dire showed, to probably over half of the
10 black community of Montgomery County. For that reason, I
11 don't think no matter what color, what race he is any
12 prosecutor would want to allow his relatives or friends
13 on a jury. I mean that -- I guess the defense could not
14 only argue they don't want any blacks struck off the
15 jury, but they don't want any of his family members
16 struck off the jury.

17 The whole purpose of a trial and a voir dire is to
18 attempt to get a fair jury. I know that this Court is
19 not going to allow either side to improperly strike
20 jurors. The law is clear in this state. And I, I
21 respectfully, highly disagree with the justice that wrote
22 the opinion in *Flowers III*.

23 I think if the Court had seen what went on in trial
24 and understood, that ruling would have been completely
25 different. But when you coldly get a record and don't
26 see what goes on, it is easy to be mistaken about what
27 happened.

28 The law is clear in this state as to what is
29 permissible, what is not. All we intend to do is follow

1 the law and use the strikes that there are reasons for.
2 And I think that because of this case, it's going to be
3 necessary to have a more thorough and more written list
4 of what the jurors say so that no error can occur from
5 any side.

6 THE COURT: Response.

7 MS. STEINER: If the Court please. I take
8 seriously that accusation of, of even discourtesy in a
9 courtroom. And I don't believe I said anything here with
10 respect to the facts of this case, with respect to jury
11 selection that have not already been determined by
12 judges. However much we may agree or disagree with their
13 determination, those are black letter law in Mississippi
14 and the law of this case.

15 THE COURT: Well, I think Flowers III was very
16 clear that the prosecutor engaged in misconduct. You
17 know, they had the transcript of what happened. I am not
18 going to speculate about what happened in that prior
19 trial, but it is clear from the opinion that the Supreme
20 Court found prosecutorial misconduct. So that is beyond
21 question, and I don't really think the prosecutor should
22 be arguing otherwise now.

23 The -- your motion, you know, eludes to the fact
24 that there was misconduct in Flowers IV. I really don't
25 believe that could have occurred. I don't believe it --
26 or let me back up and say, I think counsel that
27 representing Mr. Flowers are very capable and competent
28 counsel. And if there had been a Batson problem in
29 Flowers IV, I have no doubt whatsoever that issue would

1 have been raised to the Court.

2 So I don't think there is any way that anyone could
3 seriously argue that defense counsel would just ignore a
4 Batson problem in Flowers IV, after Flowers III had been
5 reversed on a Batson problem. So it seems the last trial
6 the prosecutor did learn their lesson about not using
7 racially -- strikes for racial reasons.

8 I want to caution the State of Mississippi at this
9 point, because you made a comment about facial
10 expressions or something like that in the jury panel. If
11 there is not something this Court can look in the record
12 and see, it is not going to be allowed to be used as a
13 strike.

14 If counsel for either side sees a witness out there
15 that they believe is being -- I mean a juror that is
16 being inattentive, that is not making eye contact, that
17 is doing things of that nature, your responsibility is to
18 come forward to this Court right then and make the Court
19 aware of it. Because if you can't read it in the record
20 and see it, then it's not going to be allowed to be as a
21 strike -- be a strike.

22 If there is a situation where, you know, somebody's
23 supposedly got a family member that's been involved, you
24 know, or convicted or something like that, if you --
25 you've got opportunity to voir dire jurors on those
26 issues. And if it's not something that I can look in the
27 record and see, it's not going to be considered to be
28 race-neutral reason. It has got to be something I can
29 see in the record.

1 So that is the limits the Court is going to place.
2 I do not think that it would be appropriate to say the
3 State cannot exercise any peremptory strikes, because
4 there are situations -- in fact, I mean, you know, I know
5 what Flowers III said. And obviously, Judge Morgan in
6 Flowers II did order that one of the black jurors be
7 placed on the panel.

8 But it's also -- obviously, a number of jurors were
9 stricken for non-racial reasons, because there were
10 very -- you know, one was one too many. But
11 nevertheless, there are valid race-neutral reasons for
12 striking jurors. And so I am not going to preclude the
13 State from having peremptory challenges. But again, I am
14 going to caution the State of Mississippi that I am going
15 to look very closely at this case.

16 You know, once a case gets reversed, even though it
17 wasn't me that was presiding at the previous trial, I
18 think any court is going to be very cautious of what
19 happened to cause reversal in the past, is going to be
20 diligent in making sure that type error does not occur
21 again.

22 So if it's not something that I can see in the
23 record that happens in the courtroom that is not called
24 to my attention then it's not going to be considered to
25 be a valid excuse. So I'm going to deny the motion. But
26 I am going to keep a watchful eye on the proceedings and
27 on the State of Mississippi's use of their challenges.

28 What's the next one?

29 MS. STEINER: Your Honor, we would call up the

1 Motion to Preclude Death Qualification of Jurors or in
2 the Alternative to Preclude the Imposition of the Death
3 Penalty.

4 This goes less to and in particular sanctions or
5 findings of the law of the case and more to -- it is case
6 specific, it appears as the Exhibit A to this motion,
7 shows that as the Court observed in *Flowers*, in the
8 fourth trial, where the death penalty was not being
9 sought, a jury that was representative, was proportional
10 racially, proportional to the venire drawn, which itself
11 as observed in *Flowers III* was proportional to the
12 general racial makeup of the county, that we had a venire
13 that looked like the county in both *III* and *IV*. And in
14 *III* we didn't have a jury that looked like the county,
15 and in *IV* we did. And what's the difference between
16 those two cases? The difference is that there was no
17 death penalty.

18 Death qualification per se tends to do two things.
19 One, in it can -- it can whiten as it were -- or it takes
20 certain groups out of the, the pool. People with
21 religious scruples tend to be members of similar churches
22 and people without religious scruples about the death
23 penalty tend to be in different churches. That sort of
24 thing.

25 *Witherspoon* says that is okay. But what *Lockhart*
26 *versus McCree* says is that that's okay, but only if the
27 result and the effect of death qualification isn't to
28 exclude identifiable groups, women. *Lockhart* identifies
29 racial groups and those sorts of things.

1 The Mississippi Supreme Court interestingly enough
2 has added religion into a suspect category. We are no
3 longer permitted to cite religion itself as the basis for
4 a strike, neither the State or the defense. It applies
5 to both. And so I would argue that we may be in question
6 as to whether *Witherspoon*-type death qualification is --
7 that excludes people on the base of religion might even
8 be at issue.

9 But simply put here, I think the numbers are as
10 articulate as they can be in Exhibit A, that in *Flowers*
11 III where the death penalty was sought the -- in a 50, 45
12 percent African-American and 54 percent white. I did
13 double check. The population of Montgomery County is
14 still almost entirely out of those two groups, and it
15 persists with these numbers.

16 In *Flowers* III we ended up with 30 points difference
17 from the distribution in the actual jury. In *Flowers* IV
18 we were within ten points after -- even after what I have
19 argued was use of ten peremptories on, on African
20 Americans by the State. But I -- you know, we have a
21 jury where there wasn't a death qualification.

22 That is not statistically significant with divergent
23 from the venire summoned and from which it was drawn in
24 spite of the fact that this is the county where this
25 happened. There -- and probably there are numerous
26 people who are the friends or relatives, not only of Mr.
27 *Flowers* and his family, but also of Mrs. Tardy, Mr.
28 *Golden*, Mr. *Stewart* and Mrs. *Rigby*.

29 I mean that -- the fact is when a death penalty

1 wasn't being sought, we got a jury that was -- that
2 looked like what the Supreme Court told us in *Flowers III*
3 a jury should look like drawn from this county. And I
4 believe that either -- and that death qualification is
5 the reason that this happened.

6 And so either this Court could preclude
7 imposition -- I mean precluding imposition of the death
8 penalty may or not using death qualification to draw the
9 jury, if the death penalty is sought, is the solution to
10 the Fourteenth Amendment problem that arises, that I
11 think under *Witherspoon* remains good law, that in this
12 particular case the *Lockhart* issue that wasn't decided in
13 *Lockhart* about racial discrimination resulting from death
14 qualification.

15 And certainly if the jury was deciding guilt or
16 innocence should not -- it would be a Sixth and
17 Fourteenth Amendment violation for such a jury to be
18 drawn and that therefore the death penalty imposition --
19 imposition of the death penalty should be banned.

20 MR. EVANS: Your Honor, I don't think this even
21 requires much argument. The law is clear of what
22 questions are proper. The law is clear of what the Court
23 is to do on these. I don't even see a need in arguing
24 this.

25 THE COURT: As defense counsel notes,
26 *Witherspoon* is still good law, and I do not feel like I
27 could overrule the U.S. Supreme Court. It works the
28 other way.

29 And so it -- you know, and I don't -- of course, I

1 didn't have the benefit of four previous trials. So I
2 don't know what questions were asked. Or let's say I
3 don't know what the race of the jurors that, that were
4 that said that they could not even consider the death
5 penalty. I've tried several death cases and I've had --
6 you know, I don't know that I've really noticed that
7 there is a great deal more of one race than another that
8 says they can't consider the death penalty.

9 But basically, *Witherspoon* is good law still. And I
10 don't think I have any authority to, to decide on my own
11 that it's not good law. I think the *Witherspoon* question
12 will be asked.

13 Also, well, in fact, we have the jury questionnaires
14 had the *Witherspoon* question. It also had the question
15 that defense counsel wanted about, you know, the
16 consideration of life without parole.

17 But I am going to deny the motion on death
18 qualifying based on the fact that I think *Witherspoon* is
19 good law still.

20 What is next?

21 MS. STEINER: Your Honor, maybe you will be
22 relieved to know this is the last one I'm going to be
23 arguing.

24 I -- earlier this week, I called the sheriff. We
25 talked about the bailiffs. And he indicated to me that
26 although I didn't know if the bailiffs went with the
27 judge or if the sheriff -- what the thing was. And he
28 did inform me that, I think, three of the jury bailiffs
29 that the sheriff has arranged to sit with this jury when

1 it's sequestered are bailiffs that have, in fact, served
2 in at -- some of them have, I think, served in all four
3 previous trials.

4 I gave the sheriff a courtesy copy of this, and he
5 is here today and can tell the Court about what, what is
6 and isn't possible. And I don't want to mischaracterize.
7 He said that he basically -- as a new sheriff has
8 basically relied on the people who have been recruited
9 before. I do not minimize the kind of sacrifice it
10 requires of the people who are going to serve as
11 bailiffs.

12 THE COURT: Why don't we, since the sheriff is
13 here, just have him come around and state on the record
14 who is going to be bailiffs.

15 MS. STEINER: That, that will --

16 THE COURT: And so, if you will. Because I --
17 obviously, I am new to this case. So you can sit on the
18 witness stand. That would probably be easier for the
19 court reporter to hear you, if you just...

20 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

21 THE COURT: Sheriff, who have you got lined up
22 to be bailiffs on this trial?

23 THE WITNESS: I have Mary Browning and Richard
24 Whitfield, Bud Knight, Mattie Hall, Pat Haynes and Ronald
25 Bennett.

26 THE COURT: The second one. Mary Browning.
27 Richard.

28 THE WITNESS: Whitfield.

29 THE COURT: The next one.

1 THE WITNESS: Mattie Hall.

2 THE COURT: Mattie Hall. Okay. Pat.

3 THE WITNESS: Pat Haynes.

4 THE COURT: Ronald.

5 THE WITNESS: Bennett.

6 THE COURT: And what was the...

7 THE WITNESS: I am trying to think which ones I
8 left out.

9 THE COURT: The initials starts with a "B", but
10 I didn't get --

11 THE WITNESS: Bud Knight.

12 THE COURT: And of those, I am sure Miss
13 Browning, because she has been a bailiff over here longer
14 than I have been judge. I don't know these others. So
15 who served as --

16 THE WITNESS: Mary Browning. Bud Knight. And
17 Mattie Hall.

18 THE COURT: And, of course, I am sure you will
19 have bailiffs staying at night. Some of them will be
20 here for the day, and some will be at night.

21 So who are going to be the ones that will be staying
22 at night?

23 THE WITNESS: Night time will be Bud Knight and
24 Mattie Hall.

25 THE COURT: Okay. Unless y'all have got some
26 question, I just wanted it here in the record, because I
27 didn't know who the sheriff had lined up.

28 MS. STEINER: Thank you, Sheriff.

29 Yes, Your Honor. I think certainly day jury

1 bailiffs that are in the courtroom, in the public world,
2 you know, that, that I'm less concerned. Although, I
3 think the same considerations apply.

4 But certainly the night bailiffs. The jury is
5 expressly forbidden from communicating with anybody
6 except these bailiffs. And in the course of a
7 sequestration, the Supreme Court case I have cited, it
8 was a eight-day sequestration, which is more or less like
9 what we have here.

10 The relationship between the bailiffs and the jurors
11 is a very close one. It is often one of great intimacy,
12 because if something very personal happens that you might
13 just tell your spouse about that needs attention, you
14 have to go to this juror -- this bailiff and tell them.
15 It's a close relationship.

16 And this is a case where, you know, the key is that
17 this jury hear this case and decide guilt or innocence,
18 and if it comes to sentencing, sentencing on the basis
19 only of what was before it and admitted by Your Honor in
20 this case. I think that even inadvertently things that
21 might have been evidence in another case, in another
22 trial can be eluded to in ways that are of significance
23 to one of these jurors and that the possibility of
24 cross-contamination.

25 We are not suggesting there has been any affirmative
26 misconduct. I believe Mr. deGruy and Mr. Carter said
27 there was some question. I think while one of the cases
28 was on appeal, someone who had worked as a bailiff had
29 conversed in the community about the facts.

1 But no -- I'm saying this again is a move to prevent
2 things from happening. I, I don't think I read a single
3 case in Mississippi or elsewhere. I looked today at all
4 our annotations where the first thing the Court says when
5 it finds an improper contact not to be prejudicial, it --
6 but we wish it hadn't happened in the first place. And
7 we caution -- Mississippi Supreme Court has said this.
8 We caution Courts to make sure the opportunity for this
9 happening doesn't happen and that we condemn any kind of
10 potential communication of anything other than -- to a
11 juror, other than what might happen.

12 And I believe that jurors who -- the bailiffs who
13 have been familiar with other testimony and are not
14 forbidden from looking at papers -- in fact, I think they
15 have to look at papers to make sure there is nothing when
16 they pass them on to the jurors. That certainly people
17 who have had multiple exposures to this case, in multiple
18 trials, their service to this court is immeasurably
19 valuable.

20 But in this case they should not be the sole point
21 of contact with the world and the Court for jurors who
22 are trying -- we are going to have to look for jurors who
23 can promise us they can hear only what is said in this
24 courtroom. And I think it's an opportunity for even
25 inadvertent error, much less deliberate misconduct.

26 And that we would request that the sheriff look in
27 the community for -- I'm sure there are lots of people in
28 the community who, if approached, would be honored to do
29 this kind of civic duty, and could be trained in the ten

1 days on what might be expected of them. And I would
2 respectfully request that that be done with respect to
3 the jury bailiffs in this case.

4 MR. EVANS: Your Honor, as a general rule, I
5 don't care who the bailiffs are, because neither side has
6 any say in that. It is nothing that is an issue.

7 As this Court knows and all the attorneys know, this
8 Court is going to advise the jurors to start with not to
9 talk to anybody about the facts of the case. The
10 bailiffs are going to be under oath not to do that.
11 There has never been an accusation that any bailiffs have
12 talked to any jurors about the case.

13 And to me it's even -- if I had any say in it, I
14 would prefer having bailiffs that did know how to be a
15 bailiff instead of just going and getting somebody off
16 the street that might not realize how important it is not
17 to talk to the jurors. But to start with, I think that
18 is the sheriff's call. And I think that neither side has
19 any say as to who the sheriff picks.

20 And the Court is the one that controls the fact that
21 nobody - attorneys, bailiffs, witnesses or anybody else -
22 try to influence the jury improperly. And I think that
23 has always been done. I am sure it will be done in this
24 trial.

25 THE COURT: Well, I agree with the State on one
26 statement that was made. I want people around that know
27 what to do, how the process works and have been around
28 before. I will go on -- I will -- of course, the
29 bailiffs are sworn in on a capital case too. They are

1 given an oath.

2 But I will go further. When their oath is
3 administered, I will advise them that they cannot discuss
4 the facts of the case with the jury, and they cannot
5 mention to the jury a prior trial or anything about the
6 case. And the jury, obviously, is cautioned about not
7 discussing the case with anyone or among themselves, but
8 I'll also give that same caution to the bailiffs.

9 I think that that -- I don't think there is a
10 problem. This is one area where there is not a problem
11 at all. But, you know, to head off any potential
12 problem, I will certainly go on record and advise them,
13 the bailiffs, not to discuss the case with anyone and not
14 to discuss the fact that there has been previous trials.
15 And I think that will take care of any problem that might
16 arise.

17 Are there any of the other defense motions to call
18 up at this time?

19 MR. DEGRUY: Yes, Your Honor.

20 There are several motions that were litigated in
21 earlier trials that we specifically would like to bring
22 up today. Actually, I have, I think, six or seven that,
23 that we will renew for the sake of this case.

24 The first is we filed a Motion to Prohibit Victim
25 Impact Evidence. The, the argument we have and this,
26 this motion has been ruled on before. It's been -- we
27 have been ruled against on this. Flowers III, the
28 Supreme Court in Justice Cobb's concurring opinion made
29 reference to this issue; although, the case was reversed

1 for other grounds and no one else joined her.

2 The issue on the victim impact evidence is -- our,
3 our first argument is while the constitution allows it,
4 it only allows relevant evidence. And under the
5 Mississippi scheme, unless it goes to an aggravated
6 circumstance it can't be said to be relevant to anything,
7 because the only thing the State can and must prove are
8 aggravating circumstances. And so we, we are objecting
9 to it primarily on that ground.

10 The, the other, as an alternative, is the limit
11 to -- under the statute, which is one, in the past, one
12 of the grounds. We have a victim rights' statute that
13 allows victim impact statements that I request is that,
14 that statute is written in the singular. It only allows
15 for one victim representative. And we would ask, without
16 waiving our argument, that it shouldn't come in at all,
17 it's irrelevant, that we at least ask that it be limited
18 to one witness per victim.

19 MR. EVANS: Your Honor, there has never, that I
20 know of, been an issue where our Supreme Court has said
21 victim impact is not appropriate. This issue has been
22 raised numerous times.

23 Matter of fact, there was never anything that said
24 that these victims should not have been allowed to
25 testify about the impact it had on their families. That
26 is definitely relevant. Even the one justice that had a
27 problem with it, did not have a problem with the victim
28 saying how this had influenced their families.

29 There was one witness that gave an opinion as to

1 what the sentence should be, and that was what I think
2 Justice Cobb went off on.

3 Now, as far as limiting it, we have never put on, I
4 don't think, over two per victim. You know, we don't ask
5 that the defense only be able to allow to put on one
6 witness in that phase of the trial. And I think for the
7 Court to specifically try to limit the number of
8 witnesses would be unreasonable.

9 I -- we, we -- as the Court can see from the
10 previous trials, we are not going to try to parade a long
11 list of witnesses in. We are just going to try to follow
12 the statute and present just enough so that the jury can
13 see what type of impact, that is allowed by law, there
14 has been because of these four murders.

15 THE COURT: Well, the victim impact testimony
16 has been allowed by the Mississippi Supreme Court. That
17 is still the law. I am going to deny the, the motion to
18 exclude victim impact. I'm also going to deny the motion
19 to limit it to one per victim.

20 However, I will say that if testimony becomes
21 cumulative, that the defense certainly may object, if the
22 case ever gets to that point. And the Court will
23 consider that objection at the time. But I am not going
24 to rule ahead of time that the State's limited but to one
25 witness on victim impact. So I am going to deny that
26 motion.

27 MR. DEGRUY: The next motion, Your Honor, is a
28 Motion for Disclosure of Evidence to -- of the State's
29 snitch, Odell Hallmon.

1 Again, this motion was raised before the Flowers III
2 and renewed before Flowers IV. And specifically, we have
3 gotten the criminal history on Odell Hallmon. What we
4 have not gotten are jail records, pen pack, the records,
5 everything that the prison and jails -- that the numerous
6 prisons and jails he has been housed in have.

7 As well as Mr. Hallmon testified at the third trial
8 that he had been administered a polygraph exam. Of
9 course, the mention of a polygraph and admission of any
10 polygraph is inadmissible in court. However, if he took
11 one, then there are statements that he made during that
12 polygraph, and that we do believe we are entitled to.

13 THE COURT: Well, now, I -- you know, I read
14 the transcript of the previous testimony of Mr. Hallmon
15 at Flowers IV, but I -- give me more specifics about
16 exactly what it is you are asking for.

17 MR. DEGRUY: He has been housed in the
18 Department of Corrections at different facilities and in
19 jails. He claims that he was contacting the district
20 attorney at different times. He claims he was in
21 proximity to Mr. Flowers at different times.

22 There are also his, his -- questions of, of his
23 mental state. He is saying -- he has admitted that he
24 committed perjury. What we would like is all of the
25 files that the sheriffs and the Department of Corrections
26 have on this witness be given to us so we can go through
27 and see if there is, in fact, exculpatory impeachment
28 evidence in there and specifically his, his polygraph,
29 the questions and answers on the polygraph exam.

1 MR. EVANS: Your Honor, one thing that I think
2 is very important. Of course, to start with let me say
3 this. The State has given the defense everything that
4 they are entitled to on any witness. On Odell Hallmon
5 though, one thing that I think is very important, this
6 was not a state witness until the last trial. This is a
7 witness that the defense coached, that the defense went
8 to Parchman or wherever. I think he was in Greenwood.

9 They met with him on numerous occasions. They
10 worked with him. He testified as a defense witness in
11 Flowers III. He was a key defense witness in Flowers
12 III, because he tried to impeach the testimony of his
13 sister, Patricia Hallmon, by saying that she had lied and
14 was trying to take up for Curtis Flowers.

15 It was only after that that he contacted me, and he
16 told me that he had lied. He went into detail about why
17 he had lied, because this defendant had asked him to. He
18 testified. And the first trial that he testified in, I
19 may have the numbers wrong as far as the trials, I think
20 it was trial two that he testified in. It was the
21 Gulfport trial that he testified for the defense in.

22 It was brought out through questioning of the
23 defense about the polygraph. We did not bring that out.
24 In Flowers IV we specifically made sure in open court,
25 without the jury here, that the Court told him that no
26 matter what either side asked him, that could not be gone
27 into. We have tried hard to make sure that only the
28 proper questions were asked.

29 But this is a witness that was a defense witness.

1 And he has specifically testified that he did lie. Yes,
2 he committed perjury. But he committed perjury at the
3 request of the defendant.

4 And I think that is very important. I think that is
5 a key issue in this case. As a defense witness, they
6 know more about him than I did. He has been convicted.
7 He has several convictions.

8 He testified he didn't particularly like me, because
9 I had sent him to the penitentiary. All of that has been
10 furnished. Everything has been gone into. They were not
11 limited on cross-examining him. They went into all of
12 it.

13 As a matter of fact, they elicited, I think -- so
14 much has happened, it's hard to say exactly who did what.
15 But I think they were the ones that elicited from him in
16 the last trial that it was a prior defense attorney that
17 had specifically asked him to lie. All that was gone
18 into, because they brought it up. But this is their
19 witness that we have brought into court to show how the
20 defense has asked him to lie, Your Honor. And everything
21 that has ever been asked has been furnished.

22 Now, as far as some of the things they are asking,
23 there are things that I have no access to. And I think
24 the prior Court in this has ruled that it was just things
25 that were not relevant that had not -- that we did not
26 have access to and were not necessary.

27 THE COURT: What is it that -- why would you
28 need these items that you are requesting?

29 MR. DEGRUY: Because it is the only way to

Motion for Disclosure of Evidence of the State's...

1 impeach Mr. Hallmon on his, his claim of who made first
2 contact, when he talked to people, where he saw people.
3 There, there are records of this in the -- in the
4 Department of Corrections and in the various jails. And
5 the, the polygraph, we didn't even know until he blurted
6 out on the stand. And I agree it was not sought by
7 either side. We didn't even know he had been given a
8 polygraph until he claimed to have taken the polygraph.

9 And so that is -- the State has all of this
10 information that we are asking for. We can't get to it.
11 And we need to look at it to determine whether or not it
12 is of any impeachment value.

13 THE COURT: Well, has the criminal history of
14 Mr. Hallmon been provided?

15 MR. EVANS: Yes, sir, it was.

16 And Your Honor, that was a complete misstatement of
17 the facts in this case. It was furnished in discovery
18 that he had taken and failed a polygraph test. They did
19 know about that. But we had assured them we were not and
20 we will not attempt to elicit that. And we will do
21 everything humanly possible to make sure that it is not
22 done, including ask the Court to help us make sure that
23 it is not done.

24 But this is not -- this is, you know, they want to
25 say well, we need to know what cell he was in. They know
26 what cell he was in, because they went -- the defense
27 went and talked to him. They are the ones that went and
28 met with him when he was in jail. The only time I met
29 with him is after he had gotten out of jail when he came

1 to me and solicited that he wanted to make sure that we
2 knew that he had lied because they had requested him to.

3 THE COURT: As to the issue on polygraph, it's
4 apparent that you already knew about that. So I don't
5 see that there is anything more to be gained from that.
6 And polygraph -- no mention of polygraph is to be made at
7 all anyway. So absolutely -- it's, you know, that is
8 totally off limits, any mention of a polygraph.

9 I do -- apparently, you have got a criminal history
10 of him, and I don't know what more is required under the
11 rules that you be provided. So it appears to me that you
12 have got all you are entitled to.

13 Certainly, of course, on cross-examination you
14 certainly have the right to cross-examine him about why
15 he is in jail, what he has been convicted of and things
16 like that. But I don't see that there is anything more
17 the State has to provide that hasn't already been
18 provided.

19 What is the next...

20 MR. DEGRUY: Again, just for clarity, we
21 have -- we know that he took a polygraph. We don't know
22 what questions were asked and what answers were given.
23 The answers given we, we maintain are statements of his.

24 THE COURT: Is there some recorded writing or
25 is there some recording of anything that he -- statements
26 that he has given that has not been furnished?

27 MR. EVANS: I don't remember if the actual
28 questions and answers were given. And I'd like to
29 correct myself, because there have been a couple of

1 polygraphs in this case.

2 This witness that he is referring to did pass the
3 polygraph, I think. A minute ago I said it was submitted
4 that he failed it. I thought we submitted the questions
5 and answers to the defense, but that I cannot remember
6 for sure.

7 THE COURT: Well, review --

8 MR. EVANS: I have no problem with doing that
9 if we didn't, but I think we did.

10 THE COURT: Review your files. I am sure both
11 of you have very thick files in this case.

12 MR. EVANS: Your Honor, I have been advised
13 that we were going to submit it, but Mr. Hill stated that
14 he couldn't say whether we were able to file it.

15 I will say this. If it is available, I have no
16 problem with submitting that. Even though I don't think
17 it is relevant, because we can't go into the polygraph.
18 I think if we get into those questions, then we get into
19 the polygraph.

20 THE COURT: Well, this is a prior statement of
21 a witness though, and they would be entitled to it. So I
22 want you to search your files, and if you have got it --

23 MR. EVANS: Yes, sir. If we have got it, I
24 would be glad to give it to him, Your Honor.

25 THE COURT: If you don't have it, then I want
26 some notification to be made to the defense that you
27 don't have it as well. So I want them to have some
28 notice of it either way.

29 MR. EVANS: I know on this case there have been

Motion to Produce Information Gathered by the Law...

1 statements, and I think even a tape that was -- I'll look
2 back through, and we will make a record in there of
3 exactly what was furnished. I am pretty sure there was
4 even a taped interview with him that was furnished.

5 THE COURT: Just file something with the clerk
6 advising what has been provided on Mr. Hallmon. If there
7 is something that has not -- that you do not have
8 possession of, I want that noted in the filing as well.

9 MR. DEGRUY: The next motion, Your Honor, is
10 again, brief history on this case, the Motion to Produce
11 Information Gathered by the Law Enforcement Agencies on
12 Other Suspects.

13 This case -- the killings occurred in July of 1996.
14 Mr. Flowers was initially arrested in July. He was then
15 released. And we believe the law enforcement agencies,
16 both local and the state highway patrol, investigated,
17 looking for other suspects. And we, we would like all of
18 that information.

19 It goes directly to *Holmes versus South Carolina*,
20 third, third party guilt evidence. If they have got
21 other suspects, investigation that points to other
22 suspects, we are entitled to review that and make a
23 determination on it, whether or not it's exculpatory.

24 MR. EVANS: And we've covered that on, I think,
25 every trial, Your Honor. We have furnished them
26 everything that's there.

27 THE COURT: Have you received any --

28 MR. DEGRUY: We, we --

29 THE COURT: What have you got?

1 MR. DEGRUY: Any report about any other
2 investigation.

3 MR. EVANS: As far as I know, he was the key
4 suspect from the beginning. And everything that I'm
5 aware of pointed to him.

6 THE COURT: If the State has any information on
7 other suspects, that's to be provided. But I am taking
8 it by what is being stated here that that, that you do
9 not have any information about --

10 MR. EVANS: No, sir.

11 THE COURT: -- other suspects; is that correct?

12 MR. DEGRUY: Your Honor, we have also
13 previously made a Motion for Criminal History, either
14 N.C.I.C. -- both N.C.I.C. and Mississippi Crime
15 Information Center on the State's lay witnesses. The,
16 the defense cannot access N.C.I.C. or Mississippi Crime
17 Information Center information.

18 They have numerous witnesses, lay witnesses in this
19 case. Perhaps as many as 18. We are just asking that
20 they, with the capacity to run these searches, to do so.

21 This, this matter was somewhat addressed just in the
22 last two weeks or so in the Marlon Howell post-conviction
23 case where the Court said in post-conviction Howell was
24 claiming that a general discovery request should have
25 entitled him to have the State run these searches. And
26 the Court said no, you didn't make a specific request.

27 So, so the record is clear, we are specifically
28 requesting the State to do what only the State can do.

29 MR. EVANS: They have had those for years, Your

1 Honor.

2 THE COURT: Are you asking for updated or --

3 MR. DEGRUY: Certainly. This case has gone on
4 for 12 years. What was produced in original discovery or
5 even to Mr. Lumumba would need to be updated.

6 THE COURT: If there is something that has
7 changed on prior witnesses -- or I guess it wouldn't hurt
8 to go ahead and do these again and provide them again. I
9 don't -- so if you will, State will do a new --

10 MR. EVANS: Your Honor, I have no problem
11 requesting it. We do not have access to N.C.I.C. We
12 have been trying -- through the attorney general's
13 office, we have been trying to get N.C.I.C.'s for the
14 D.A.'s office. It is proper now to do. They are saying
15 we can set it up, but we do not have the funds to pay for
16 it.

17 THE COURT: I believe the local sheriff's
18 office can do that.

19 MR. EVANS: We, we will request it.

20 THE COURT: So if you will do that in
21 coordination with them and provide it to the defense.

22 MR. DEGRUY: Your Honor, we had in the past
23 filed a motion for the -- and I think the Court covered
24 it when we were discussing Batson. In past cases the
25 State has done investigation on certain jurors, gotten
26 information on jurors from either law enforcement sources
27 or by doing N.C.I.C. And we would ask that any evidence
28 that the State gets on this jury, on the jury panel, any
29 investigation made on particular jurors be provided to us

1 as well.

2 MR. EVANS: Your Honor, this has been settled
3 several times also. The defense does not have to furnish
4 to us what they find about jurors and who they want, and
5 there is nothing in the law that says that we do. If we
6 find a reason that a juror should not sit, then we have
7 an obligation to bring it to the Court's attention if we
8 want that juror struck. There is absolutely nothing in
9 the law that says our work product has to be provided to
10 the defense.

11 THE COURT: I agree with the State on this. I
12 would -- I would assume that both of you have probably
13 looked over the jury list and tried to find out as much
14 as you can about the potential venire. But this is not
15 something that is required to be provided in discovery.

16 And I will say if the State attempts to strike
17 someone based on some criminal violation or something
18 they are -- or something of that point, trying to show a
19 race-neutral reason, that the State is going to be
20 required to show proof to this Court of that. But as far
21 as providing information that the State may have on
22 potential jurors, that is certainly work product.

23 It is -- in fact, I guess under the reciprocal
24 discovery, if the State provided it to the defense, the
25 defense would have to provide any information on jurors
26 to the State. And I don't think that is appropriate. So
27 that one is denied.

28 MR. DEGRUY: Your Honor, the final motion we
29 would renew, prior to the third trial we moved based on

1 speedy trial grounds to prohibit the prosecution in the
2 cases involving Miss Rigby and Mr. Golden because they
3 were not -- the State in Flowers I sought -- prosecuted
4 only the case of Miss Tardy. In II, only Mr. Stewart.
5 The argument then and we are renewing the argument now,
6 the State chose not to prosecute for eight years the
7 cases involving Mr. Golden and Miss Rigby and that under
8 speedy trial and due process rights that today the
9 prosecution of those cases should be prohibited.

10 MR. EVANS: All of these issues have been
11 argued and raised several times, Your Honor. I don't see
12 any need in trying to go back through them.

13 THE COURT: I do not see there to be speedy
14 trial violations on those issues. It was my
15 understanding based on what I know about the -- about the
16 proceedings, Flowers I was -- I'm not sure who the victim
17 was, but I know that originally the State had indicted
18 four separate indictments. And it's my understanding
19 that there was a -- basically two were tried, and they
20 were waiting on decisions from the Supreme Court before
21 others were tried. So I certainly think any delay was a
22 reasonable delay.

23 Also, I don't see how there is going to be any
24 possibility of prejudice to the defendant on speedy trial
25 issue, because all four murders occurred at the same
26 time. So, you know, whether he is convicted of one or
27 four murders, ultimately, you know, if he is convicted of
28 one and gets the death penalty or convicted of all four
29 and gets it or if he is convicted of all four and does

1 not receive it, there is still no -- consequences of one
2 conviction or four convictions would be the same.

3 But I do not see there to be any valid speedy trial
4 issues. I am certain if there had been, the Supreme
5 Court would have so found in the appeal in Flowers III.
6 But in Flowers III all they found was a violation of
7 Batson, except for Justice Cobb, who I really, after
8 reading, never quite figured out what her concern was
9 passed Batson.

10 Is that all from --

11 MR. DEGRUY: That, that is, Your Honor.

12 THE COURT: And I don't know. I want --
13 because I had prepared this list, and I don't know how it
14 was dealt with in the past. But I have gone back and
15 tried to see who was on the petit juries and also, the
16 venire on previous cases.

17 Sheriff, if you will hand these to counsel. At
18 least I think it is worthy of discussion on the record.
19 I don't know exactly...

20 The first group are people that actually served as
21 jurors, actually sat on the jury. And I would assume
22 that y'all can agree that maybe the clerk needs to
23 contact these people ahead of time.

24 MR. EVANS: Yes, sir. I agree that ones that
25 have served on prior juries should not even appear.

26 THE COURT: Does --

27 MR. DEGRUY: Yes. Yes, Your Honor. We agree
28 with that.

29 THE COURT: And I don't -- do not know how it

1 was handled on people that were on previous venires that
2 went through voir dire but did not serve. I've got those
3 people's names here, but I do not know how that was
4 handled. And I do not ordinarily -- obviously, in most
5 cases if you were retrying a case you would not want
6 anybody on the jury panel to have any knowledge of a
7 prior trial. But in this instance I don't think there is
8 going to be very many people probably that are not aware
9 of previous trials. So I don't know exactly how, how
10 this should be handled, and I'm open to hear both sides.

11 MR. EVANS: Your Honor, before we get to that,
12 may I bring something to the Court's attention?

13 THE COURT: You may.

14 MR. EVANS: There is another prospective juror
15 on here, Sherry Welch. And I don't know that it's going
16 to appear. That is why I want to make sure the Court is
17 aware of it. She was not on one of the jury panels, but
18 she was on the grand jury that indicted this defendant.
19 And just as much as the ones that have actually served on
20 juries, I don't think she can properly serve on this jury
21 either since she was on the grand jury that indicted him.

22 THE COURT: I would assume --

23 MR. DEGRUY: We would agree. Yes.

24 THE COURT: -- you would agree with that.

25 I'll have the clerk contact E.C. Gary, Elsie Rebecca
26 Holifield, Tracie Moore, Patricia Ann Tierce, Larry Wood
27 and Sherry Welch and advise them that they do not have to
28 appear on, on that date -- on September 22.

29 MR. EVANS: Your Honor, I'm sorry. I need to

1 correct. Instead of Peggy Welch, she was a juror on the
2 last one. The juror that needs to be struck that was on
3 the grand jury is Peggy Gooch. She was on the grand
4 jury.

5 THE COURT: What was the name again?

6 MR. EVANS: Peggy Gooch. What we probably need
7 to do is pull a list of the grand jury from that case
8 just to make sure that there is nobody else on it.

9 MR. CARTER: How do you spell the last name,
10 Doug?

11 MR. EVANS: G-o-o-c-h.

12 THE COURT: Now, this Welch. What was -- was
13 that just --

14 MR. DEGRUY: Welch did serve on the jury. I
15 think she was called --

16 MR. EVANS: But I don't think she is on this --

17 MR. DEGRUY: She is not on this panel.

18 THE COURT: Okay. She is not on the list then.

19 MR. DEGRUY: She is not on the list.

20 THE COURT: So Peggy Gooch then was the name.
21 So I will have the clerk contact her as well.

22 Now, how are -- I mean I don't know if prior venire
23 members that were not selected, I don't know -- I'm
24 certain there were probably in Flowers IV some that had
25 been voir dired that appeared, but I do not know how that
26 was handled. As I say, I want to hear input on whether
27 these should be reporting or not.

28 And incidentally, and I was not clear on this
29 either. I know there was some -- an additional 100 group

1 was called after. I don't know how many were pulled to
2 start with. And I do not know if that last group of 100
3 that served in Flowers IV were ever voir dired or not.

4 So what, what -- see, I have got a list here from
5 the clerk that advises the first 500 that were pulled in
6 November. And then there was an additional 100 that was
7 pulled sometime maybe the week of trial. And it was my
8 understanding that they were not necessary.

9 MR. EVANS: I think they were just pulled out
10 of precaution, Your Honor. I don't remember voir diring
11 any of those, but I can't say for absolute sure on that
12 right now.

13 MR. DEGRUY: I don't remember. I remember it
14 was -- I think we were talking about like Wednesday night
15 we were running out of jurors and the sheriff went out to
16 round up another 100. I can't tell you for sure whether
17 or not we got to that, that panel or not.

18 MR. EVANS: I don't think we did. I think we
19 ended up having enough, but we can probably go back and
20 look at some notes and find out for sure.

21 THE COURT: At any rate, how do y'all want
22 these jurors handled that were on previous venires but
23 did not actually serve on the jury? Do you want them
24 part of the group?

25 MR. DEGRUY: Yes, Your Honor. I think they
26 should be part of the group. We can question them
27 individually whether the -- just being voir dired would
28 have any effect on, on them. I think the problems with
29 the jurors who have actually heard evidence --

In Open Court

1 THE COURT: Well, I definitely agree on --

2 MR. DEGRUY: They obviously have to go. But I
3 think these jurors -- and there is a considerable number
4 of them. I think if they have a particular problem, we
5 can take it up at that point. But I, I think -- I don't
6 think it would be proper to excuse them just because they
7 had been impaneled.

8 THE COURT: As I say, my concern, you know, in
9 most instances would be if somebody sat through a voir
10 dire of one trial and then next time they were sitting
11 through the voir dire again, they would have known a
12 previous trial took place. But I assume here that there
13 is not going to be many people who don't know about
14 previous trials.

15 MR. DEGRUY: Your Honor, I think even back in
16 2004, there were -- I don't know that there was more than
17 one or two people who packed into this courtroom that
18 didn't know there had been previous trials.

19 THE COURT: Okay.

20 MR. DEGRUY: I think, you know, certainly it
21 would be improper for either of us -- for anybody to be
22 pointing that out, but just the reality of it is the
23 reality of Montgomery County.

24 THE COURT: And the last group here, I noticed
25 Johnny Hargrove, chief of police. And obviously, he is a
26 witness, and the circuit clerk, who I very much am going
27 to have to have, and Mr. -- I assume this Miller is the
28 same individual that the State has subpoenaed as a
29 witness. And then Mr. Piner was a bailiff at previous

Motion of the State

1 trials and sat through and heard all testimony. I know
2 he was -- well, I don't know for a fact, but I assume in
3 Flowers III that he was a bailiff. I don't remember -- I
4 know Mr. Piner at some point quit being a bailiff. So I
5 don't know if he was a bailiff in Flowers IV or not. Do
6 y'all --

7 MR. EVANS: We agree, Your Honor, that those
8 three could not be jurors in this particular case.

9 THE COURT: There is four because I've got
10 Hargrove --

11 MR. EVANS: Yes, sir.

12 MR. DEGRUY: We agree with that.

13 THE COURT: Okay. I'll notify the clerk to
14 advise these individuals not to appear that day as well.

15 Do we have any other matters that need to be taken
16 up?

17 MR. EVANS: Yes, sir. The State has one motion
18 that needs to be taken up, Your Honor.

19 As the Court knows, the last couple of trials we
20 have had to introduce the testimony of one witness
21 through reading the transcript, because that witness is
22 deceased.

23 I've been advised that there are two more witnesses
24 that we are probably going to be required to do that. I
25 think in this particular trial Sam Jones, who was the
26 elderly man that worked at the store that found the
27 bodies, I think he was 87 in the last trial. It's my
28 understanding that he has had a stroke and is probably
29 going to be unavailable.

Motion of the State

1 Also, Miss Beneva Henry. She was one of the
2 witnesses that knew the defendant real well and spoke
3 with him and saw him coming by her house that morning.
4 In the last trial she had very great difficulty in coming
5 into the courtroom, walking. And she was almost
6 completely blind. It is my understanding now that she is
7 physically not able to come into the courtroom at all.

8 MR. DEGRUY: We understand that, Your Honor,
9 that these witnesses are unavailable.

10 THE COURT: So you agree these are unavailable.

11 MR. DEGRUY: We agree that they are
12 unavailable.

13 THE COURT: Well, I'll allow them to testify --
14 or their testimony from previous trials to be presented
15 just like Mr. Collins.

16 MR. DEGRUY: Your Honor, before the trial in
17 Flowers III where we first introduced Mr. Collins'
18 testimony, the State advised which of the prior two
19 testimonies of Mr. Collins that they were -- well, we
20 reached an agreement that it should have been -- it was
21 the testimony from the Gulfport trial where he was
22 extensively cross-examined by Mr. Lumumba.

23 So we, we just ask the State if they just intend to
24 call -- I don't know. I tried looking at it last night.
25 There are not significant differences in the testimony of
26 these witnesses in any of the four trials. So if the
27 State is going to elect to use one of the prior trial
28 testimonies as their direct, if they would just let us
29 know that.

Motion of the State

1 MR. EVANS: I, I just kind of assumed. I think
2 we did agree that that one went more into what
3 cross-examination the defense wanted. So I have no
4 problem with going back through the same one what we have
5 done before.

6 THE COURT: So on Collins it will be the one
7 that was used actually in the November trial, which was
8 the one that occurred, I think, in Flowers II; is that
9 correct?

10 MR. DEGRUY: That's correct.

11 THE COURT: As to these, Mr. Jones and Miss
12 Henry.

13 MR. HILL: Miss Henry.

14 MR. EVANS: Miss Henry. I haven't even looked
15 at them, Your Honor, because I haven't even thought about
16 that. We can probably get with defense counsel and try
17 to agree on which one.

18 MR. DEGRUY: I think it would be easier if we
19 were able to do just testimony and cross from one trial.

20 MR. EVANS: I agree.

21 MR. DEGRUY: It would make more sense.

22 So we will try to reach an agreement on that. If
23 not, there may be a question if they are using Trial III,
24 there may be a cross-examination question from Trial IV
25 that we would want to present and versa. We can work
26 that out before they are actually presented.

27 THE COURT: That will be fine then. If y'all
28 will proceed to do that.

29 Anything else? If not...

In Open Court

1 MR. DEGRUY: Your Honor, we just have a
2 question. We received from the clerk a, a list of jurors
3 that were excused.

4 THE COURT: Right.

5 MR. DEGRUY: And just for these jurors that --
6 I assume these age jurors -- I guess I shouldn't assume.
7 Are these jurors who have claimed their age exemption?

8 THE COURT: They are. That have -- in the
9 letter that was sent out with the jury questionnaire,
10 which, you know, you were not present, you know, that
11 day. But it was stated in that letter that, you know,
12 you had to appear unless you had some -- over age 65 and
13 claimed that exemption or if you had some medical
14 problem.

15 So these are people that have notified the clerk
16 that they do not choose to serve but want to exercise
17 their exemption based on age. And the others are
18 individuals that doctors have given them excuses.

19 Now, the last -- the other group is -- you know, I
20 mean these are clerk's notice, I guess, just basically
21 for our benefit to know that there are certain people
22 like that are in the nursing home probably that are not
23 going to appear for trial that day or for the voir dire
24 that day or people that have moved out of the county.

25 They haven't been excused by the Court but, you
26 know, I don't think that if they -- if they fail to
27 appear on the day of trial, I'm not going to send the
28 sheriff to pull somebody out of the nursing home, because
29 they didn't -- you know, because they didn't appear. And

1 if somebody has moved to another county, they are not
2 eligible. And I do not know if they have even received
3 notice that they were called to begin with.

4 So I think she just gave those individuals to us to
5 let us know ahead of time that there was a possibility
6 that these would not be here.

7 And then the three listed under postponement, you do
8 have the right now to postpone jury service if you choose
9 to do so. And these three individuals that she has got
10 listed that, that have notified her that they chose to
11 postpone to a later time.

12 MR. DEGRUY: I understand, Your Honor. I just
13 really wanted to make sure that these were that --
14 because moved to another county, disqualifies you as a
15 juror. Being 82 doesn't disqualify you.

16 THE COURT: Right. Well, these are not people
17 the clerk went through and looked at their age --

18 MR. DEGRUY: Right.

19 THE COURT: -- and decided --

20 MR. DEGRUY: We just wanted to make sure.

21 THE COURT: These are people that she has had
22 contact her and advise that they were claiming age as an
23 exemption. Well, I am sure you have too, but there is
24 several people over age 65 still on the list that have
25 not claimed age.

26 MR. DEGRUY: I just -- I wanted to make sure
27 the record was clear that these were people who were
28 affirmatively claiming age and not just based on their
29 age. And the -- you know, our position is that doctor

1 medical excuses, whether they bring them in the day they
2 come or whether they present them to the Court prior to
3 coming is, is the call of the Court on whether or not
4 that person has a hardship.

5 THE COURT: Well, by statute, you know, the
6 clerk can excuse people if they bring medical proof
7 without them having to appear. So that is what those
8 individuals have done.

9 Anything else?

10 MR. DEGRUY: I believe that is all, Your Honor.

11 THE COURT: If not, we will stand this matter
12 recessed until September 22 and resume at that time.

13 (THE PROCEEDING ON THIS DATE WAS CONCLUDED.)

14 (THE FOLLOWING WAS HEARD IN THE CIRCUIT CLERK'S OFFICE IN
15 THE MONTGOMERY COUNTY COURTHOUSE ON APRIL 20, 2010. MR.
16 EVANS, MR. HILL, MRS. STEINER, MR. CARTER, THE DEFENDANT,
17 CIRCUIT CLERK LANELLE MARTIN, DEPUTY CHANCERY CLERK PATSY
18 BARTON, AND SHERIFF BUBBA NIX WERE PRESENT. PROCEEDINGS WERE
19 AS FOLLOWS:)

20 THE COURT: First off we are going to draw a
21 special venire for the trial that is to commence in June.

22 For the record, we do have representatives, Deputy
23 Chancery Clerk Patsy --

24 What is the last name?

25 MRS. BARTON: Barton.

26 THE COURT: Lanelle Martin, circuit clerk.
27 Sheriff Bubba Nix. And the prosecutors and the defense
28 attorneys and Mr. Flowers.

29 So Madam Clerk, if you will now draw a special

1 venire for us.

2 While the computer is submitting the names, I went
3 back and looked at the questionnaire we did last time,
4 and I assume we will send it out again unless there is
5 some changes that need to be made.

6 MR. EVANS: I think it would be fine.

7 THE COURT: Do y'all --

8 MR. CARTER: Whatever you say.

9 MRS. STEINER: I think...

10 THE COURT: I will let y'all also -- this is
11 just a little letter that I wrote to the jurors, kind of
12 explaining about -- but I want you both to read it before
13 I sign it and have the clerk include it with the
14 questionnaire.

15 MRS. STEINER: Thank you, Your Honor. I don't
16 even recall if we had any objections on the
17 questionnaires that was issued before. But to the
18 extent --

19 THE COURT: Well, the last time -- the last
20 time we added a question, Number 24, and that was
21 suitable and acceptable. And there weren't any other
22 objections to the questionnaire.

23 MS. STEINER: That's fine, Your Honor. I just
24 didn't have a recollection. I just want to preserve --

25 MR. CARTER: Your Honor, I actually have one.
26 I have one that has a whole lot more questions on it. Of
27 course, I have some concerns about whether or not I could
28 ever get it passed getting Mr. Evans to accept it or get
29 it passed the Court.

1 You think it's worth presenting?

2 I guess I'll just -- is the Court open to my
3 presenting another one to see if it can?

4 THE COURT: Well, I mean our situation is the
5 clerk is going to just, like, within -- I mean very
6 quickly, as soon as she can get the addresses and
7 envelopes done, going to be sending this out.

8 MR. CARTER: Well, that's okay. We will pass
9 on presenting a new one and just accept what we already
10 have. We will just ask whatever additional questions we
11 have got during voir dire.

12 MRS. STEINER: Your Honor, would it be
13 appropriate to raise an issue that has not been a motion
14 just yet? It just arose. While the computer is doing
15 this selection, while we are in recess waiting on the --

16 THE COURT: That's fine.

17 MRS. STEINER: We were called last week and
18 informed that Mr. Flowers had been transferred up to the
19 Leflore jail as a detainee. You know, ordinarily, it is
20 neither the Court nor the defense counsel's job to make
21 security decisions, Your Honor.

22 MR. EVANS: May I see it, Your Honor?

23 MR. CARTER: I'm sorry, Doug.

24 MRS. STEINER: But given that his defense team
25 is Jackson-based and given that we are now running up in
26 the last six months preparing for trial, this actually
27 adds a half hour each way if we want to go up and see him
28 and do trial preparation work. Under the Sixth Amendment
29 and his right to counsel and our obligations under

1 Wiggins and its progeny, his being housed at a further
2 distance than Vaiden is actually going -- you know, is
3 not without impact.

4 And we would move that the Court direct that he be
5 housed back in Vaiden during this period of trial
6 preparation time. And I have no notion of why he was
7 moved. I know there may be other witnesses coming in. I
8 have no idea if that is it. But if it has to do with
9 this trial that he has been moved, that if it deals with
10 housing of other witnesses, that we would move that
11 that -- he be asked to house him in Vaiden and place the
12 other witnesses in alternative places. Because it really
13 is -- it does affect our ability to do our final trial
14 preparation.

15 MR. EVANS: Your Honor, I was also advised by
16 the sheriff of Carroll County that he had moved the
17 defendant. I asked why and was informed that part of it
18 was that Marcus Moore, who may end up testifying for the
19 State in this case, is housed in Vaiden also, his
20 stepson, when this occurred. They have been trying to
21 house them separate. That has been causing a problem.

22 Also, I was advised by the sheriff that part of the
23 problem is the special treatment that this defendant has
24 been receiving in Carroll County jail. Basically, we
25 have been advised of him having free run of the jail,
26 using cell phones when he wants to, having sexual contact
27 with guards, things like that down there. I think one
28 guard ended up confessing and was fired because she was
29 in love with him and was visiting him in the jail.

1 And he felt that it would be safer and a more
2 appropriate place to house him where he didn't have to
3 put up with all of these. And since he had been in
4 Leflore County jail for two years before, he thought that
5 would be an appropriate place to house him since it is
6 close to here.

7 MRS. STEINER: Well, Your Honor, I think my
8 point would be that Mr. Moore could as easily be housed -
9 I believe he is a state prisoner there - MDOC facility at
10 Greenwood. And if there are disciplinary problems with
11 Mr. Flowers, this is a jail fully capable of imposing
12 discipline, I would think.

13 THE COURT: Well, at this point I don't know --
14 I don't know -- I don't know anything, because I didn't
15 know he was moved at all. So I don't know what is going
16 on with the jail at Vaiden, and I don't really know that
17 I have got enough information in front of me to override
18 what the sheriff has done at this point. If what Mr.
19 Evans is saying is true, then I think there was a valid
20 reason why Mr. Flowers would have been moved, not just
21 from Mr. Moore being there, but from these other
22 allegations. You know, I can revisit the issue later.
23 But I feel like I would have to have some sworn proof of
24 some kind to, you know, override the sheriff.

25 And I don't think that being housed in Greenwood is
26 a great burden anyway. It's not -- you may be talking
27 about 35, 40 minutes extra drive. And, you know, I don't
28 think that is unreasonable. And for the record, I'll say
29 Montgomery County has no jail at all, because that's why

1 he is being housed out of county.

2 And now, getting back on the letter that was going
3 to be included with the questionnaire, has anybody got
4 anything they want to change or is it acceptable?

5 MR. CARTER: It's acceptable.

6 MR. EVANS: It's acceptable.

7 THE COURT: Okay. I'll sign it and then have
8 it included with the questionnaire. The questionnaire,
9 was no objection to it either; is that correct?

10 MR. CARTER: Yes, sir.

11 MR. EVANS: (Nodded.)

12 THE COURT: Also, we do have the special venire
13 now. And you know, I mean there is 600 names. What's
14 this going to be the -- how many time -- is this going to
15 be -- I mean is this the third trial in Montgomery
16 County?

17 MR. EVANS: Yes, sir.

18 THE COURT: Do I have an agreement from the
19 parties that if the clerk looks through the list and
20 finds anybody that actually sat on the previous juries to
21 just exclude them? Obviously, they are not going to be
22 able to sit on this case if they sat on a prior trial.

23 MR. EVANS: That would be fine from the State's
24 side. I think it would be the appropriate thing to do,
25 because if they were actually brought up here and sat
26 with the other jurors I think it could taint the panel
27 either way.

28 MRS. STEINER: Your Honor, we have no objection
29 to the clerk excusing any people that have actually

1 served as jurors.

2 And the other thing, I believe the clerk herself
3 ended up in the venire in the last case. And we have no
4 objection to the Court excusing the clerk herself should
5 she be in this array.

6 THE COURT: Well, that's good.

7 And so Miss Martin, you are directed to go through
8 and if there is anybody on this list that actually sat on
9 the previous two juries, you can just mark by their name
10 that they previously served and not send them a summons
11 out because --

12 MS. MARTIN: Okay.

13 THE COURT: -- because they couldn't serve.

14 I do have concern if they were to show up it might
15 tend to taint the rest of the panel. We do have the
16 venire drawn now. And the clerk will make copies for
17 both of you or print additional copies out.

18 MRS. STEINER: Your Honor, is that a random
19 array?

20 THE COURT: It is a random array. I think she
21 can actually print out for you alphabetically, if you
22 want it done both ways.

23 MRS. STEINER: Right.

24 THE COURT: That is the random list that I just
25 have.

26 MRS. STEINER: Both ways would be good,
27 especially since there may be over lapse from before.
28 It's easier to compare that way.

29 THE COURT: Right.

1 Now, we had some other motions. And, of course, I
2 didn't know there was going to be a civil trial going on
3 in the courtroom. We can sit here or did you --

4 CIRCUIT CLERK: The room is available across
5 the way in the extension office, if you need it.

6 THE COURT: We might move just because the
7 clerk's office has got to keep functioning, and we are
8 sitting here. If anybody has business in the clerk's
9 office, it's going to be difficult for them to come in
10 with us actually having court inside the clerk's office
11 right now.

12 So let's just adjourn to the annex across the street
13 and hear these motions.

14 (COURT RECESSED TO RELOCATE TO THE EXTENSION OFFICE.)

15 (COURT RESUMED IN THE MONTGOMERY COUNTY EXTENSION OFFICE.
16 MR. EVANS, MR. HILL, MS. STEINER, MR. CARTER AND THE DEFENDANT
17 WERE PRESENT. PROCEEDINGS WERE AS FOLLOWS:)

18 THE COURT: We will come back to order now.

19 I know there were a few motions that defense counsel
20 had, had filed. We will take those up now.

21 And normally lawyers are required to stand when they
22 are addressing the Court. But I will not require that,
23 because of the cramped quarters and the tables in front
24 of us. I think it would be probably more convenient for
25 everyone to just remain seated when you are speaking,
26 unless you just have some overwhelming desire to stand
27 up.

28 So Ms. Steiner, I don't know which motion you want
29 to take up first. Proceed.

Motion Hearing on April 20, 2010

1 MS. STEINER: Your Honor, I have only -- well,
2 I have two motions on which I propose to offer evidence
3 from the four individuals subpoenaed here today.

4 I believe Chief Hargrove, Mr. Johnson --
5 Is Mr. Matthews and Mr. Thornburg here?

6 THE COURT: I have not seen them.

7 MS. STEINER: All right. But we have Chief
8 Johnson -- Chief, Chief Hargrove and Mr. Johnson. I have
9 --

10 Is the sheriff here?

11 Do you know if Mr. Thornburg or Mr. Matthews got
12 their subpoenas served?

13 SHERIFF NIX: I haven't seen them.

14 MS. STEINER: Did you -- did you notify them of
15 them?

16 SHERIFF NIX: I didn't know anything about
17 them.

18 MS. STEINER: Okay. I had given them last week
19 to be served and John got his.

20 Well, in any event --

21 (MONTGOMERY COUNTY CIRCUIT CLERK, MS. LANELLE MARTIN,
22 ENTERED THE ROOM.)

23 THE COURT: Hold on. The clerk has got the
24 file. She is bringing in the file now. We can see if
25 the --

26 MS. STEINER: I can go ahead and start
27 proceeding, and we can answer these questions later.

28 The first thing I want to do is mark as defendant's
29 first, or hopefully only motion exhibit, a C.D. marked

1 Defendant's Exhibit 1, 4-20-10 motions, which is a C.D.
2 of everything that we have been able to locate in our
3 files from the discovery served over the past few years,
4 and also some crime lab master files that were served
5 upon us.

6 And I'd like to have that marked as defendant's
7 exhibit to the Motion for Disclosure and Supplementation
8 of Discovery, which is what I would call it now.

9 MR. EVANS: Your Honor, as far as it being
10 introduced on the motion, I have no problem with it being
11 introduced as her version of what has been furnished.

12 I think she came in today and stated that she had
13 found some more stuff since she had last compiled the
14 disk on it that had been previously furnished in
15 discovery. And I have not had time to go through the
16 list and see if it was everything that we furnished.

17 So I have no problem with her using the disk. But
18 as far as us stating it is everything that has been
19 furnished in the past, I can't state that at this point.

20 MS. STEINER: Thank you. I, I understand that.

21 This is simply what we found. The last, I think,
22 eight pages are the additional pages we found that are
23 actually redundant pretty much of some other materials,
24 but that's part of why I, I called witnesses today
25 because we need to figure out what might be out there.

26 Since last October when we set this Mr. Evans said
27 he would -- did not want to invite us to come have a look
28 for ourselves. So in any event --

29 MR. EVANS: Your Honor, if I may, I would like

1 to comment on that last comment that was just made by
2 defense counsel before we go further.

3 This case has been going on for many years. When we
4 first started it the defense attorney, Johnny Gilmore, in
5 this case came to our office. We let him go through
6 everything in the file. It was thrown completely in
7 disarray. We had to spend weeks putting it back
8 together.

9 After this group of defense attorneys got into the
10 case, two different times their office has sent people to
11 Grenada. We have let them go completely through
12 everything in the file, everything that is there. I know
13 Mr. Carter has personally been there twice looking
14 through things in the file.

15 And again, everything that they said that they did
16 not know for sure that they had at that time, we allowed
17 them to go up front, use our copy machine, make copies of
18 anything that they wanted. There has to be a limit at
19 some point.

20 And I agree with her to the point that I have told
21 them they will not come back to our office and go through
22 the files for the fourth time. If they can't get what
23 they needed out of it out of three times, something is
24 wrong.

25 THE COURT: I will say this, Mr. Evans.

26 The last thing I am going to have happen is this
27 case come back to this court again from the Supreme Court
28 because of some discovery issue. So I am going to take
29 the motion up. But if there is some discovery that is

1 out there that is needed, it will be provided. Because,
2 as I say, preliminary matters are not going --

3 MR. EVANS: If there is discovery that is
4 needed, we will gladly provide it.

5 We have told every defense attorney that has been
6 involved that they are welcome to go to the crime lab,
7 get full copies of everything. Ms. Steiner has furnished
8 me a copy this morning of everything the state crime lab
9 has furnished. There is no more discovery. This case
10 has been tried so many times it's pitiful already with
11 the same evidence. And the evidence is clear.

12 THE COURT: Miss Steiner, what -- I mean if you
13 want to go specifically now, what is it that you are --

14 MS. STEINER: Yes, Your Honor. I have to say
15 that, you know, this was a huge and disorganized file
16 and, you know, at the point it -- you know, spending
17 three hours with it, as Mr. Carter did back in 2003, I --
18 what I have the officers here for is to talk about, to
19 make sure there is no piece of a police agency file that
20 somehow either didn't get to us or didn't get to the
21 State that I think might be relevant, and it's, it's
22 based on that.

23 And we have also requested some -- that the Court
24 order production of the radio logs for a larger period
25 than they were originally done.

26 And let me say that Chief Hargrove had asked --
27 there has been a death in Winona that is being
28 investigated by his office, and he had asked if he might
29 be taken first and then excused. And perhaps if, if I go

1 -- let me examine Chief Hargrove and then the Court can
2 decide if things are irrelevant.

3 THE COURT: Chief, if you will come around.

4 (THE WITNESS CAME FORWARD.)

5 MS. STEINER: And I would like the rule invoked
6 with the other witnesses who are here.

7 THE COURT: Okay. If there are other witnesses
8 that are going to testify...

9 MS. STEINER: And the witnesses who are going
10 to testify on discovery are just Mr. Johnson, and then if
11 Mr. Thornburg or Mr. Matthews appear.

12 THE COURT: Mr. Johnson is not in here.

13 MS. STEINER: I think he is in the hall.

14 THE COURT: Either tell Mr. Johnson to step out
15 where --

16 A DEPUTY: He stepped into the side --

17 MS. STEINER: Okay. Thank you.

18 THE COURT: I need you to raise your right hand
19 and take the oath.

20 Do solemnly swear or affirm the testimony you give
21 in this case will be the truth, the whole truth and
22 nothing but the truth so help you God?

23 THE WITNESS: I do.

24 THE COURT: If you will have a seat, please.

25 THE WITNESS: (Complied.)

26 THE COURT: For the record, state your name.

27 THE WITNESS: Johnny Hargrove.

28 THE COURT: You may proceed.

29 MS. STEINER: Thank you, Your Honor.

1 JOHNNY HARGROVE, Called on behalf of the Defendant,
2 having been duly sworn, was examined and testified as follows:

3 DIRECT EXAMINATION BY MS. STEINER:

4 Q. Chief Hargrove, you are the chief of police of
5 Winona; is that correct?

6 A. Yes, ma'am.

7 Q. And that was the office you held at the time the
8 four people were found dead at Tardy Furniture on July 16,
9 1996; is that correct?

10 A. Yes, ma'am, I was.

11 Q. When had you become chief?

12 A. '95.

13 Q. All right. So you had been chief for two years. So
14 you were at the time and continue to be fully familiar with
15 the kind of records your office keeps on criminal
16 investigations; is that correct?

17 A. Yes, ma'am.

18 Q. All right. When -- what kind of file or files does
19 your office maintain when a crime -- when it begins to
20 investigate a crime?

21 A. On, on that crime, what we did, we called in the
22 state investigators and, you know, people from the crime lab
23 and all that. And they done the paperwork on it.

24 Q. Okay. So you are saying your office maintained no
25 specific --

26 A. No, ma'am.

27 Q. -- file --

28 A. No, ma'am.

29 Q. -- on this crime.

1 A. No, ma'am.

2 Q. When you or your officers investigated something or
3 prepared a report, to whom did you give it?

4 A. What I'm saying is we, we called in investigator
5 from the state.

6 Q. Okay. So none of your --

7 A. And they, they worked it up.

8 Q. So none of your officers took any statements that
9 weren't done in companionship with the state, which you had
10 called in.

11 A. Not to my knowledge.

12 Q. Okay. So your office has no case file per se on
13 this.

14 A. No, ma'am.

15 Q. I noticed that one of the crime lab orders, Miss
16 Schoene's evidence --

17 A. Um-hum.

18 Q. -- was told to be report -- the requesting officer
19 was your office and was to be returned to you.

20 A. Um-hum.

21 Q. And also to Wayne Miller of C.I.D. Did you actually
22 get a copy of that or did it all just --

23 A. I'm not for sure, but I know the state did.

24 Q. All right. Thank you.

25 Now, I believe -- I just want to make sure I'm right
26 about this.

27 A. Um-hum.

28 Q. Your testimony is that you yourself did not do any
29 questioning of people at or around the scene the day this

1 happened; is that correct?

2 A. That's correct.

3 Q. And to your knowledge, did any of your officers do
4 any such questioning?

5 A. What we did, we waited on the investigators to come.

6 Q. Okay. But at any point did you deploy any of your
7 officers to do any investigation other than just securing the
8 crime scene and waiting --

9 A. Securing the crime scene.

10 Q. All right. So I'm assuming that you, you never
11 yourself prepared or had your officers prepare any sort of
12 summary of the investigation that was conducted by the police.

13 A. Not to my knowledge.

14 Q. All right.

15 A. You know, right offhand.

16 Q. Okay. And I believe your testimony is you sent
17 anything you gathered off to the state. By that you mean
18 the --

19 A. They came --

20 Q. -- the highway patrol.

21 A. They came into my office, and they worked it up.

22 Q. Okay. And they did not file copies with you of what
23 they did.

24 A. No, ma'am.

25 Q. All right. Let me just go over some specific things
26 that came up in this. One of the items in discovery -- and
27 let me say for the record that I'm just going to use the Bates
28 numbers that are on the disk. It's at Page Number 662. It's
29 preceded by the words February 2010, and it's in the folder on

1 the disk that is called C.D. filed with motion.

2 And I have to apologize. My copy machine broke down
3 yesterday evening, and I didn't make a duplicate.

4 MR. EVANS: I believe this was furnished in
5 discovery.

6 MS. STEINER: Yes, it is.

7 MR. EVANS: Page 136 of the discovery.

8 THE COURT: What, what number is it on the
9 C.D.?

10 MS. STEINER: On the C.D. it's Page 662 in that
11 first folder, Your Honor, that's labeled C.D. filed with
12 motion.

13 For the record, it's the offense report dated July
14 8, 1996, by a Winona Police Department officer of a
15 break-in at the Tardy place. And I'm not going into the
16 details of what's in it. I'm just going to ask the chief
17 to identify it.

18 THE COURT: Okay.

19 Q. I'm handing you a document, which I have not yet
20 identified. But can you tell me what kind of document that
21 is?

22 A. That's a offense report from a B and E.

23 COURT REPORTER: Judge, would you ask the
24 witness to --

25 THE WITNESS: Offense report from B and E.

26 Q. Now, is that a form that you had your officers using
27 any time they received a criminal complaint --

28 A. Yes, ma'am.

29 Q. -- that occurred in the city of Winona?

1 A. Yes, ma'am.

2 Q. Okay. And this is, in fact, the one -- your
3 officers received a complaint of a break-in at Miss Tardy's
4 store. The complaint was received on --

5 A. Yes, ma'am.

6 Q. -- July of 1996.

7 A. Yes, ma'am.

8 Q. And so that's the form that your officers used --

9 A. Offense report.

10 Q. -- when filing this report.

11 All right. Did, did you have -- did you or any of your
12 officers fill out an offense report like this on the tragedy
13 at, at Tardy?

14 A. (Unintelligible.)

15 COURT REPORTER: Judge, I'm sorry. I can't
16 hear him.

17 THE COURT: If you will, speak up a little
18 louder. She --

19 THE WITNESS: I haven't said anything yet.

20 THE COURT: Okay.

21 A. Most likely it, it was. But right offhand, I can't
22 sit here and say it's there.

23 Q. Okay. You think that such a report would have been
24 prepared by one of your -- on one of your forms; is that
25 correct?

26 A. Just like I said, right offhand, I can't tell you if
27 it was or if it wasn't, because we sat there and secured the
28 crime scene. And then all the investigators came in and all
29 that.

1 MS. STEINER: Let me state for the record that
2 in Exhibit 1, we don't have a copy of any offense report
3 for the tragedy at Tardy's.

4 Q. (By Ms. Steiner:) Do you know --

5 MR. EVANS: Your Honor, for the record on that,
6 I would like to make a statement that this chief has been
7 asked these same questions on every trial. And he has
8 specifically stated, if I'm not mistaken, on at least
9 several of those trials that he did not think that they
10 did prepare one. If it had been, it would have been
11 furnished to the investigators.

12 MS. STEINER: I, I appreciate that. Since we
13 haven't had access to go back and make sure we actually
14 copied everything out of your file, I just want --

15 MR. EVANS: Yes. Yes, you have.

16 THE COURT: You won't interrupt. Ms. Steiner
17 has the floor right now.

18 Any other questions for the chief?

19 MS. STEINER: Yes.

20 Q. (By Ms. Steiner:) Similarly, do you know whether or
21 not anybody in -- well, was the theft of the gun at Angelica
22 from the parking lot, from the car of Doyle Simpson ever
23 reported as a criminal matter to the Winona Police Department?

24 A. That's in the county.

25 Q. Say again.

26 A. That's in the county.

27 Q. Okay. So that would not have been --

28 A. Angelica is --

29 Q. So there wouldn't be a report from you in any event.

1 Now, can you tell us -- we have received -- and I am now
2 alluding to Pages 667, 668 and 669 on the document collection
3 in evidence as one, labeled radio logs. And I am going to
4 hand these to the chief to look at.

5 Can you tell me -- that appears to be radio logs from two
6 different dispatching agencies. Can you tell me what the
7 difference is?

8 A. One of them is from highway patrol, M.H.P.

9 Q. And that's the one that says M.H.P. on the top of
10 it.

11 A. Yes, ma'am.

12 Q. And what is the one that says radio log on it?

13 A. That is going to be from E.O.C., if I ain't
14 mistaken.

15 Q. All right. Now, does your -- does the Winona Police
16 Department use the E.O.C. --

17 A. Yes, ma'am.

18 Q. -- as its dispatch log?

19 A. Yes, ma'am.

20 Q. And there are several entries from you, yourself, on
21 those where you have called in, I believe.

22 A. Yes, ma'am.

23 Q. You are W-1.

24 A. Yes, ma'am.

25 Q. Now, this log that you use appears to begin at 9:21
26 in the morning, and the last entry on it appears to be at
27 11:32 in the morning, both of July 16. Did you mean -- does
28 E.O.C. maintain radio logs for the day, say, the weekend of
29 July 6 and 7 --

1 A. Yes, ma'am.

2 Q. -- as well?

3 A. Yes, ma'am, it should.

4 Q. And are they kept 24 hours?

5 A. Yes, ma'am.

6 Q. And similarly, there should be radio logs at the
7 E.O.C. for the traffic that went on that dispatch --

8 A. Yes, ma'am.

9 Q. -- starting the midnight before this happened and
10 really, extending -- we have asked to have the logs --

11 A. Yes, ma'am.

12 Q. -- start the midnight previously and extending
13 through midnight on the Thursday following --

14 A. Um-hum.

15 Q. -- this event. Those logs should exist; is that
16 correct?

17 A. Yes, ma'am.

18 Q. And you and your officers when you are reporting
19 what you are doing, what you found, you would call in and --

20 A. Yes, ma'am.

21 Q. Entries like this.

22 A. Yes, ma'am.

23 Q. So we can tell what your officers have found and
24 what they were doing.

25 A. Yes, ma'am.

26 Q. Does any other agency use E.O.C. dispatch to your
27 knowledge?

28 A. Yes, ma'am. You have got Duck Hill and Kilmichael.

29 Q. Duck Hill and Kilmichael. Does the sheriff's

1 department use it, or does it have its own?

2 A. Yes, ma'am. The sheriff's department use it.

3 Q. Is it just Montgomery or does Carroll --

4 A. It's Montgomery. Carroll, Carroll used to use it
5 too. They, they got our frequency. They can come across and
6 use the same --

7 Q. In 1996, July of 1996, was Carroll using this?

8 A. Carroll could use it, yes.

9 Q. What about Leflore?

10 A. Leflore. They don't use our unit.

11 Q. Do you know about Grenada? Did they use this too?

12 A. Grenada, no, ma'am.

13 Q. All right. Thank you, Chief.

14 And do you -- the M.H.P one, you don't use --

15 A. We don't maintain those.

16 Q. All right. Thank you very much.

17 Did you -- one of the documents we were furnished, it
18 appeared to be a summary of investigation. Appeared to be --
19 it's a document entitled information obtained by district
20 attorney regarding statements made by Curtis Flowers and
21 observations from investigators, which has been in our file
22 for, for as long as I have been on the case. It is on the
23 disk in the record located at Pages 265 through 272. It was
24 also furnished by the district attorney's office with a D.A.
25 Bate statement Pages 41 through 48.

26 And I am going to ask you to inspect it, look at it and
27 tell me if - this is not signed - if you contributed any of
28 the information to that on the basis of your participation in
29 this or your officers' participation in this investigation.

1 A. I didn't.

2 Q. Pardon me.

3 A. I said I didn't.

4 Q. All right. Thank you, Chief.

5 And, Your Honor, I'd -- ordinarily I wouldn't try and
6 take testimony on two motions at once, but since the chief has
7 a time -- I have one, a couple of questions that would go to
8 the bail motion.

9 THE COURT: Okay.

10 MS. STEINER: With the Court's permission.

11 Q. (By Ms. Steiner:) Chief, in 1996 during the course
12 of the investigation of this case, did you have occasion ever
13 to interact with Mr. Flowers, either as a witness or once he
14 was arrested in January of 1997?

15 A. No, I didn't.

16 Q. All right. You never transported him to or from,
17 statements or anything like that?

18 A. No, I don't recall that I did.

19 Q. All right. Did you as the chief law enforcement
20 officer of the city ever have any law enforcement complaints
21 about Mr. Flowers fleeing or making any attempt to make his
22 whereabouts unknown or otherwise behave uncooperatively with
23 the investigation in this matter?

24 A. Only thing I had heard, he had went to Texas.

25 Q. Okay. And were --

26 A. Some part of Texas.

27 Q. And were you aware that once he was notified that he
28 was in indictment, he waived extradition -- which is charged,
29 he waived extradition and returned here to custody as soon as

1 he learned he had --

2 A. See, I didn't have any knowledge of that.

3 Q. Thank you.

4 A. Sure.

5 Q. Have you received any information to indicate Mr.
6 Flowers during the times he has been here in Winona for trial,
7 at least, has been disruptive or violent or made any attempt
8 to flee custody or fail to appear for court?

9 A. No, I haven't.

10 Q. All right. Thank you.

11 That's all I have of the chief, I believe.

12 THE COURT: State have any questions?

13 CROSS-EXAMINATION BY MR. EVANS:

14 Q. Chief, very simply. Do you know of anything that
15 defense counsel has not been furnished that anyone had in this
16 case?

17 A. No, not to my knowledge.

18 MR. EVANS: Nothing further.

19 THE COURT: You are excused, Chief, and you are
20 free to go.

21 MS. STEINER: Is Mr. Matthews here? Jack
22 Matthews.

23 Mr. Johnson is here. I would call John Johnson.

24 (JOHN JOHNSON ENTERED THE ROOM.)

25 THE COURT: If you will come around, Mr.
26 Johnson.

27 Do you solemnly swear or affirm the testimony you
28 give in this case will be the truth, the whole truth and
29 nothing but the truth, so help you God?

1 THE WITNESS: I do.

2 THE COURT: Have a seat, please. And for the
3 record, state your name.

4 THE WITNESS: John Johnson.

5 JOHN JOHNSON, Called on behalf of the Defendant, having
6 been duly sworn, was examined and testified as follows:

7 DIRECT EXAMINATION BY MS. STEINER:

8 Q. Mr. Johnson, good morning.

9 A. Good morning.

10 Q. What, what position do you presently hold
11 professionally?

12 A. I'm an investigator with the district attorney's
13 office.

14 Q. And on July 16 of 1996, what position did you hold?

15 A. The same.

16 Q. Are you the chief investigator?

17 A. I've been there longer than the rest of them.

18 Q. How many investigators are there?

19 A. Three of us.

20 Q. And it's yourself. And who are the other two?

21 A. Robert Jennings. William Blackmon.

22 Q. All right. Were both Mr. Blackmon and Mr. Jennings
23 employed on July 16, 1996?

24 A. No, I was the only one at that time.

25 Q. All right. Did Mr. Jennings do work for the
26 district attorney's office during that time?

27 A. He started. Yes.

28 Q. Okay. The reason I'm asking is there are some
29 documents that indicate he participated in interviews,

1 conducted some other interviews, and there are documents
2 relating to his work.

3 A. He started --

4 Q. And, and they talk about him as a D.A. investigator.

5 A. He was a district attorney's investigator. I'm not
6 sure that he actually went to work for us that day. But right
7 on the day of that happening, he went to work with us, and he
8 did work with us on occasions with this case. Yes.

9 Q. And it looks to me like you were the person who did
10 the documentation of almost everything that was done by D.A.
11 investigators; am I correct?

12 A. That may be so. I don't know.

13 Q. All right. But he is not -- he is not with some
14 other agency. He is with your agency if he is participating.

15 A. Yes.

16 Q. Now, ordinarily -- well, I had one other question.
17 Are -- for radio call purposes, are you DA-1 or is Mr. Evans
18 DA-1?

19 A. Mr. Evans.

20 Q. All right. And then do you all have call numbers,
21 the investigators?

22 A. We do but we don't talk on the radio very often.

23 Q. Okay. You were referred to -- D.A. number people
24 were referred to in the radio logs we have, and I just need to
25 know if you recall what was your number at the time.

26 A. Either DA-2 or DA-3.

27 Q. All right. And then --

28 A. It changed. It was either DA-2 or DA-3.

29 Q. Did the assistant district attorneys also have call

1 numbers?

2 A. They did. And I can't remember. Theirs may have
3 changed also.

4 Q. But there is no way to tell from the call number
5 whether it was an investigator or an assistant district
6 attorney who's being referred to, other than to know whose
7 number was whose.

8 A. I don't know that I could tell you that right now.

9 Q. All right. You all don't talk on the radio. Do
10 you -- to your recollection, did you in the course, at least
11 the first couple of days, of this investigation use the radio
12 log as a law enforcement officer would?

13 A. Yes.

14 Q. You had previously been chief of police of Winona so
15 you are familiar with those --

16 A. Yes.

17 Q. -- procedures. And as I understand it, did you use
18 the E.O.C. city radio dispatch when you were making dispatches
19 when you were D.A. investigator on this case?

20 A. We worked with them and through them on occasion.
21 Yes.

22 Q. Okay. Did you also use the frequency for the
23 Mississippi Highway Patrol in the course of investigating this
24 case?

25 A. I think -- I think the frequencies would be limited
26 that I would use with the highway patrol, but I can't say
27 that. We have a statewide frequency that it's possible that
28 we used, yes.

29 Q. Okay. I, I noticed both from the testimony in the

1 trial and from the discovery that is here that you
2 personally -- a lot of the interviews you personally either
3 conducted yourself or you conducted in companionship with
4 highway patrol. My question is did you all use each others'
5 frequencies to communicate on or did you just use phones and
6 that sort of thing.

7 A. Both. And somewhat -- it's kind of a vague area,
8 you know. I mean it's hard to know sometimes what
9 frequencies, but we did share statewide frequencies on
10 occasion.

11 Q. All right. And would that show up?

12 A. I'm not sure.

13 Q. You have been so involved in this. I am going to
14 hand you pages --

15 (THE WITNESS PUT ON HIS GLASSES.)

16 I have to put mine on too.

17 I am going to hand you Pages 667, 668 and 669 of
18 discovery that has been furnished, and they appear to be radio
19 logs - one with M.H.P. on it and one that has been -- already
20 been previously identified by Chief Hargrove as being the
21 Winona and Montgomery County E.O.C. dispatch log. And are you
22 familiar with what those look like?

23 A. Yes.

24 Q. All right. And then the third page says M.H.P. on
25 the top. Are you familiar with what that is?

26 A. Yes.

27 Q. All right. Chief Hargrove testified that the E.O.C.
28 log is perpetual, and they would have this sort of record from
29 the entire time period I have requested. Do you have any

1 knowledge about the highway patrol dispatch log? Is theirs
2 also perpetual? If I wanted to get a few hours before this or
3 a few hours after that, would that be in existence?

4 A. I think that is what this is, this third page starts
5 at 0854 and stops at 1358, I think.

6 Q. But if I wanted what happened at 0600 and --

7 A. I think --

8 Q. -- the next day --

9 A. I don't know how long they keep their records. I
10 don't know the answer to that, but --

11 Q. But --

12 A. -- for some time you would. But at this date, I
13 don't know.

14 Q. All right. But you certainly as a D.A. investigator
15 sometimes called on the highway patrol to produce larger than
16 a single days worth of records.

17 A. Sure.

18 Q. Would it surprise you to learn I counted it up? I
19 have -- in the material on Defendant's 1, I have handwritten
20 witness interview statements, either with J.M.J. -- that is
21 your initials; is that correct?

22 A. Yes.

23 Q. Either with that on it or what appears to be the
24 same handwriting for 82 different people. Is that a fair
25 characterization of the number of people you interviewed in
26 this matter?

27 A. Very well may be.

28 Q. And actually, about 105 separate kinds of contacts.
29 You not only interviewed; you showed photo arrays. You

1 personally collected evidence and that sort of thing. Is that
2 correct?

3 A. I was involved. Yes.

4 Q. All right. And again, as I assembled what is on
5 Defendant's Exhibit 1 in this, apart from a report of an
6 interview written up by some officers in New Orleans of a
7 witness from New Orleans, the larger transcribed taped
8 statement taken on July the 18 from Curtis Flowers, and the
9 statement of one of the Mary Flemmings. And I can't remember
10 which one off the top of my head. And maybe -- well, those
11 are the only transcribed statements or written reports I have
12 that either do not -- your initials don't appear on the report
13 of them or you -- what appears to be the same format for
14 report taking in your handwriting.

15 Would that be safe to say that you were able to
16 participate in all but three or four at most of the witness
17 investigation interviews and interactions in investigating
18 this case?

19 A. I, I can only -- as for the ones that have my
20 initials on it, that is the ones I participated in.

21 Q. Okay.

22 A. But yes, I participated in all of those.

23 Q. All right. Well, let me ask you about that.

24 May I hand the district attorney something?

25 THE COURT: You may.

26 MS. STEINER: Again, I am going to hand him a
27 packet of what I think are just a selection of his
28 different notes that I'd like to show the district
29 attorney.

1 MR. EVANS: Your Honor, if, if all we are going
2 to do on this hearing is her show different things that
3 we furnished in discovery, I don't think that is relevant
4 to whether or not discovery has been furnished. I think
5 this is just a complete waste of time and not relevant.

6 MS. STEINER: Your --

7 MR. EVANS: Now, if she has some something that
8 she does not think she has been furnished in discovery, I
9 have no objection to going into it. But as far as just
10 going over and over and over things that have come out at
11 every trial and things that have been furnished in
12 discovery, that cannot be relevant to a Motion for
13 Discovery.

14 MS. STEINER: Your Honor, I am simply
15 attempting to ascertain that what I -- that I do have
16 everything. I, I just -- he has just now testified that
17 his initials need to be on a paper for it -- me to be
18 confident that I have his notes.

19 And if they are not, I really need to know if there
20 might be other officers whose notes or summaries I might
21 need to request from the D.A. I just want him to look
22 through these pages and tell me if I am mistaken.

23 Q. (By Ms. Steiner:) Let me hand you, Mr. Johnson,
24 some pages that I have been assuming in the years I have been
25 involved in this case were interview notes taken by you, but
26 they have no initials. And if I -- if you answer this
27 question that these aren't your notes, then I obviously will
28 have to ask for more of a specific discovery.

29 But I'm handing you -- for the record, these are Pages

1 905 --

2 MR. EVANS: Your Honor, just for the record,
3 the Court never ruled on the motion.

4 THE COURT: Well, if there are some notes, I
5 think she can ask Mr. Johnson whether these notes are
6 his. Because if they are not his, then, then there might
7 be somebody who's, who's -- well, she would need to find
8 out whose notes they are.

9 Q. (By Ms. Steiner:) All right. So let me repeat
10 again.

11 And I'm not sure if I ever offered that disk into
12 evidence --

13 THE COURT: It was.

14 MS. STEINER: -- and it was admitted.

15 All right. So this is Pages 905, 977, 904, 707 and
16 916. And I'm going to ask you to review these and tell
17 me if despite the absence of initials these are, in fact,
18 notes taken by you in the course of the investigations in
19 which you participated.

20 A. They are.

21 Q. All right. Thank you.

22 I have one other unsigned item. It is Page 6. Which,
23 again, in my amateur way I, I classed with notes you had
24 taken.

25 A. I took those.

26 Q. Those are -- that was a summary --

27 A. Um-hum.

28 Q. -- that you made of people who had seen a certain
29 event; is that correct?

1 A. (Nodded.)

2 Q. All right. Let me ask you. Some of these -- I am
3 going to hand you Page 979. That happens to be an interview
4 with a lady named Catherine Snow. And I note -- I take it
5 these are, in fact, notes you took. Are these all
6 contemporaneous if they are handwritten.

7 A. I took these.

8 Q. Okay. Now, I notice on this one that there is
9 initials J.M.J. There is also a J.M. Is that Jack Matthews?

10 A. Yeah. I put that there.

11 Q. All right. You would write -- would you write
12 everybody present at the interview?

13 A. I tried to do that. But, you know, it was just a
14 policy on keeping up with my daily events. And then if I was
15 talking to a witness that felt uncomfortable when you picked
16 up a pen or something, I may alleviate -- you know, not do any
17 writing at the time. And I would scratch this down, moving or
18 whatever. I mean it is just something for me to keep up with.

19 Q. So it's possible that if, if it were those
20 circumstances, even your initials might not be on the paper --

21 A. That's true.

22 Q. -- or there might be people there who weren't
23 shown --

24 A. That's correct.

25 Q. -- to be there.

26 A. That's true.

27 Q. I also believe -- I think we know from the testimony
28 the first conversation with Miss Snow on 7-16 occurred at her
29 place of employment at Angelica. And across the top it says

1 Angelica. Does that designate that that is where the
2 interview took place?

3 A. Not necessarily. I might have been just noting for
4 myself that she worked at Angelica.

5 Q. All right.

6 A. I'm not -- I know that we -- I think we went to
7 Angelica there but that we also may have talked to her in
8 another location.

9 Q. All right. And then you have got a time there, 3:36
10 p.m.

11 A. That would be the time that we did that interview.

12 Q. And again, some of the papers I already handed you
13 have a time stamp, some don't. What would be the reason you
14 wouldn't --

15 A. Just people talking, interruptions or whatever.

16 Q. All right. And so you personally, obviously,
17 preserved and kept and turned over to the D.A. to turn over to
18 defense all these notes.

19 A. Yes.

20 Q. Did you ever prepare any sort of investigative
21 summary? Well, let me step back.

22 When you were chief of police in Winona and you had a
23 crime that was investigated by several officers, would you
24 appoint an officer in charge? You know, if there were two
25 different --

26 A. There would usually be a senior officer.

27 Q. Senior officer. And would he or she at the
28 conclusion of the investigation write up a final report for
29 the prosecuting authorities?

1 A. Some times. Not always. But some times, yes.

2 Q. And would your officers typically preserve their raw
3 notes? Or would they make a report and then destroy them?

4 A. It, it depended on the time, when this timeframe --
5 a lot of things. I, I don't have a clear answer to that.

6 Q. Okay. But now at this time you are working for the
7 D.A.'s office. Did the D.A. have a practice of having his
8 investigators write up final investigative summaries and
9 either keep or destroy their notes?

10 A. I don't think there was an overall summary --

11 Q. Do you --

12 A. -- from, from myself.

13 Q. Okay. And did you supervise any other officers --

14 A. No.

15 Q. -- who were doing this?

16 Did you turn your notes or any of your documentation that
17 you made of your own investigative efforts over to any other
18 law enforcement agencies?

19 A. To my knowledge, everything that we have would have
20 been in our file that I had.

21 Q. All right. And did you service a repository for
22 reports of other -- of like if the sheriff's department had a
23 file or M.H.P. had a file. Did they turn everything over to
24 you, or would they have their own files?

25 A. They would have their own files.

26 Q. Okay. Thank you.

27 A. We shared information. But as far as a documented
28 report outline as to everything they did, I don't have
29 anything like that.

1 Q. Okay. And on this case I believe you've testified
2 that this was the -- sort of the worst crime you had ever had
3 the misfortune to have to be investigator on; is that correct?

4 A. That's true.

5 Q. Did you -- can we rely that if there is something in
6 your handwriting about a witness interview that you did
7 interview that witness or you did do what was said there? And
8 if we don't have it, there -- either there was -- it was never
9 done or you didn't write it down when you did it.

10 Let me strike that. Did you write down notes on every
11 witness or suspect interview you had in this matter to the
12 best of your recollection that you participated in?

13 A. I'm not familiar with another suspect if that is
14 what you are --

15 Q. Oh, no. I'm sorry.

16 A. I mean you threw me off when you mentioned --

17 Q. I wanted to make sure to include -- have you -- did
18 you -- do you think that you kept and turned in for disclosure
19 in discovery all the notes you took in your capacity as a fact
20 investigator on the facts of the murders at Tardy Furniture?

21 A. I don't know that I would swear that every note I
22 took -- I am just like any other human being. In addition to
23 being an officer, I tried to record, document everything as I
24 went through the case.

25 But riding down the road if I made a note on a piece of
26 paper or something like that, I wouldn't -- you know, I mean
27 that kind of thing, I tried to be responsible and record
28 everything that related to this case and -- does that answer
29 the question?

1 Q. That's fine. I was looking through the discovery.
2 I note that the district attorney's office received an undated
3 letter that was produced, a three-page letter from Mr. Odell
4 Hallmon. And it was produced in December of 2001 to a prior
5 counsel.

6 Were you the investigator in the office who handled
7 processing that letter and developing Mr. Hallmon as a
8 witness? And if not, who was?

9 A. I would have been involved. I have heard Mr.
10 Hallmon's statements before.

11 Q. And I believe that he both gave that letter and then
12 we were notified there were two tape-recorded statements taken
13 from him in the course -- I'm not sure if it is tape or video.
14 He gave two statements sometime in May of --

15 A. I don't remember the dates, but I know he did make
16 some statements.

17 Q. Okay. Do you recall the date that Mr. Hallmon's
18 three-page letter that was disclosed in December of 2001 came
19 into the office?

20 A. No, I don't.

21 Q. Okay. And other than the tape recordings and this
22 written statement from him, do you recall having interviewed
23 him and made the kind of notes that you made that you've
24 identified earlier with other witnesses?

25 A. I don't recall that.

26 Q. So they could exist, but you don't know one way or
27 the other.

28 A. I don't know.

29 Q. It's only been 13 years. Or actually, it's only

1 been eight years on him.

2 I'm handing you the documents, Pages 265 through 272,
3 with the D.A. Bate Stamps 41 through 48 and ask you - it's
4 entitled Information Obtained by District Attorney - and ask
5 you if you prepared that or participated in the preparation of
6 that.

7 A. Yes, I was -- not in preparing this statement, but I
8 was a witness to that interview.

9 Q. I appreciate that. That actually -- let me describe
10 that. That actually appears to be some sort of summary of the
11 investigation made at some point. And I just didn't know if
12 that was -- as D.A. investigator that might have been a
13 document you had prepared or collated as your final report.

14 And if so, if you knew when that was put together and how
15 it was done and who else participated in the preparation of
16 the document.

17 MR. EVANS: May I see which document we are
18 referring to, Your Honor?

19 MS. STEINER: It's document entitled
20 Information Obtained by District Attorney, Re:
21 Statements.

22 MR. EVANS: I --

23 MS. STEINER: I'm happy to have you --

24 MR. EVANS: I can clearly state where that came
25 from if, if the Court would like. This is documents that
26 are our work product that we prepared, that we didn't
27 even have to furnish in discovery. But we did because it
28 was out of the items that were furnished. It is work
29 product is what it is that was prepared by the

1 investigators -- not the investigators, the D.A. and the
2 assistants that were working this case.

3 MS. STEINER: Thank you, Doug. I appreciate
4 that.

5 Q. (By Ms. Steiner:) I didn't know if you -- well,
6 would you say that in the beginning of this investigation you
7 were one of the on-the-ground law enforcement officers
8 investigating what had happened and hopefully identifying and
9 bringing the evidence to prosecute a suspect? You went out
10 the gate as a fact investigator.

11 A. Yes, ma'am.

12 Q. And then by the time it was getting ready to go to
13 trial, you put on your other hat which is to be the
14 investigator who assists the D.A. in developing the case and
15 making sure the evidence gets there for court and that, that
16 sort of thing.

17 A. Yes.

18 Q. All right. So you wore two hats. And I just didn't
19 know if this was something you wore in your investigator hat
20 or if this was something that you helped with once you became
21 the D.A.'s assistant, investigator for purpose of preparing
22 for trial.

23 The D.A. has just said he prepared that with your
24 assistance but you didn't --

25 MR. EVANS: No, I did not say I --

26 MS. STEINER: Oh, I'm sorry.

27 MR. EVANS: -- prepared it with his assistance.

28 I said that it was me and one of my assistants prepared
29 this.

1 MS. STEINER: Oh, I thought you said you
2 prepared it with your investigators.

3 MR. EVANS: No.

4 Q. (By Ms. Steiner:) Okay. So that was prepared by
5 the D.A. You didn't prepare that.

6 A. No, I didn't.

7 Q. I know your name isn't on this, but I'm handing you
8 Document 775 from Exhibit 1 that appears to be standard
9 Miranda waivers, Criminal Investigation Bureau, which would be
10 the highway patrol. And it's signed by Jack Matthews, who was
11 -- was he the chief, chief person for C.I.D.?

12 A. I think so.

13 Q. All right. Pertaining to Mr. Willie James
14 Hemphill -- and I didn't know. Are we missing a statement
15 from a Mr. Willie James Hemphill? Did you ever -- of Memphis,
16 Tennessee.

17 A. I'm not familiar with this.

18 Q. Okay. You did not interview Willie James Hemphill.

19 A. No. No.

20 Q. To your knowledge, when you sat down with -- this
21 was taken on July 21, 1996, and I'm assuming that was in the
22 height of everybody investigating. And you were talking
23 frequently with Mr. Matthews and the other investigators to
24 decide what to do next.

25 Did anybody ever mention having interviewed a Mr. Willie
26 James Hemphill?

27 A. I don't remember that name myself.

28 Q. And then there was also some evidence submitted to
29 the crime lab from Ellisville, Mississippi, some clothing and

1 other things collected from someone named Jeffery Hudson. Do
2 you have any -- did you ever interview or process or do any of
3 the investigation that lead to a Mr. Jeffery Hudson having
4 evidence taken from him and submitted in connection with this
5 case?

6 A. No, ma'am.

7 Q. All right. Now, I believe that on July 16, a
8 gunshot residue kit was collected from Mr. Curtis Flowers.

9 A. That's right.

10 Q. Did you know that was happening then?

11 A. Yes.

12 Q. Did you request that it be done?

13 A. It was discussed. I know Mr. Matthews collected it.

14 Q. At that time you and Mr. Matthews were both talking
15 back and forth about what needed to be done right away. And
16 he wouldn't do anything without telling you and you wouldn't
17 do anything --

18 A. No, that, that wasn't lined up.

19 Q. Okay.

20 A. I mean he worked for the Mississippi Highway Patrol.
21 I worked for the district attorney. And we tried to work in
22 cooperation as much as possible toward the same goal. But you
23 know, I don't know all that they did or didn't do.

24 Q. Do you know -- did you request that this be done?

25 A. I think Mr. Matthews requested that.

26 Q. Okay.

27 A. Now, when you say requested, you talking about
28 requesting from the crime lab?

29 Q. No. As an investigator saying one of the things we

1 need to collect here is a G.S.R. on Mr. --

2 A. I can't recall. We may have all discussed it, but
3 Mr. Matthews collected it.

4 Q. Did you collect a G.S.R. off of anybody else? I
5 know Mr. Simpson had reported losing a gun, Doyle Simpson.
6 Emmitt Simpson himself reported as having been accused of
7 stealing a gun by Mr. Simpson.

8 Did you request anybody or you yourself perform a gunshot
9 residue collection kit? And I'm not trying to get at the
10 testimony that people have given that they didn't. I am
11 asking you did you request it.

12 A. I, I don't remember that. But you know, you were
13 stating that Mr. Simpson's brother was a suspect --

14 Q. I'm not saying he was a suspect.

15 A. -- of stealing a gun; did you say?

16 Q. I'm saying as I understand the testimony and the
17 evidence collected, at some point Emmitt Simpson said my
18 brother accused me or my cousin accused me of stealing a gun.
19 And I didn't know --

20 A. Right. That, that was suggested by Doyle Simpson.
21 He confronted his brother --

22 Q. Right.

23 A. -- thinking he might have gotten it at first. Yes.

24 Q. Right. But you did not -- so far as you know,
25 nobody took --

26 A. I'm not familiar of anyone else doing a G.S.R. kit.

27 Q. Okay.

28 A. I'm not saying there was not. I am just not
29 familiar with it.

1 Q. One of the reasons I'm asking is in the -- when we
2 came on the case, the D.A.'s office gave us all -- everything
3 that had been filed and included a very large master list of
4 everything that had been previously served that had actually
5 been attached to the service. And one of the things attached
6 to that list was something about something dated -- a report
7 dated August 27, 1996, from the state crime lab.

8 And I have now gone through both what had been produced
9 to us and what I've gotten from the crime lab, and there is no
10 report with that date. And I'm trying to sort out, is this a
11 typo or might there have been something else.

12 And this was at or around the times that we were getting,
13 I think, the other -- the immediate trace evidence stuff was
14 coming back during that, before that part of the year. And I
15 just didn't know if that might have been something --

16 A. I don't know. I would have to guess and would have
17 to suspect it to be a typo, but I wouldn't start to even guide
18 it there.

19 Q. Okay. But it might be worth at least asking --

20 A. I'm not familiar with it.

21 Q. -- to look and see if there is such a thing in
22 y'all's office.

23 A. I don't think our office has anything to do with
24 anything like that.

25 Q. All right. And let me ask you this. In October of
26 1996, and I'm handing you Page 541 on Exhibit 1. And I know
27 that you are not -- are neither the delivering or submitting
28 or requesting officer. But on October 1 of 1996, there is an
29 evidence submission form for something labeled Exhibit 77,

1 .380 caliber Lorcin automatic. It says pistor, but it's
2 apparently pistol.

3 And I was wondering if you, in your capacity as being so
4 involved in the investigation or talking with Mr. Matthews and
5 Mr. Miller, who submitted this, if you know from whom that gun
6 was collected and why it was submitted to the crime lab.

7 A. I don't know the answer to that.

8 Q. All right. Do you know -- you didn't have anything
9 to do with requesting any of the tests on this.

10 A. No.

11 Q. Okay. I'm handing you Page 800 from that disk. And
12 it is a letter addressed to Lieutenant Wayne Miller, and it is
13 from your colleague Robert Jennings. And it's referring to
14 two interviews that Mr. Jennings had -- one with Doyle Simpson
15 on July 22 and one with Curtis Flowers on July 23 of 1996.

16 And in it he refers to copies of the questions he asked
17 and some charts that were associated with responses to those
18 questions. I'm going to let you inspect that.

19 I will say for the record that in Defense 1 there
20 appeared to be two, three handwritten lists, that were
21 furnished in association with this, of questions that I'm
22 satisfied from prior discovery are what is being referred to
23 there, relating to the interview with Mr. Flowers, one with
24 notations of plus or minus on it. And one with Mr. Simpson,
25 also with notations of plus or minus on it.

26 My question is I think it uses the words charts. And he
27 uses an and. So I don't think those lists are charts. Are
28 you aware of whether or not what he calls the charts are in
29 existence? I would state for the record that they are not --

1 I don't have anything that I would associate as charts on
2 that.

3 A. I would not be involved in that.

4 Q. Okay.

5 A. That would be Mr. Jennings.

6 Q. Okay. He would have acted independent. He wouldn't
7 have gone through you --

8 A. No, ma'am.

9 Q. -- for that.

10 All right. But do you recall ever having charts come in
11 to your position --

12 A. No, ma'am.

13 Q. -- as an investigator?

14 There was in, again --

15 THE COURT: Weren't the charts you were talking
16 about polygraph?

17 MR. EVANS: Yes, sir, they were.

18 MS. STEINER: Yes. And as I say, I will say
19 that on what I am furnished there is not anything that I
20 would associate -- that looks like that. And I just was
21 wondering and possibly, you know, I was going to ask. I
22 just didn't -- we don't have those. If they are in
23 existence, I think they need to be furnished.

24 THE COURT: Are there any?

25 MR. EVANS: No, sir. We have looked for the
26 charts, the results. I think the report is in existence.
27 It has been furnished. The Court has ruled that we
28 cannot go into it. They know what was there, and we have
29 talked about it numerous times.

1 MS. STEINER: I, I understand that. I mean and
2 its value is as an interrogation but...

3 MR. EVANS: Well, it would be to me.

4 Q. (By Ms. Steiner:) Now, according to the district
5 attorney summary that we were discussing, there were, in
6 addition to the interview with Mr. Jennings, at least three
7 interviews with Mr. Flowers conducted by law enforcement; is
8 that correct?

9 A. As I understand that, yes.

10 Q. And I believe according to Page 1037 in the summary
11 and the Miranda waiver, you participated in a conversation
12 with Mr. Flowers on July 13 --

13 A. 16th.

14 Q. -- 16th, excuse me, at about 1:30 in the afternoon.

15 A. Correct.

16 Q. I am going to hand you Page 801 and Page 1037. And
17 let me confirm that those are both documents you prepared or
18 participated in the preparation of.

19 A. I participated in them, yes.

20 Q. All right. Now, the second page, Page 1037, is a
21 single page handwriting. That is your handwriting; is that
22 right?

23 A. Um-hum.

24 Q. And you've noted you were there and the time. Is
25 that the only page of notes from that conversation you had?
26 It appears to end very abruptly, and I was wondering if there
27 might be a second page of those.

28 A. No. I think, to my knowledge, that is it.

29 Q. Did you prepare that as you were having the

1 conversation? Or was this one of those conversations that you
2 felt you should probably just not have a pen in your hand and
3 prepare later?

4 A. I did this while it was going on.

5 Q. My only question was you put approximately 1:30 up
6 there.

7 A. I always do that. I don't get specific, you know,
8 for my watch may be off or whatever, a lot of different
9 reasons. Just like not to give a documentation on a specific
10 location not to scale. You just put not to scale there to
11 keep from being pinned down in case there is a conflicting
12 problem there.

13 Q. Now, the longest interview, as I understand it from
14 the testimony and the discovery, with Mr. Flowers actually
15 occurred on July 18 of 1996.

16 A. Um-hum.

17 Q. And at Page 802 Mr. Matthews and his colleague Wayne
18 Miller administered Miranda warnings at 1455.

19 A. Um-hum.

20 Q. And then at 1502, excuse me, took a statement that's
21 located at Pages 781 through 799, district attorney's Bates
22 numbers Page 90 through 108.

23 A. Um-hum.

24 Q. And that's in a slightly different format than the
25 recorded statements you took. Was that statement transcribed
26 by someone at C.I.D.?

27 A. I, I don't know the answer to that.

28 Q. Okay. Did you sit in on that statement?

29 A. No.

1 Q. All right. Was there -- to your knowledge, was
2 there any reason why you didn't at that point?

3 A. I think one thing, you know, if you have got three
4 people in a room, you didn't want him to feel intimidated and
5 be comfortable in his conversation. You know, a lot of times
6 that's the answer. But on that particular case, the
7 situation, I don't know for sure. I don't know for sure.

8 Q. And then there's a third statement in the summary
9 and a third Miranda warning dated July 23 in which Wayne
10 Miller and Jack Matthews also report in the D.A. summary as
11 having been present and had a conversation and taking a pair
12 of shoes. Did you participate in that conversation or event?
13 I am handing you -- will you read the page numbers at the
14 bottom?

15 A. 803. And is it 270?

16 Q. 270. Yeah. 271.

17 A. I don't think I -- I may have been there, but I
18 didn't participate. And I don't know that I was in the room
19 when he was actually --

20 Q. As far as you know, you didn't take any --

21 A. No.

22 Q. -- notes as you did in that first conversation.

23 A. No.

24 Q. All right. Thank you.

25 The discovery refers to a recorded statement by Troy
26 Yates taken from Curtis Flowers in the master list. Who is
27 Troy Yates? Is he a police officer?

28 A. He was a citizen here that when the sheriff, former
29 sheriff, become disabled from an accident or whatever, he was

1 a friend to the sheriff or auxillary deputy or something on
2 that order. Specifically, I don't know the answer to that.

3 Q. Okay. You don't know --

4 A. That's as much as I know about it.

5 Q. -- how he came to be taking a recorded statement
6 from Mr. Flowers.

7 A. No. I'm not directly involved with that.

8 Q. I, I didn't ask if you were directly involved in it.
9 But you were the chief investigator for the D.A.'s office or
10 you were doing a lot of work for the D.A.'s office. Were you
11 aware of that statement and the circumstances under which it
12 was taken?

13 A. I read the statement later, but I was not involved
14 with it.

15 Q. So there is a written transcript of that statement.

16 A. I heard Troy and them talking about it. And I, I
17 don't know that I read one, but I know that Troy and the
18 sheriff, former sheriff, had talked about it. I don't know.

19 Q. But there is a tape recording of that statement if
20 that is what is disclosed.

21 A. I don't know. There may be. I don't know. If it
22 was, I didn't have anything to do with it. I don't know
23 anything about it.

24 MR. EVANS: Your Honor, if I may, for the
25 record, I think I can explain this point. This was not
26 done by law enforcement. This was done by a friend of
27 the defendant, and it was done at their dealings. We had
28 nothing to do with it.

29 So once we got information that it was there, even

1 though it was not something that we prepared, it was done
2 at his own doings, we furnished what we had to defense.

3 MS. STEINER: All right.

4 MR. EVANS: But it was not done by law
5 enforcement. It was not done by the D.A.'s office. It
6 was not done in furtherance of the prosecution. It was
7 done by the defendant and his friend.

8 MS. STEINER: And you still have the recording.

9 MR. EVANS: I have no idea if I ever had a
10 recording. Whatever we had was furnished.

11 MS. STEINER: Well, the problem, as it turns
12 out, as I went through this, it appears that we do not
13 have any tape or video recordings, except possibly the
14 Odell Hallmon interviews, physically in our office from
15 these interviews that happened during that first few
16 months. And I am at the conclusion going to ask that we
17 do have the right to come and make copies of those.

18 MR. EVANS: Your Honor, I think this we got
19 from one of the former defense attorneys.

20 MS. STEINER: Okay.

21 THE COURT: Troy Yates. Was he doing anything?

22 MR. EVANS: No, sir. He was not working in the
23 capacity of law enforcement at that time.

24 MS. STEINER: But he did turn something in to
25 you and you were --

26 MR. EVANS: Not to me. No.

27 MS. STEINER: Somebody. A defense attorney
28 turned it in to you.

29 MR. EVANS: That is the best I can remember. I

1 think it was Gilmore that had furnished it to us.

2 MS. STEINER: All right.

3 MR. EVANS: And at some point -- it may have
4 been Chokwe Lumumba did not have what we had. We told
5 him what we had.

6 MS. STEINER: Okay.

7 MR. EVANS: I think that is the way it went.

8 MS. STEINER: It is just on a list that has
9 multiple updates --

10 MR. EVANS: Yeah.

11 MS. STEINER: -- from the time when the
12 Gilmores were doing it, from the time when Mr. Lumumba
13 was doing it. And I think a new list was started after
14 we got involved. So there may be that tape recording and
15 possibly --

16 MR. EVANS: If it is, y'all saw it. I don't
17 know.

18 MS. STEINER: I'm saying for the record we
19 don't have it. And certainly we are going to ask for
20 access to come and make copies of those.

21 MR. HILL: Your Honor, I don't know how it
22 could be much plainer. This is something that the
23 defendant went to Troy Yates and gave voluntarily. It
24 was not furnished to us. We don't have any tape
25 recording to the best of my knowledge.

26 MS. STEINER: The disclosure indicates that
27 there was a tape-recorded statement. I didn't know if it
28 was a tape recording or a written statement.

29 MR. EVANS: You can ask your client.

1 MS. STEINER: We have neither.

2 Q. (By Ms. Steiner:) Now Mr. Johnson, you did actually
3 take tape-recorded statements from several of the people you
4 personally interviewed; is that correct?

5 A. Yes.

6 MS. STEINER: I've got to reach in my bag.

7 Excuse me. I am going to turn my back on you, Your
8 Honor.

9 Q. (By Ms. Steiner:) I'm handing you, just for example
10 purposes, Pages 868 and 869 of the discovery on the disk
11 entitled statement of Beneva Henry. You don't have to talk
12 about the substance of it.

13 I am asking you to look at that format. It is a
14 uncaptioned, typed statement that says whose statement it is
15 and introduction with who was there and then a "Q" and "A"
16 with the questioner and the responder.

17 Is that the format of any tape-recorded statements you
18 took that were transcribed?

19 A. Yes.

20 Q. So if I find statements that look like that and in
21 that typeface...

22 A. I can answer for this one.

23 Q. Yeah.

24 A. That is Miss Henry.

25 Q. Okay. Did you send these out to be transcribed, or
26 did you have someone in the D.A.'s office who did this for
27 you?

28 A. I don't know. I don't remember that. Sometimes our
29 secretary will do it, and sometimes the police department will

1 have it done. But I don't know the answer to that.

2 Q. All right. To your knowledge, are the tape
3 recordings from which these transcripts made still in the
4 possession of the district attorney's office?

5 A. I'm sorry.

6 Q. Are the actual tapes in the possession of the
7 district attorney's office?

8 A. I would assume so.

9 Q. Are they small scale tapes?

10 A. Yes. Microcassette.

11 Q. Microcassette tapes. All right. So that is what I
12 need to be digging through my boxes to see if we have
13 microcassette tapes.

14 A. You should have all those. We made copies of all of
15 them.

16 Q. Did you make them for this office, or did you make
17 them for Mr. Lumumba or Mr. Gilmore?

18 A. I think two different times we made copies of the
19 tapes.

20 Q. Okay. But do they still exist if for some reason
21 they didn't end up coming to us? If we want to come up with a
22 small scale, they are still there to be copied if we need to.

23 A. As far as I know, I think so.

24 Q. Thank you.

25 Excuse me, Your Honor. I'm used to a bigger table.

26 I showed you a Miranda form without a statement. There
27 is a transcribed statement of Doyle Simpson that was taken -
28 and I can't remember the exact date - in which there was also
29 a note dated the same date in your hand, in which it says

1 Miranda warnings were given by someone. And there is no
2 actual Miranda waiver form attached. And I think it's from a
3 numbered-thing, and there is no page before or after it
4 missing.

5 Do you have a recollection of whether or not a written
6 Miranda form was ever obtained from Doyle Simpson?

7 A. I don't know. It may have been just read to him
8 from a card. I, I don't know the answer to that or which
9 interview you are talking about or day and time.

10 Q. All right. Let me find this then. This is what I
11 was looking for before. I am handing you pages marked 917 and
12 then 921 through 920 -- well, I'm handing you Pages 921
13 through 923, which appears to be the first three pages of the
14 statement taken August 14, 1996, from Doyle Simpson.

15 And the first page is a date of same date with a similar
16 time stamp and asking you to review those and see if you can
17 tell me whether or not you can tell from that whether or not a
18 written waiver was taken.

19 A. It says here mirandized and says from card. That is
20 why I --

21 Q. Okay. Okay. So that means it was done orally --

22 A. Um-hum.

23 Q. -- but not written.

24 There is a little -- looks like a tear out of the corner
25 of that piece of paper at the bottom. It is about a third
26 generation photocopy. Do you recall if there was -- did you
27 tear that off or did it just get --

28 A. If it was a full size, it wouldn't have been a tear.
29 It could have been just a note or something that got stuck on

1 there. I don't know the answer to that.

2 Q. You don't recall if you --

3 A. No, ma'am.

4 Q. -- tore that off for any reason.

5 A. No, ma'am.

6 Q. I have asked you, you don't know anything about an
7 August 27 forensic report from the crime lab.

8 A. Forensics on what?

9 Q. That is what I don't know. We talked earlier about
10 whether this was a typo.

11 A. The only way I would know is if, you know, when you
12 send something to the lab, you have a submission form showing
13 the request of what you want analyzed and why. And you know,
14 unless I saw that and who signed it in, I wouldn't know.

15 Q. Were you the officer who assisted Mr. Carter and
16 Miss O'Flaherty the first time they came and requested 188
17 pages of documents from the file back in August of 2003?

18 A. I don't remember.

19 Q. So you wouldn't --

20 A. It very well could be.

21 Q. Okay. Do you know --

22 A. Or somebody else at the office could have been
23 there. I don't know.

24 Q. To your knowledge, the D.A.'s office preserved
25 copies of everything of that particular 188-page submission.

26 A. I would think we have preserved everything that we
27 have on that case.

28 Q. So that would be available if --

29 A. As far as I know, everything is available.

1 Q. -- we have missing pages from that.

2 Your Honor, may I proceed with the questions that would
3 be pertinent to the motion for bail as well, rather than
4 recalling Mr. Johnson or making him wait?

5 THE COURT: That will be fine.

6 Q. You, I believe, signed the affidavit once you had
7 determined that Mr. Flowers -- you had the evidence to charge
8 Mr. Flowers. You signed the affidavit and obtained the
9 warrant; is that correct?

10 A. I was -- yes.

11 Q. All right. One of the things that for whatever
12 reason isn't in our file is the warrant itself. The general
13 affidavit was signed, I think, on January 9. Did you obtain
14 the warrant the same day that you submitted the affidavit or
15 was there a delay?

16 A. That's been some time ago, but I think it would have
17 been done the same day.

18 Q. It was done in front of Judge Morgan.

19 A. Morgan.

20 Q. Do you ordinarily get felony warrants signed by the
21 circuit judge?

22 A. Well, you can. I mean it's not an undone practice.
23 It's not a common practice, but we did choose to go before
24 Judge Morgan on that.

25 Q. Do you -- was it just the officers who -- did you
26 submit any kind of further statement of probable cause other
27 than just the warrant? It's the last -- just the affidavit,
28 the general affidavit. Those are the last two pages.

29 A. The general affidavit is all I remember.

1 Q. Okay. And did that warrant get issued? And you
2 think that --

3 A. Yes.

4 Q. -- warrant got issued that day.

5 A. Yes.

6 Q. When did you first attempt to serve that warrant?
7 Did you make any investigation to find him?

8 A. We, we knew that he had -- was in Pilot Point,
9 Texas. And you know, we watched as far as comings and goings
10 here. I knew he had been here on a weekend or two. But we
11 were able to confirm that he was there, and we just had him
12 picked up there.

13 Q. Okay. And you were satisfied that you knew his
14 whereabouts and if he was in Texas that you could get him
15 there on a phone call and notification of warrant.

16 A. Well, I don't know that. I think we were concerned
17 about his stability. I mean to leave here and go out there
18 would have been unusual.

19 Q. But he would come back visiting several weekends
20 during that time.

21 A. Well, I don't know that he was public with that.

22 Q. Winona is --

23 A. I would get word that he might have come home on the
24 weekend, but he wasn't out in the public like we thought he
25 normally would be.

26 Q. He didn't have a job here, of course.

27 A. That's right.

28 Q. He was well aware that he was under suspicion --

29 A. Yes, ma'am.

1 Q. -- and that people in the neighborhood --

2 A. Yes, ma'am.

3 Q. And, you know, he could go downtown and there were
4 people who had already decided he was a murderer who just
5 hadn't been arrested, probably wasn't a very pleasant place
6 for him to be out in public.

7 A. Well, I don't know what he felt like. I am just
8 saying that we were concerned about his mobility there.

9 Q. All right. But he had not disappeared from where
10 you knew where he was at any time between when you first
11 questioned him and the time you picked him up.

12 A. He, he didn't report to me that he was moving to
13 Texas. I don't know what else I can say.

14 Q. Had you requested that he do so?

15 A. I think we had.

16 Q. Okay. But you knew where he was and you went and
17 got him when you needed him.

18 A. Well, we did some checking and found where he was.
19 Yes, ma'am.

20 Q. And he signed a waiver of extradition and returned
21 home within 24 hours of having been detained in Texas; is that
22 correct?

23 A. I think so.

24 Q. And every time you participated in calling him in to
25 be interviewed or give anything he came and cooperated; is
26 that correct?

27 A. That's right.

28 Q. And he, to your knowledge, has not -- you have had
29 no reports that he has ever attempted not to show up for a

1 court appearance or to leave or escape from custody on this
2 court appearance during the time -- these 13 years he has been
3 in detention.

4 A. I have no knowledge of that.

5 Q. Okay. You certainly don't have any knowledge he
6 has.

7 A. No, I don't.

8 Q. I have one other question, and this really is one
9 other area.

10 I believe that in the trials there are two witnesses, a
11 Mrs. Catherine Snow and a Mr. Charles Collins, who is now
12 deceased, and who we are using prior testimony from, who were
13 shown photo arrays in which Mr. Flowers was allegedly
14 identified.

15 And did you participate in both of those photo array
16 show-ups, per se?

17 A. I did.

18 Q. Are the original sleeves and envelopes of the actual
19 arrays, are they still in existence?

20 A. To my knowledge they are.

21 Q. All right. I, I really don't know what's what. Let
22 me give you the pages I'm handing you and see if you can maybe
23 talk to me about who was shown what and what they represent.
24 And I'm handing you Pages 710, 712, 713, 714, 981, 982, 983
25 and 984. And let me show these to Mr. Evans.

26 If you want to look at that.

27 (MS. STEINER SHOWED THE DOCUMENTS TO MR. EVANS.)

28 MS. STEINER: Thank, you Doug.

29 MR. EVANS: All right.

1 MS. STEINER: Your Honor, may I stand next to
2 the witness, because I have very specific questions?

3 THE COURT: You may.

4 Q. (By Ms. Steiner:) If you review all of these and if
5 you could sort out for me, if you can recall, which show-up,
6 which photo arrays were shown to which witness? And then also
7 tell me which was the first and which was the second photo
8 array shown to Mr. Collins.

9 A. I would have a difficult time doing that from this,
10 because these are just photostatic copies of the originals,
11 number one.

12 Q. Okay.

13 A. But I know that on the originals, in the
14 photographs, when they were identified, whatever they
15 identified, such as Catherine Snow saying that's him, I had
16 her to initial the back of the photograph, and I initialed it.

17 Q. All right.

18 A. Or the back of the deal in order to identify that on
19 the original. That wouldn't show on here.

20 Q. Okay. Just a second. Let me --

21 A. I can't tell from looking at that unless I
22 remembered the dates and got that straight in my mind which
23 one was shown to which person.

24 Q. All right. I'm showing you -- I'm showing you four
25 pieces of paper that appear to be front and back of the same
26 pictures. One of which has the name Catherine Snow written
27 somewhere on it. And these are pages in no particular order,
28 981, 982, 983 and 984. I have to say I arranged these on my
29 best guess of what was what.

1 MR. EVANS: Your Honor --

2 Q. And I am going to ask you --

3 MR. EVANS: -- if I may object, Your Honor,
4 before she continues. Every witness that has testified
5 from these has testified from originals.

6 The originals have been in the court files on
7 several trials. They are available. There is no need in
8 trying to reproduce something here in court and have a
9 witness testify that is not even in the same order it was
10 furnished.

11 MS. STEINER: Your Honor, that is why I'm
12 asking this, because, unfortunately, we have yet -- I
13 mean some of these are defense exhibits. We have yet to
14 have absolutely gotten this, and I would like to ask him
15 questions about --

16 First, I want to identify that this is as best you
17 can tell photographs --

18 THE COURT: Wait. Have we not had those in the
19 other trial?

20 MR. EVANS: Yes, sir. We have. A good place
21 for her to look would be in the court file.

22 THE COURT: The exhibits are going to be in the
23 possession of the clerk. Everything that is --

24 MS. STEINER: All right.

25 THE COURT: And as far as Collins, his
26 testimony is, you can rest assured, one witness whose
27 testimony is not going to change.

28 MS. STEINER: That's true. That's true.

29 Q. (By Ms. Steiner:) I am -- can you tell me just from

1 looking at that that is the one that was shown to Miss Snow?

2 A. I can't tell.

3 Q. You can't tell that.

4 MR. EVANS: Your Honor, I think the Court has
5 ruled that this was not relevant.

6 THE COURT: If we have got -- I mean we have
7 got the photos in the file. We have got I don't know how
8 many trials of testimony about this. So I really don't
9 know...

10 If you will be specific about the question.

11 MS. STEINER: Um-hum.

12 Q. (By Ms. Steiner:) Yes. I'm -- let me say for the
13 record, that I'm fairly confident that 712 and 713 are copies
14 of the actual -- are fairly clear copies. They are the front
15 and back of something that is in evidence.

16 There is also Page 710, which all I have is an unclear
17 copy. And I can't even tell. Is that the same line-up as is
18 on 712?

19 A. I, I honestly can't answer that.

20 Q. You don't know whether Curtis Flowers is in either
21 of those.

22 A. No, I can't answer that.

23 Q. All right. Thank you.

24 As far as you know, Doug, the physical originals have not
25 been taken back to your office for safekeeping. They are in
26 the clerk's office.

27 MR. EVANS: I would have to check to be sure.

28 This is the same exhibits that have been in trial. This
29 is the same exhibits y'all have come and looked at

1 numerous times at the office and in the courtroom.

2 You know, I don't know what else I can do.

3 MS. STEINER: I appreciate that.

4 THE COURT: I have not signed an order allowing
5 anything to be withdrawn from the court file that was
6 introduced in the last trial. So I assure you they are
7 in the court file. Because I have every confidence that
8 our clerk has got them in her possession, because she
9 wouldn't release them without my authority.

10 MS. STEINER: Okay. While we are on this, the
11 clerk, since she came in after the first and second
12 trials, Your Honor, do we know, are the exhibits that
13 were introduced in the first few trials, the trial in Lee
14 County and Harrison County, that were not re-introduced
15 in subsequent trials, are those -- should those be here
16 in this clerk's office or did the --

17 MR. EVANS: Those are in our office.

18 MS. STEINER: In your --

19 MR. EVANS: They are the same exhibits that
20 y'all have looked at. They haven't changed.

21 MS. STEINER: I appreciate that. We do not
22 appear to have copies.

23 THE COURT: All I know is where the exhibits
24 from the trial -- I mean I didn't try it the first
25 several times. The only exhibits I'm aware of are the
26 ones that were introduced at the last trial. And they
27 are going to be in the office of the clerk.

28 MS. STEINER: I appreciate that.

29 What I've discovered is some of this discovery and

1 some of the trial transcripts refer to exhibits that were
2 introduced in the first and second trials that have not
3 been introduced. And I would like to see those.

4 And we have yet -- Miss, Miss Martin didn't know
5 whether she had those or if those would have been stored
6 elsewhere. And I just am trying to determine that so
7 that I can go to the correct clerk's office to look at
8 them.

9 THE COURT: Well, I'm going --

10 MS. STEINER: Or if the D.A. has them to ask
11 that we be allowed to view them.

12 THE COURT: Miss Martin is a very efficient
13 clerk, and I am sure that she will be glad to look with
14 you and see if she has got these. If she doesn't, you
15 will know to start looking elsewhere.

16 MS. STEINER: Yes, sir. I am just trying to
17 figure out where else to look - if I go to Lee County or
18 if I go to Mr. Evans' office.

19 THE COURT: Well, I am beyond the ability to
20 assist you on that since I didn't have anything to do
21 with the previous trials. But I would assume that you
22 could even look in the record in the Supreme Court if you
23 had to because those cases were appealed to the Supreme
24 Court. And I am sure there is a complete record. And I
25 don't know if the record of the prior trials are on file
26 here or on file in Lee County or Harrison County. Is
27 that where it was?

28 MS. STEINER: Yeah, that was the -- no, Your
29 Honor. I have checked with the archives in the Supreme

1 Court. And typically, the actual exhibits are not
2 retained in the archives record. And I am just trying to
3 figure out before I give Miss Martin asthma going through
4 her files.

5 THE COURT: What are you looking for
6 specifically?

7 MS. STEINER: I think there were some documents
8 in the first trial introduced by the defendant pertaining
9 -- there were some defense exhibits that were not
10 re-introduced in the second or any of ours. And I feel
11 that we have to see what those are as part of our
12 investigation.

13 THE COURT: That is kind of like the needle in
14 the haystack. If you can't tell us what it is you are
15 looking for, the clerk is not going to be able to look.

16 MS. STEINER: Well, it was Defendant's Exhibit
17 1. And I can't remember why I thought it was significant
18 in the trial held in Lee County.

19 And it's -- I'm sorry, Your Honor. I had a cold and
20 some allergies all week. And I'm blanking on what it
21 was. It was a defense exhibit.

22 THE COURT: Are you through with Mr. Johnson by
23 the way testimony?

24 MS. STEINER: I believe so, Your Honor.
25 Do you have anything else?

26 Thank you, Mr. Johnson. That is all I have.

27 THE COURT: Do you have any questions for Mr.
28 Johnson?

29 MR. EVANS: No, sir.

1 THE COURT: We will recess and you can go look
2 during the recess in the clerk's office and see if what
3 you might be wanting is there.

4 And we will resume at 1:15.

5 (COURT RECESSED FOR THE NOON HOUR.)

6 (MR. EVANS, MR. HILL, MS. STEINER, MR. CARTER AND THE
7 DEFENDANT WERE PRESENT. PROCEEDINGS WERE AS FOLLOWS:)

8 THE COURT: We will come back to order.

9 MS. STEINER: Thank you, Your Honor.

10 I am assuming since they wouldn't just refuse to
11 show up on a subpoena, that the subpoenas I had on Mr.
12 Matthews and Mr. Thornburg didn't get served. And I had
13 a brief conference with Doug.

14 Mr. Matthews has testified several times in this
15 matter and will undoubtedly testify again. All I was
16 trying to establish with him was what the content of
17 the -- make sure we actually had the full content of the
18 highway patrol investigative file.

19 Which at the time I filed the motion, I was missing
20 six pages that had been mentioned. And let me just state
21 on the record that we've been informed that the only
22 notes that constitute summaries or C.I.D. Mississippi
23 Highway Patrol reports prepared by -- as part of the file
24 of the highway patrol, are the following pages in Exhibit
25 1, Pages 59, 60, 61, 62 and 63 and then Pages 1287, 1288,
26 1289, 1290, 1291 and 1292, that I'm satisfied we have the
27 handwritten notes of the various investigators who worked
28 for the highway patrol to the extent that they were
29 taken.

1 But I wanted to state that the only thing I was
2 going to ask him about was that -- was this, the
3 investigative file. I have to say those last six pages
4 contain something I had been expecting to find, and I now
5 have my answer to that.

6 So I'd like to mark those pages that I've actually
7 identified as our second exhibit on -- and go ahead and
8 rest on the discovery motion.

9 MR. EVANS: If I understand right, this is
10 prior discovery that you had received that you just
11 couldn't find, and then you found it.

12 MS. STEINER: Yes. Yes. I had -- it was
13 referred to in the tender, but this wasn't attached to
14 the tender. I had -- I dug through a box of stuff that
15 at least three other attorneys had been through, and I
16 think it was in the box of the appellate attorney, which
17 was not where we had looked before. It's actually two
18 page, two documents, and I'd like them to be collectively
19 Exhibit 2.

20 THE COURT: I have seen this. What is the
21 other one?

22 MS. STEINER: The other one, Your Honor, is --
23 it appears to be the handwritten draft for some of the --

24 THE COURT: That is fine. You can for benefit
25 of your motion. It looks like you have a copy of the
26 affidavit that you were asking about earlier too that
27 Judge Morgan had signed or that they had signed.

28 MS. STEINER: Yes, Your Honor. That is not
29 going into evidence, the affidavit I had. What I don't

1 have is the warrant that was issued on it. And I, I
2 don't think that is in the circuit court file since it
3 was not already in this case number. And if the State
4 has a copy of that, if they wouldn't mind faxing me a
5 copy of it, the warrant itself.

6 Are you willing to furnish that?

7 THE COURT: Do you even have it?

8 MR. EVANS: I doubt it very seriously.

9 THE COURT: I don't know what --

10 MR. HILL: It was probably sent to Texas.

11 MR. EVANS: If I had it, then it would be
12 listed on discovery. If it wasn't listed on discovery --

13 MS. STEINER: It was listed on discovery.

14 MR. EVANS: Okay. If it is listed on
15 discovery, I had it.

16 MS. STEINER: I am just saying I, I have been
17 through all the boxes and for some reason it isn't there.

18 MR. EVANS: It's probably in one of those other
19 boxes y'all haven't looked through.

20 MS. STEINER: No, I have looked through every
21 single one of them.

22 MR. EVANS: Your Honor, I do not object to what
23 she wants to introduce as to what she is representing it
24 as. I am not saying that that is everything that Jack
25 Matthews did. I am saying that everything that Jack
26 Matthews did and recorded was furnished in discovery.
27 Now, whether this includes all of that or not, I don't
28 know. But I have no objection to her having it
29 introduced with that stipulation in there.

1 THE COURT: I understand, and that will be
2 fine.

3 (THE DOCUMENTS WERE MARKED DEFENDANT'S EXHIBIT NUMBER 2
4 AND ADMITTED INTO EVIDENCE ON THE MOTION.)

5 MR. EVANS: Your Honor, in response, and I
6 don't know that I ever on the record answered you. You
7 asked me a minute ago if we had that warrant if we would
8 send it. We will. And if -- and you know, I think I
9 have made myself very clear to defense all along, through
10 all these trials. If they can give me any specific thing
11 that we have furnished that they have lost, I will
12 furnish it to them again.

13 We are not trying to keep them from having evidence.
14 We are just trying to save going through everything that
15 we have already gone through so many times. But if it is
16 something that they can show me and say this particular
17 page or this exhibit we have lost, I will furnish it to
18 them again.

19 MS. STEINER: I appreciate that, Doug.

20 I was going to sort of sum up what in the motion,
21 because I had specified some very specific things that I
22 had wanted. And I was going to specify what I think
23 remains outstanding and get His Honor -- get you to
24 respond and ask His Honor to rule on them.

25 MR. EVANS: I do -- I do think the proper
26 procedure would have been for you to call me and say we
27 have lost these pages, would you reproduce them for the
28 fourth time, instead of filing a motion.

29 MR. CARTER: We haven't lost anything.

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1 MR. EVANS: I beg your pardon, but opposing
2 counsel just testified you had.

3 MS. STEINER: Well, we don't have it. It is
4 not there. Let me -- let me say --

5 THE COURT: Are these things you have had at
6 the previous trials?

7 MS. STEINER: Not as far as I know. I mean
8 that's --

9 THE COURT: Well, go forward with what -- I
10 mean --

11 MS. STEINER: Let me go forward with what I
12 think remains on the basis of testimony here today. The
13 original photo arrays, either they are in a court file or
14 they have been put with the D.A.'s office for
15 safekeeping.

16 THE COURT: Actually, that is fine. But why do
17 you need it? Mr. Collins is dead, and his testimony is
18 not going to change. So I don't see anything under the
19 sun that that would -- how is that going to benefit you
20 even if you do get it?

21 MS. STEINER: Well, I'm -- I, I just can't tell
22 who's in the photo arrays. If the originals are in
23 evidence, that's no problem. If I -- if we have to
24 examine, I just wanted to know what I'm looking at.

25 THE COURT: I mean he is not going to be
26 looking at them.

27 MS. STEINER: Well, I appreciate that. Mrs.
28 Snow will be. Mrs. Snow will be looking at hers.

29 THE COURT: If they have got the original photo

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1 array in the court file or if you have got it in your
2 office, Mr. Evans, if you will, turn that over.

3 MR. EVANS: Yes, sir. Again.

4 MS. STEINER: The second item -- and I am now
5 on Page 3 of my motion. The recorded statement of Curtis
6 Flowers to Troy Yates. Let me say that I, I assumed that
7 we had all these statements in the file. We had -- and I
8 have been through every box and everything, and we don't.
9 We apparently never -- apparently, our office was never
10 made separate copies. And for whoever they were made,
11 didn't get to us. I, I realize that. But if we wish to
12 come with recording, copying devices to look at those
13 originals, could they be tendered?

14 MR. EVANS: No. Not without the Court ordering
15 me too.

16 I specifically, Your Honor, the last time Ray
17 Charles Carter was in my office and tore the box up
18 looking through it, it took us two weeks to go back
19 through it and straighten it up.

20 That particular time I asked him specifically. I
21 pulled out every one of those tapes. I said is there
22 anything here that you don't have. He laughed and said
23 no, I have got every bit of it.

24 THE COURT: Well, I thought Troy Yates was the
25 one that --

26 MR. EVANS: Your Honor, she is talking about --
27 there are probably 30 or 40 tapes that they are wanting
28 to come copy again. I don't even know where they are at
29 this time. We have got this file scattered over about

1 three counties.

2 MS. STEINER: Doug, let me say for the record.
3 I only came into this late. As far as I know, those
4 tapes, if they were copied, were not copied by the Office
5 of Capital Defense counsel, because we didn't have the
6 technology to copy mini-tapes.

7 THE COURT: Copies. Are we just talking about
8 Troy Yates, or are we talking about other things?

9 MS. STEINER: Well, Troy Yates is one. And
10 then I will also say that I have a list - and I can
11 certainly provide that to the D.A. - of all the witnesses
12 who it appears the tape-recorded statements, there have
13 been transcripts, and we have never been furnished the
14 actual tapes of the statements. And these are witnesses
15 who may testify. Some of these are witnesses who
16 testified differently from trial to trial.

17 THE COURT: Well, I will do it like this. I
18 will allow somebody from your office to go to the D.A.'s
19 office and sit there with a tape recorder and listen to
20 every one of those tapes if they want to.

21 MR. EVANS: Your Honor --

22 MS. STEINER: May we copy them?

23 MR. EVANS: -- I would ask that we come to
24 either open court and do it or go to the circuit clerk's
25 office.

26 THE COURT: Well, I am not going to sit and
27 listen.

28 MR. EVANS: Well, I am not either. I have --

29 THE COURT: No, you don't have to. But I mean

1 you can make available a space for them, and they can sit
2 there and listen to the tapes if they choose to do that.

3 MR. EVANS: It will be the same thing every
4 time they come. They laugh and say they don't want to
5 look at anything.

6 THE COURT: If they do that, then --

7 MR. EVANS: That is why I would like to have a
8 court reporter transcribing what they do and don't do.
9 Because it gets aggravating, them coming up and doing the
10 same thing every trial, and then acting like they don't
11 have it.

12 To start with, Mr. Carter ought to be the one
13 arguing this motion, because he is the one that has been
14 coming to look at the evidence.

15 THE COURT: Again, if they want to come listen
16 to the tapes, they can listen to them. You know, they
17 can bring their own recording device and listen to them
18 in your office. That way you maintain possession of
19 them. And I don't see any need for anybody in your
20 office to sit there and listen with them. If they want
21 to, that's fine.

22 MS. STEINER: Your Honor, may we bring our own
23 tape recorder and record the recordings if that is what
24 we want, make our own copies of them? I, I don't want
25 them --

26 THE COURT: As long as -- I mean, you know,
27 they are -- I'm not suggesting that it would be an
28 intentional thing, but I mean tapes can easily -- push
29 the wrong button and it is going to be recorded over.

1 MS. STEINER: No, I wouldn't even put it in the
2 machine.

3 THE COURT: I mean if while somebody from your
4 office is listening to the tape, if you want your own
5 tape made while it is being played by, you know --

6 MS. STEINER: Thank you, Your Honor.

7 7-C, I believe the answer is they don't exist.

8 7-D, the -- there were three parts of that. The
9 general affidavit and the criminal investigation six-page
10 report have been located.

11 The actual warrant itself I will simply say was not
12 with those papers, and we would like to be provided with
13 a copy of the actual warrant.

14 THE COURT: If you have got the warrant, I
15 don't know what --

16 MR. EVANS: I don't know if we do or not.

17 THE COURT: Usually once a court issues a
18 warrant, there is a return made and returned to some
19 court.

20 MR. EVANS: We normally don't have the
21 warrants.

22 THE COURT: I don't know what --

23 MS. STEINER: It was Judge Morgan's court, and
24 the warrant is not in the case file on -- that was part
25 of the record that went to the Supreme Court on either
26 the first or second trials. It does not appear to be in
27 the clerk's record on this case number either.

28 THE COURT: Well, are you suggesting the
29 warrant was not a proper warrant? How is -- I don't

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1 really see what -- whether you get the warrant or not,
2 what that accomplishes, what it's going to show. And you
3 have been able to go to trial four other times or five,
4 however many it has been, without it.

5 MS. STEINER: Your Honor, I didn't decide the
6 *Wiggins* line of cases that put all of professional
7 investigation on the line under the Sixth Amendment and
8 can get -- lead to a reversal if we do not do a complete
9 investigation. This is part of the entire thing that
10 deals with him. There is also the bail motion. And
11 therefore, I believe it's relevant to this, and I'm
12 asking for it.

13 If the State says they don't have it, and there is
14 no court in which it is returned to, then, then the State
15 can say what they want. But if it is there, I would
16 request the Court order that they have someone review the
17 files, and if they have a copy of it -- it was apparently
18 originally attached to discovery served back to one of
19 the prior attorneys, and it just has not physically made
20 it into our files.

21 And very specifically, when I found that I made
22 those last few pages I thought well, great, that is off
23 the list too and it wasn't there either.

24 THE COURT: Mr. Evans, if you will check with
25 your -- look in your files and also check with -- I would
26 assume if it was -- the warrant was done by Mr. Johnson,
27 Mr. Matthews. So it may have been returned to the
28 sheriff here --

29 MR. EVANS: I don't know that I have ever even

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1 seen a warrant other than the fact she says it was
2 furnished in discovery, but we will look, Your Honor.

3 THE COURT: If you will double check and see if
4 it's --

5 MR. EVANS: It is going to take awhile, Your
6 Honor, because we have this file now in about five or six
7 different boxes, some in Grenada, some in Winona, some in
8 different locations. It is going to take awhile to sit
9 down and go back through every bit of this like we have
10 had to do before.

11 THE COURT: As I say, I have confidence y'all
12 can look through it. And if it's there, provide it.

13 MR. EVANS: Your Honor, we will arrange some
14 place. I just -- I just don't feel comfortable with them
15 coming in my office anymore, but we will arrange some
16 place to meet with them.

17 I do not trust them to the fact that I can just turn
18 them loose with the evidence. So we will have to have
19 somebody that can sit there and play the tapes and make
20 sure that nothing happens to them.

21 MR. CARTER: What about our office?

22 THE COURT: Well, y'all can meet here at the
23 courthouse in Winona.

24 MR. EVANS: That will be fine with me.

25 THE COURT: In the board of supervisor's room
26 or the extension service may be gracious enough to let
27 y'all continue using this room. I am sure you can find
28 some --

29 MS. STEINER: I would say if security or the

1 fact that he believes that we would risk our livelihoods
2 by committing felonious tampering with evidence is strong
3 enough, we would certainly stipulate that if he does not
4 wish us to even handle those, if he would like to arrange
5 to have recorded copies made of each item, we will take
6 his word for it that he has accurately copied the tapes
7 and --

8 MR. EVANS: Like he has in the past.

9 MS. STEINER: -- he can just give those to us.

10 THE COURT: Well, I don't care how it is done,
11 don't care when it is done. It has to be done. If you
12 want to have the sheriff or some law enforcement officer
13 sitting here running the recorder, that is fine. I, I
14 don't care. That is not a concern. But I want it to be
15 done.

16 MS. STEINER: So Paragraph 7-E, at the bottom
17 of Page 3, we don't -- we have the waiver of proceedings.
18 We do not have an arraignment certificate, but I kind of
19 agree with, Your Honor, that we know when he was
20 arraigned and that's of record. So they don't need to
21 look for that.

22 On Page 4, Subparagraph 7-F, the additional pages
23 from the C.S.I. investigator, those were in what I've got
24 from the crime lab. So that's moot.

25 Let me just, Doug, give you the page numbers that
26 are missing from the 188 pages that were labeled
27 inclusive from the State's file and request that Pages 9,
28 10, 41, 42, 68 through 70, 109 through 115, 126, 157 and
29 -58, 172 and 175 to -78. They are all located in

1 Paragraph F, ii at Page 4 of the motion.

2 I would request that copies of those be made and
3 furnished to us. I will send a postage, self-addressed
4 envelope if that's necessary. It probably is, what, less
5 than 20 pages.

6 THE COURT: And that's from...

7 MS. STEINER: The district attorney has said
8 that he made a copy -- copied 188 pages for Mr. Carter
9 back in 2003. I am saying that in this --

10 MR. EVANS: It was --

11 MS. STEINER: -- those pages are missing. And
12 I just want to have other copies, because I don't even
13 know if I might have those pages somewhere else in the
14 file. But if, if it's a page that's just gone, I'd like
15 to be able to assemble the file and be confident if I am
16 ever questioned about whether or not I provided adequate
17 representation to this man. I want to be able to say
18 well, I investigated and I got the D.A. mad at me and
19 the -- everybody irritated at me, but I made him give me
20 copies of everything he says I have when I have
21 represented I don't have it.

22 MR. EVANS: Your Honor, when the defense
23 attorney himself has signed that he has received these
24 items in the past, it is absolutely ridiculous that we
25 are going back through these things.

26 I would ask to put Mr. Carter on the stand and ask
27 him some questions, Your Honor.

28 THE COURT: I am not going to allow that and
29 the State can furnish these again. As I said from the

1 outset, I don't -- if this case gets appealed, if there
2 comes the time when it is, the last thing I am going to
3 have this case reversed on is because discovery wasn't
4 provided.

5 If it has to be provided more than once, I am going
6 to have it provided more than once rather than to have
7 some argument that it wasn't provided the first time.

8 MR. EVANS: That is exactly why I think it
9 needs to be done in open court so that there can't be any
10 dispute of what was done.

11 THE COURT: I don't think I have got time
12 between now and the time the trial takes place with the
13 other terms that I have got to sit here for days on end
14 going through the discovery to the items. And making
15 copies of ten pages, I don't think is going to be
16 extremely burdensome.

17 MR. EVANS: But no disrespect to the Court, but
18 we don't have time either, Your Honor. We need to be
19 preparing for trial.

20 THE COURT: Well, I am sure somebody in the
21 office can find a few minutes to make these copies.

22 Now, what else?

23 MS. STEINER: Your Honor, the following
24 Paragraph, 7-G, was a catchall. I am fairly satisfied
25 that with the explanations given by Mr. Johnson that I
26 can reconstruct most of those attachments.

27 The only thing being the statement that there was an
28 August 27, 1996, report of some sort from -- it's under
29 crime lab reports. It just says report dated August 27,

1 1996. The place where it's disclosed is, is set forth in
2 the motion.

3 If there is an August 27, 1996, crime lab report
4 that is in the possession of the State, it has never been
5 produced to us. And if they have something that that
6 refers to, I would like that produced.

7 I will say that there is nothing in the crime lab to
8 indicate that they actually issued a report that day.
9 They did issue one on August -- ballistics report on
10 August 26. But it's there and if -- since I haven't seen
11 it and apparently the State's investigator hasn't seen
12 it, we don't know what it contains.

13 MR. EVANS: Your Honor, she has got the entire
14 crime lab report. If there was no report issued on that
15 date, there is no report, period.

16 I can't go out and manufacture something, because
17 you would like to look at it.

18 THE COURT: I mean we have got the assurance
19 that there is no report on August 27.

20 MR. EVANS: It is not in the crime lab report.

21 THE COURT: So I would assume, as you discussed
22 with Mr. Johnson when he was testifying, it is
23 probably --

24 MS. STEINER: Right.

25 THE COURT: Dates are close enough in time, I
26 can understand how somebody might have put the wrong date
27 on it.

28 But there has been a search of the files and this
29 does not -- there is no report; is that correct?

1 MR. EVANS: No, sir.

2 MS. STEINER: Okay. Your Honor, the next thing
3 that we are looking for is in Paragraph 8, Subparagraph
4 A. We are asking for the dispatch logs.

5 I think we have established there is the highway
6 patrol and the local E.O.C. for a slightly expanded
7 period. The first one is from 3:00 p.m., Friday, July 6,
8 through 6:00 p.m., Monday, July 8. That would be the
9 time of the break-in to Tardy's and the report.

10 And frankly, for the first time ever, at the last
11 trial there was discussion about investigations and back
12 and forth. And I realized that we don't have anything
13 from that. They have made -- they have always attempted
14 to connect Mr. Flowers to that. And no one, as far as I
15 know, the State, nor us, have had that period to see
16 whether or not there were any reports within 20/20
17 hindsight that might be relevant to this case one way or
18 the other.

19 The second subset is for the reports starting at the
20 beginning of that day in which this occurred through
21 midnight on Thursday, January 18, of those --

22 THE COURT: I think you mean July maybe. I
23 don't know.

24 MS. STEINER: Through January -- July. That is
25 a type -- yes, I'm sorry. That should be Thursday, July
26 18. Oh, actually, I did go through, 1997, but let me
27 just --

28 MR. HILL: Judge, I --

29 MS. STEINER: July 1996. Because what's become

1 evident on this is that what, what -- before -- you know,
2 again, if there was anything in the reports that had been
3 reported and not associated both before and in the
4 immediate aftermath, I think that would be relevant. And
5 I think it's within our investigation obligation.

6 THE COURT: Well, I am not even sure. I, I
7 don't understand what you are asking for right now, and I
8 don't know --

9 MS. STEINER: Just an expanded version of --

10 THE COURT: Of what?

11 MS. STEINER: -- of radio logs.

12 THE COURT: From what date to what date?

13 MS. STEINER: From July 16 -- two dates. From
14 July 6, 3:00 p.m., July 6, 1996, through 6:00 p.m., July
15 8, 1996, and then commencing at 12:01 a.m. on July 16,
16 1996, through midnight, Thursday, July 18, 1996. That's
17 another day, two days on -- around the time of the crime,
18 most of it afterwards and the weekend of the --
19 apparently of what the State contends is the related
20 break-in.

21 THE COURT: Which -- I don't know. I have
22 never even heard any mention of a break-in before. Was
23 there some break-in a few days before?

24 MR. EVANS: Yes, sir. But nothing that came
25 out as far as in this trial.

26 THE COURT: What dispatch logs are of -- I mean
27 I don't even know if E.O.C. keeps them.

28 MR. EVANS: I doubt it very seriously.

29 MS. STEINER: If they don't exist anymore, they

1 don't. The chief said he thought they did keep them in
2 perpetuity, and he is the chief of police.

3 MR. EVANS: There has got to be some relevance.

4 THE COURT: I'm kind of -- kind of like, okay,
5 why is this suddenly something that is needed when it
6 hadn't been needed in any -- since 1996 it hasn't been
7 needed.

8 MS. STEINER: Well, for the first time in 2008
9 officers were talking about a systemic canvas, and it
10 appears that that was of sufficient importance to the
11 State, that there were consequences not only in this case
12 but in others. And I think that the -- certainly the
13 second round of these tapes would cover the time that any
14 officer testified to about that --

15 MR. EVANS: Your Honor, all the --

16 MS. STEINER: -- to determine whether reports
17 were made.

18 MR. EVANS: -- radio logs shows is when
19 officers check out at different locations. It doesn't
20 have anything else in it.

21 MS. STEINER: It --

22 MR. EVANS: I can't see anything that could be
23 relevant about this case other than when people checked
24 out at this scene.

25 MS. STEINER: Well, it --

26 MR. EVANS: Now, we did try to look at that
27 time at others and see if any more was relevant. You
28 know, frankly, I don't care what they have on the radio
29 logs if they are available, but I can't see any possible

1 way that any of that is relevant to this. It is sure not
2 relevant to who they may have talked to and things like
3 that, because that is not on the radio log.

4 MS. STEINER: Well, Your Honor, there is a
5 great deal on the radio logs about very specifically the
6 events of this case on what we do have, and it ends at
7 11:30. And what the investigation shows is they were
8 still discovering things about this case and identifying
9 possible witnesses and, and it's not even clear that the
10 theft of the .380 was officially reported or there was
11 any kind of police entry during -- that it even happened
12 during this time. I think there is many relevant things
13 that -- and this is not an unreasonable scope if they are
14 in existence to ask that they be produced.

15 THE COURT: Well, if you want to go to the
16 E.O.C. I think that you certainly can look at their logs.
17 If there is something -- and Mr. Evans, if you will
18 direct them to allow the, the defense counsel to look at
19 their logs if they have got them from that point. I
20 don't think that --

21 MS. STEINER: I have no problem with doing it
22 myself, Your Honor. I would also include the highway
23 patrol frequency that - which, again, if the Court would
24 direct - that the surrounding times within this that are
25 requested for the highway patrol frequency, as well.
26 Since I think the testimony was they were --

27 THE COURT: You know, we have got -- you are
28 going to have to limit that in scope a little bit since
29 we have got 82 counties. And you are not -- I mean I

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1 don't know which highway patrol.

2 MS. STEINER: It appears that the log that was
3 given us was just the Greenwood office log. I'm just
4 asking for a few hours before, before and a couple of
5 days after on that same log. Just, just more of -- the
6 pages that came before and after that log, and I think
7 that was just Greenwood. And I just want more of the
8 pages that have already been produced.

9 THE COURT: From the Greenwood office?

10 MS. STEINER: Or whatever the office that
11 created the log that's in evidence.

12 THE COURT: Well, there might not be anything
13 else. That is why we have got to find out.

14 MS. STEINER: Okay.

15 THE COURT: You know, you can't find something
16 if it is not there, and you have got to be specific about
17 what --

18 MS. STEINER: I will furnish one of the
19 documents that people were looking at today.

20 Let me find the page. Here it is. It says Page
21 2010, Page 669, and it actually says M.H.P., Page 2,
22 which leads me to believe that there may even be another
23 page of this.

24 But it starts -- it just says M.H.P. radio station
25 log, and it starts at 854 and ends at 1356 on the copy we
26 have. I'm asking that we go -- do it for the July 6
27 through 8 dates that are specified. And again, on this
28 to start at 000 on July 16 and end at 1159 on July 18,
29 for whatever this log is that's contained in Page 669.

1 THE COURT: Does the highway patrol have
2 anything to do with investigation of a burglary back --

3 MR. EVANS: No, sir, they did not.

4 THE COURT: I don't see --

5 MS. STEINER: Okay.

6 THE COURT: -- how they could. You know, they
7 are not generally called in on a burglary.

8 MS. STEINER: Okay.

9 THE COURT: You know --

10 MS. STEINER: Well, I guess --

11 THE COURT: Now, the later times, I mean, you
12 know, if they have got any dispatch from the July 16 to
13 the 18 timeframe, I can see that might be at least
14 remotely material.

15 So Mr. Evans, if you will have somebody contact Mr.
16 Johnson or the sheriff or somebody and ask Greenwood to
17 let them look at their log back, if they have got logs
18 that exist back at that time.

19 MR. EVANS: I don't know about them. I know
20 Grenada -- I think they keep theirs for one year. I
21 don't know about Greenwood.

22 THE COURT: Well, I don't. I have heard,
23 actually, trials here about 911 tapes, and I know they
24 are not kept for a long period of time. And I don't know
25 anything about logs of something from that long ago.

26 And I can see since it wasn't relevant any time in
27 the past how they might could have gone ahead and cleaned
28 house. But if they have got them, I want them to allow
29 counsel to look at them.

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT # : 2003-0071-CR

1 MS. STEINER: Your Honor, Paragraph 8B on Page
2 5, our conversation with Chief Matthews disposed of that.

3 "C", well, we haven't had Mr. Matthews here, but
4 I'm -- I introduced what I'm going to on the M.H.P.
5 C.I.D. file.

6 Montgomery County Sheriff's Office, I don't think --
7 you know, I'll contact them directly and see if they say
8 there is something there. If they won't release it, I
9 will come back and make a specific request.

10 And then other law enforcement agencies. I think
11 Mr. Johnson was very forthcoming about who he worked
12 with. So Paragraph F is investigative notes concerning
13 the canvassing the area. I -- Chief, Chief Hargrove said
14 he didn't have any of his men do it. If there are such
15 notes from -- in the possession of the State from Mr.
16 Matthews, they are the two that testified they did it.

17 It came up only for the first time at the last
18 trial, and I just -- if they exist, I would like to look
19 at them.

20 THE COURT: Is the State aware of anybody
21 making notes about canvassing the neighborhood or the
22 immediate area around the store?

23 MR. EVANS: Your Honor, I have no idea what's
24 in the notes that we furnished before. I know that
25 everything that's in the file has been furnished. But as
26 far as what's in about different parts of the
27 investigation, I don't know.

28 THE COURT: But is there anything related to
29 this that was not turned over?

1 MR. EVANS: No, sir. Everything has been
2 turned over.

3 THE COURT: You've contacted the Winona Police
4 Department and others about all notes that --

5 MR. EVANS: I have asked them to give us
6 anything that is there so that we can furnish it, Your
7 Honor.

8 THE COURT: Well, it sounds like -- I mean
9 sounds like there is nothing left. I mean there is
10 nothing there to furnish.

11 MS. STEINER: Thank you, Your Honor.

12 The next one is Paragraph -- Subparagraph G, the
13 oral, written or recorded statement taped obtained from
14 Willie Hemphill pursuant to the Miranda waiver dated
15 7-21-96. Mr. Johnson testified that he was aware of that
16 waiver but that he knew of no statement. If the district
17 attorney says there is no statement --

18 MR. EVANS: I don't even know at this point who
19 that is.

20 MS. STEINER: Okay.

21 MR. EVANS: If there is a statement, it was
22 furnished. If, if, if in your discovery it shows that we
23 furnished you a copy of a statement from him, then we
24 have got one. If it's not in your discovery, we don't
25 have one. It's that simple.

26 MS. STEINER: All right. And then "H" is any
27 oral, written recorded statement obtained from Jeffery
28 Hudson in the course of investigation of the incident
29 matter.

1 That is on CD. Page 301 refers to the crime --
2 evidence request to the crime lab pertaining to matters
3 collected from him at the Forrest County jail. And I
4 will represent that there is no -- nothing that mentions
5 him other than that report.

6 So if there were written or recorded statement,
7 there is nothing listed in the master list furnished
8 either. But again, since none of the attachments to it
9 were also furnished, I didn't know if it was something in
10 there with some other name. And that's all I'm asking.

11 MR. EVANS: Best I can remember about him, he
12 was a lead that they were going to follow up on. They
13 found out real quick that it was a dead lead. Nothing
14 there to do. So they didn't follow up on it. That's
15 best of my memory on it.

16 MS. STEINER: Is that possible that is what Mr.
17 Hemphill was also?

18 MR. EVANS: I can't even remember that name.

19 MS. STEINER: Or was this some other case y'all
20 were prosecuting and it just fell behind the wrong file
21 cabinet? Is that a possibility?

22 THE COURT: We, we don't -- I mean --

23 MS. STEINER: That's fine.

24 THE COURT: The State does not have anything --

25 MR. EVANS: No, sir.

26 THE COURT: -- in the file on Hudson or
27 Hemphill and you are not aware of anybody, agency that
28 does as it relates to this case.

29 MR. EVANS: Anything that we have was

1 furnished. Now, right now I can't tell you what is in
2 there and what was furnished. But if we had it, it was
3 furnished and listed on discovery. If it's not furnished
4 and listed on the discovery, we have never had it.

5 MS. STEINER: And then, you know, I appreciate
6 that Doug does not want us in there polluting his office
7 or destroying his files or whatever else he thinks we are
8 going to do with them. And that is his privilege, Your
9 Honor. We are happy to send someone to look at them yet
10 again.

11 But under the circumstances, since he does not wish
12 to have that done, I would request that the Court order
13 the district attorney to review, make a visual review of
14 all of the documents itemized by page number in Exhibit 1
15 and 2, Exhibits 1 and 2 to this hearing and would like
16 him ordered to have a review made of those and be able to
17 make a statement, not come back into court, just send a
18 statement yay or nay, yes, that appears to be everything
19 we have furnished or no, as it turns out, these are
20 documents that are not in it.

21 I mean if we don't -- if he doesn't trust us to make
22 our own inspection and comparison, then I feel there is
23 no alternative except to ask him to do that or have the
24 requested presumption that anything that is not on that
25 document is a document that is both favorable to the
26 defendant or impeaching to the State's case and have a
27 presumption that its failure to furnish is the
28 withholding of such favorable Kyle's Brady evidence and
29 presumptively prejudicial to the defendant if it is ever

1 discovered that it wasn't furnished.

2 MR. EVANS: Your Honor, this is at the point of
3 being ridiculous. We have let them come through our
4 office. I know defense attorneys have been in there at
5 least three times going through everything that is there.
6 They have been in the trials every time. Everything that
7 is there was sent in discovery.

8 We used to could send discovery to attorneys and
9 just hand it to them. Now we have to get them to sign
10 for it to make sure that they received it. And now
11 apparently, that is not good enough. I guess we are
12 going to have to start videotaping them going through
13 everything that is in discovery.

14 We do not have time to do that. I do not have time
15 to sit down and review this file. We have already given
16 it to them. I can't prove the negative. I can prove
17 that what I gave them, I gave them, because they signed
18 for it. But I can't prove a negative.

19 MS. STEINER: If the Court please, there is a
20 statement handwritten by someone other than Mr. Carter
21 that he was there for -- from 11:00 to 4:00 p.m. on
22 August 29 of 2003. We do not dispute that fact.

23 But as far as I know, we have never signed for any
24 particular item. In fact, the discovery says that even
25 the documents that Mr. Carter requested were not copied
26 on the spot and were mailed and Bates numbered and that
27 is it. So there may be other attorneys who have signed
28 for things in this case. And I would say very frankly --

29 THE COURT: I don't think he was referring to

1 this case. I think he was saying as a general rule you
2 used -- they used to. Because I'm familiar with seeing
3 them in court files and other cases where defense counsel
4 signs something acknowledging they have received
5 discovery.

6 Do I have the State's assurance that everything you
7 have had in your possession from an investigative
8 standpoint in this case has been provided?

9 MR. EVANS: Yes, sir. Everything.

10 THE COURT: Well, as far as I'm concerned, I
11 think that is sufficient. I mean I don't know that he
12 needs to go through his files for half a dozen new times.
13 You know, if it's not there, it's not there. If you have
14 got something specific that you -- like you have on these
15 other items where you listed a few pages of things that
16 you don't have that you need, then I -- you know, but...

17 MS. STEINER: It's a little difficult for me to
18 specify something that's not there if I don't have it.
19 And that, Your Honor, is very frankly why I think the two
20 choices are either to let us come in under whatever kind
21 of armed guard they wish and review everything they think
22 they have given us so we can compare it to our disk.

23 And, and if he declines to do either, that the Court
24 order the presumption I requested in the motion in this
25 hearing.

26 THE COURT: Well, if this was the first time
27 this case had been tried or maybe even the third time it
28 was being tried, but by now, you know, the State has
29 assured that everything that they have got, you have got.

1 So I don't see any need for them to go back again and
2 look through the files when, when they have already
3 provided the things to you out of the file that they --
4 and I have got Mr. Evans' assurance on his oath as a
5 licensed attorney in the state of Mississippi and under,
6 you know, sanction if he didn't provide it, because the
7 bar would sanction him if he has made some statement to
8 the Court that was not true.

9 And he has told us that he does not have anything
10 else, that you have got everything that he has got. And
11 so I don't see any need for him to go back and look at
12 the file again, to come back again and say that you have
13 got everything.

14 MS. STEINER: I appreciate that's your ruling,
15 Your Honor. And that's why you are here to make rulings.
16 And I --

17 MR. CARTER: Your Honor, part of the problem is
18 we, we came along during the third trial. At that point
19 this case had already been tried twice. And perhaps
20 discovery was -- complete discovery, perhaps, was
21 provided to Mr. Gilmore and perhaps to Mr. Chokwe
22 Lumumba.

23 Once we came along, Mr. Chokwe Lumumba passed his,
24 his entire file, as far as I know, and Mr. Gilmore passed
25 his entire file, as far as I know, to us. We had no way
26 of knowing whether that was a complete copy of the
27 discovery.

28 THE COURT: Well, this is going to be the third
29 time that your office has had the case.

1 MR. CARTER: I know, Your Honor.

2 Upon my getting it, upon our office getting the
3 case, I asked for a complete copy of the discovery so I
4 could be sure we actually had it.

5 If my memory is correct, I was told by Mr. Evans
6 that the case has been tried twice, and I think the
7 judge, Judge Morgan, might have agreed. And therefore,
8 the facts were a part of the record. I certainly wasn't
9 confident I had a complete copy of the discovery.

10 And I did, in fact, go to Mr. Evans' office one day,
11 and he came out, or maybe it was Mr. Hill, with several
12 boxes of files. It had all kinds of things in there.
13 And I couldn't distinguish, quite frankly, the time I was
14 there, whether all the discovery was there or discovery
15 for motions and various other things. I did, in fact,
16 receive some copies that I think Mr. Hill might have made
17 that day, if I'm not mistaken.

18 But I mean, to be perfectly honest, we never
19 received the complete copy of the discovery from the
20 district attorney's office with Pages 1 through whatever
21 number they went. And we have been left with trying to
22 put together a file based on what we received from other
23 people.

24 Now, Mr. Evans knows and Mr. Hill knows that they
25 never, ever provided us with a complete copy of their
26 discovery, and maybe they can't. Maybe their file is
27 kind of just like ours.

28 MR. EVANS: Your Honor --

29 MR. CARTER: It's tattered and nobody can put

1 it together.

2 MR. EVANS: It is impossible to go back and
3 give him what he has asked for, because this case has
4 been tried. As the Court knows, most of the pieces of
5 evidence and exhibits are in the court file. We don't
6 have them. This case is in court. It's very simple.
7 And everything that we ever had, they have been
8 furnished. But they can go look at any transcript and
9 tell every piece of evidence that's there.

10 MR. CARTER: That might be true.

11 THE COURT: I mean everything, I would assume,
12 that the State's intended to admit this time has already
13 been admitted in the past. Now, and I -- I'll say --

14 Has the State got any exculpatory evidence --

15 MR. EVANS: No, sir.

16 THE COURT: -- at all, or have you ever had any
17 that has not been provided?

18 MR. EVANS: We have never had any evidence that
19 showed anything other than this defendant's guilt.

20 THE COURT: To me, I mean y'all have tried the
21 case twice already. You were able to come to court twice
22 already and try the case and --

23 MR. CARTER: Three times, Your Honor.

24 THE COURT: Okay. Well, I've lost count, but
25 I've only had it for the second time.

26 You know, you have obviously -- in prior trials were
27 thoroughly prepared for the case. So you obviously had
28 all this discovery in previous trials, because I don't
29 think you would have come in and announced ready had you

1 not had it. And the State has said they don't have
2 anything that you don't have.

3 So I don't see the necessity of, you know,
4 reinventing the wheel, going back and doing what they
5 have already done. And I have asked them on these, you
6 know, few items that, you know, your file is incomplete
7 on, either you never got it or -- and I mean I can see
8 how ten pages out of something may be misplaced, you
9 know, because we are talking about huge volumes of
10 documents.

11 But I have instructed them to go back and to provide
12 these items that, you know, were missing from your file.
13 I have advised them to make sure that E.O.C. here in the
14 county, M.H.P. makes their logs available. And I don't
15 know -- I mean I just do not see any need to -- you know,
16 you can't provide anything that is not there.

17 And you know, the court files, also, you know, the
18 exhibits that were admitted in the previous trials are
19 still in evidence. And I don't think there is going to
20 be anything new in this case that you haven't seen
21 already.

22 In fact, the last case, y'all both -- both sides
23 were obviously much more thoroughly knowledgeable of the
24 evidence than I was, because I had not tried it before.
25 But you both showed at the last trial how knowledgeable
26 you were of the facts of the case. And so I don't see --
27 I am not going to order the State to go back and look for
28 something that they have already provided.

29 MS. STEINER: Thank you, Your Honor.

1 Should we draw a proposed order?

2 THE COURT: On these items that --

3 MS. STEINER: Yes.

4 THE COURT: That would be fine.

5 MS. STEINER: Thank you, Your Honor.

6 THE COURT: Are there any other discovery
7 items?

8 MS. STEINER: No, Your Honor. We can move on
9 to the rest --

10 MR. EVANS: Excuse me, Your Honor.

11 (MR. EVANS LEFT THE ROOM.)

12 MS. STEINER: There is the bail motion, and
13 then four motions that are disposed of entirely as a
14 matter of wash. Why don't I just call them up in the
15 order they were filed?

16 The first -- the next motion would be the Motion to
17 Bar Retrial Under the Double Jeopardy Clause of the
18 Mississippi Constitution. Anticipating that we were
19 doing this within six weeks of trial, these were matters
20 of law. We incorporated into the motion the legal
21 authority and what we -- and to the extent there were
22 fact issues, we have put into the record the transcripts
23 of the prior trial where these factual issues arose.

24 And basically state that our theory is here that
25 this is under the Mississippi Due Process Clause. We
26 agree that there is no per se double jeopardy attaching
27 it in this trial, has yet been found by the United States
28 Supreme Court. We had just observed that issue under the
29 Sixth Amendment of the United States Constitution.

1 But this is, again, to construe the Mississippi
2 Constitution as other states have construed similar
3 provisions to, to bar this just by virtue of the fact
4 that this is a sixth multiple trial per se. And then
5 sort of the other claims are that both the state and
6 federal constitutions, the Double Jeopardy Clause. This
7 is not a typical double jeopardy case.

8 And this is the sixth time a valid conviction has
9 been tried to be obtained. Three times invalid
10 convictions obtained. It was held by the Supreme Court
11 of Mississippi through various forms of improper evidence
12 being introduced by the prosecutor and/or by racial
13 discrimination in the seating of the jury. There is no
14 manifest necessity under the federal constitution to
15 retry Mr. Flowers.

16 The State has simply been unable to obtain a valid
17 conviction in 13 years and six -- five trials, excuse me,
18 and that eventually the due process clause of both the
19 United States and state constitution say enough is
20 enough, as does the Due Process Clause as has been
21 previously argued.

22 The second reason we would assert that both the Due
23 Process Clause is of the United States Supreme Court and
24 the Mississippi -- United States and Mississippi
25 Constitutions is simply that this is not sort of a
26 run-of-the-mill, several mistrials. Every reversal for
27 this case has been based on some form of prosecutorial
28 misconduct - either in the presentation and argument of
29 the evidence or in the selection of the jury.

Motion to Bar Retrial Under the Double Jeopardy...

1 It's been three attempts, right?

2 We are on our fourth attempt right now. The three
3 attempts had improper prosecutions. Three had mistrials.
4 And the -- either two mistrials. Two were mistrials, and
5 one was the racial discrimination reversal.

6 And that at this point, this is the product -- the
7 only -- there is just no way that we can establish and --
8 step back. The exhibits to this motion also establish
9 places at which apparent prosecutorial misconduct or
10 inconsistent treatment on the basis of race has been
11 occurring are documented there. I won't argue them, in
12 particular.

13 So with the judicial misconduct, this becomes more
14 like a speedy trial argument. We have made a speedy
15 trial motion and renew it.

16 THE COURT: Did you say judicial misconduct?

17 MS. STEINER: I'm sorry. Excuse me, Your
18 Honor. Prosecutorial misconduct.

19 No, I have not -- there has -- no one -- we did -- a
20 motion to recuse was presented to the Court, but it was
21 not on the basis of misconduct in any fashion. I
22 apologize, Your Honor.

23 THE COURT: Well, I wanted to make sure that
24 wasn't --

25 MS. STEINER: If you had said defense attorney
26 misconduct, I would have lept up and said exactly the
27 same thing. And I do apologize.

28 No, the recusal motion that the Court considered and
29 declined to grant was based entirely on perfectly

1 above-board conduct by the Court and different
2 interpretations as to whether it required recusal.

3 Just overall, that this is a case where even if the
4 federal constitution doesn't make this double jeopardy,
5 the Mississippi Constitution ought to. And under both
6 the state and federal constitutions, the due process --
7 the Double Jeopardy clause under the unique circumstances
8 of this case, with repeated inability to obtain a valid
9 conviction render this what the founders were trying to
10 protect against, continuous government holding someone in
11 jeopardy.

12 Mr. Flowers is a third of the way into his second
13 decade of incarceration for a crime of which he has never
14 been validly convicted. And the time has come to say
15 enough and pray that the State finds the evidence of who
16 really did this, whether it is Mr. Flowers or somebody
17 else, and then can proceed to get a valid conviction.

18 But now this prosecution on Mr. Flowers ought to be
19 barred under the Double Jeopardy Clause and the Due
20 Process Clause as was previously argued in prior motions.

21 THE COURT: Mr. Hill.

22 MR. HILL: I would just -- I think the best
23 answer to that, Your Honor, is this has been previously
24 argued in prior motions, and it is just as improper now
25 as it was when the Court ruled on it in past.

26 Mr. Flowers was convicted in the first three trials.
27 After he was convicted in the first two trials, in
28 different venues, by different juries, with different
29 counsel, it was nothing about those first juries being

1 anything improper.

2 Then he was brought back up here at his insistence
3 in Montgomery County to be tried. On motion by the
4 defense, as well as by the State, it was agreed that he
5 should be tried on all four together, to consolidate
6 them. He was. He was convicted.

7 There were some issues about Batson rule, which the
8 Supreme Court caused the Supreme Court to reverse. But
9 at the trial level all of those -- all our strikes were
10 found to be race neutral by a judge. So of course -- and
11 in that case there was dissent, even on the Supreme
12 Court.

13 And the defense counsel -- I've noticed by reading
14 her brief and motion that we were lambasted consistently
15 with prosecutorial -- charges of prosecutorial
16 misconduct.

17 But I would say that we have -- this is probably the
18 greatest crime in this county, in this part of the state.
19 Four completely innocent people were murdered in a
20 heinous fashion, you know, by this defendant. So there
21 is a great interest in getting to the bottom of this, and
22 we have been striving to do that.

23 The fact that defense counsel has been able to
24 impede that up to this point is a credit to them.
25 They -- Mr. Flowers has had very able counsel. But as
26 far as Mr. Flowers not being tried again, this Court is
27 very much aware of some of the things that happened at
28 the last trial. That was absolutely through no fault of
29 the State. That was collusion, if anything, on people

1 associated with the defense.

2 So Your Honor, the claim that he cannot now be
3 tried, in my view, is just simply without merit. The
4 Court has already ruled on it once, and I don't see any
5 reason now that because he was able to thwart justice
6 last time that he should not be able to be tried again.

7 MS. STEINER: If the Court please, I believe, I
8 would wish that Mr. Hill hadn't spoken as I had earlier.

9 There were two people indicted. One was convicted
10 on guilty plea. One the charges were dismissed on for
11 misconduct.

12 Nobody associated with the defendant or his
13 associates or the defense was ever charged. And what
14 happened is no more the fault of the defense than it is
15 of the State - other than the State, with knowledge of a
16 possible perjury by a juror, did not alert the Court to
17 it until after the Court and the defense had permitted
18 the juror to be seated.

19 But beyond that, let me just simply say our
20 constitution, the Sixth and Fourteenth -- Sixth and --
21 Fifth and Sixth Amendments that the founders put in, and
22 the Fourteenth Amendment that adopted them to the states,
23 is not founded on the State gets to try as often as it
24 wants to win. It is founded on saying if the State wants
25 to deprive somebody of life or liberty, they have the
26 burden of proof to prove and convict that person and
27 they -- and if it's a tie, the defendant wins.

28 That is the presumption. That is why this country
29 was founded. That is why the Bill of Rights exists.

1 That is why and how our -- for 200-and-xy years, I can't
2 remember, we have operated under that system. And we are
3 the model and example for the world of saying that the
4 State has to do it fairly. It has to do it right. And
5 it has the burden to do it. And if it can't do it
6 fairly, if it can't do it right, it can't keep trying
7 forever. And this is such a case.

8 This is the case that -- the federalist in Thomas
9 Jefferson even agreed on the State has the burden to
10 prove it. And if it can't, ultimately the courts say
11 enough is enough, and that time has arrived now.

12 THE COURT: Well, do you have any case law that
13 says after a case is reversed "X" number of times it
14 can't be retried?

15 MS. STEINER: No. Well, Your Honor, there are
16 some case -- non-binding case law from other states and
17 the federal government, both in this and our prior
18 vindictiveness motions, that have been cited where they
19 have found on the base of Due Process Clause that enough
20 is enough.

21 There is no binding precedent from the Mississippi
22 Supreme Court or Mississippi Court of Appeals, which
23 isn't binding but would be very persuasive. Nor is there
24 any Mississippi -- United States Supreme Court construing
25 that, that it must happen.

26 We are saying that under the -- this is one of those
27 instances where the State cannot prove its case. It's
28 not a strong case. It's a case in doubt. The State has
29 had plenty of chances, and it simply cannot prove its

1 case and that someone who has been incarcerated for a
2 decade and a third needs finally to be able to go free
3 and let, let him be judged perhaps elsewhere than in the
4 courts.

5 The State of Mississippi has done its best. It does
6 not have a case it can prove, and it is a violation of
7 Mr. Flowers' due process and double jeopardy rights to
8 keep him incarcerated and facing and having to defend
9 this.

10 And Ted Stevens might agree with me. But no, the
11 Ted Stevens case was not dismissed on the base of double
12 jeopardy. It was because the prosecution finally
13 admitted that despite having obtained a tainted
14 conviction, it did not have the evidence to proceed
15 further.

16 So no, there is no direct precedent binding you,
17 Your Honor. All the precedent we have that suggests that
18 you should rule in our favor is cited in our motions and
19 in our prior motions seeking similar dismissal under the
20 Due Process Clause.

21 THE COURT: When, when Flowers III was sent
22 back, it was reversed and remanded. And so I feel
23 confident if the Supreme Court had felt there was a due
24 process double jeopardy they would have reversed and
25 rendered, rather than reversed and remanded to this
26 court.

27 I know there have been cases where there were two
28 hung juries, and then there was another trial. I think
29 Mr. Beckwith was one that was tried twice and then a

1 third time he was finally convicted.

2 And so I don't think there is any case law or any
3 authority to say that under the Due Process Clause of the
4 constitution of this state or double jeopardy that it
5 would bar another trial. And you know, I know I read
6 your motion.

7 You know, you argue that the third and fourth trials
8 had -- I'm sorry, the fourth and the fifth trials had
9 prosecutorial misconduct. When in the fourth trial the
10 only thing that you could come up with was Miss Schoene
11 was having trouble looking at a picture and telling what
12 color a car was. And you are making it out to be a
13 material issue.

14 When, in fact, that was an immaterial issue as there
15 was in the entire trial, because everybody testified
16 whose car it belonged to. And whether it was a two-tone
17 brown car or single-tone car was totally irrelevant. So
18 I certainly don't see that, that was prosecutorial
19 misconduct in trial four when the State was asking the
20 witness what color the car was.

21 And then in the last trial you argued prosecutorial
22 misconduct because people who committed perjury to get on
23 the jury were prosecuted. I think the prosecutor would
24 have been derelict in his duty had he not prosecuted
25 people who lied to get on the jury.

26 The foundation of our jury system is based on the
27 belief that jurors will tell the truth when they are
28 being questioned by the Court and by the attorneys. And
29 if they ever get the idea that they can lie willingly and

1 openly and suffer no consequences, then our entire
2 justice system is going to break down.

3 We are not going to have a justice system if you
4 have got jurors that will come into court and lie about
5 it, lie in order to get on a jury. And that is what we
6 had with Mr. Bibbs and Miss Purnell.

7 And then you want to point out, you know, you say
8 well, there was some white juror that wasn't prosecuted.
9 Well, the fact that you have got this transcript here
10 shows that we did get complete answers eventually from
11 that juror. And he also didn't end up on the jury. He,
12 he didn't sit on the trial.

13 So we have got two people that perjured themselves
14 to get on the jury that were prosecuted. And they both
15 happen to be African-American, but that -- you know, if
16 there had been a white juror that lied to get on the jury
17 and sat, I have every confidence that they would have
18 been prosecuted as well.

19 So I do not see anything that would remotely
20 resemble prosecutorial misconduct in trials four or five.

21 And you know, you kind of weave it around. Say
22 well, the first three were reversed and the last two
23 prosecutorial misconduct; therefore, we can't have a
24 sixth trial. As I noted a minute ago, the first three
25 trials were reversed. But the third trial, when it was
26 reversed, they didn't reverse and render. They reversed
27 it for a remand for new trial. We have got two hung
28 juries. You know, we have got case law that says after
29 two hung juries that does not result in a dismissal.

1 So I do not think Mr. Flowers' due process rights
2 are being violated. I do not see that it would be a
3 jeopardy. Jeopardy attaches once there's a conviction or
4 an acquittal. You can't be tried twice if you have been
5 acquitted previously. He has not been acquitted; so
6 there is not a double jeopardy problem here.

7 So I am going to deny the Motion to Bar Retrial
8 Under the Constitution of the State of Mississippi.

9 MS. STEINER: Your Honor, if the Court please,
10 before we proceed with the other motions that I've
11 noticed for today, I would like to re-urge that the Court
12 reconsider its ruling on the Motion for Recusal of
13 Circuit Judge in light of its comments today.

14 I think the record is clear that one perjurious
15 juror was seated. She was charged. She was indicted,
16 and she was convicted when she pleaded guilty. There is
17 no doubt that that perjurious juror was seated. That was
18 Miss Purnell.

19 You also referred to Mr. Bibbs as having committed
20 perjury. Your Honor, he was charged with perjury. Your
21 Honor, as you said, you saw it. You called it. You
22 ordered that he be arrested. And the D.A. investigated
23 and charged and went to the grand jury.

24 However, that prosecution has been nol prossed.
25 That man now stands unconvicted of these charges. We
26 can't say -- it is certainly going too far to say he did
27 do it.

28 If the -- the Court was present. The Court did with
29 its judicial knowledge order him arrested. And at the

1 time the Court was considering recusal, both prosecutions
2 were still pending. The Court had no reason to assume
3 that a jury or another prosecutor would disagree with its
4 assessment that, in fact, both these people had committed
5 perjury.

6 However, now that at least one independent
7 prosecuting agency has disagreed with this Court's view
8 and that a -- there is, in fact, no pending prosecution
9 on this person, and no stain on his character, the fact
10 that the Court continues to characterize this person as
11 having definitively convicted perjury leads us to
12 re-urge, not out of any subjective misconduct or
13 unwillingness by the Court, but the Court is a human
14 being and was eminently involved in these proceedings,
15 and that the subjective use of the Court, I would urge
16 for all the reasons in the original Motion for Recusal of
17 Circuit Court Judge revisit its decision with respect to
18 its own recusal and change it now and order that -- grant
19 the Motion to Recuse and submit this to the Supreme Court
20 for the appointment of a special judge for the purpose of
21 presiding, assuming he or she agrees with the Court's
22 order that this is not bound by double jeopardy at any
23 subsequent trial.

24 THE COURT: Mr. Bibbs was not truthful during
25 voir dire. I think that is in the record. Whether he --
26 for whatever reason the attorney general of this state
27 saw fit not to go forward with the prosecution. It
28 certainly is not an indication that Mr. Bibbs was
29 innocent. And it was, as I understand, not pressed or

1 dismissed without prejudice, which means they can go
2 forward still if they choose to do so on the case.

3 But it was clear from the last -- from the Court's
4 questioning that Mr. Bibbs did not truthfully testify
5 during voir dire, that he was present on the scene of the
6 murder at the time the crime was committed. After the
7 trial -- well, actually, early in the deliberation we had
8 jurors sending notes to the Court, as you are aware, that
9 said that someone on the jury was bringing information
10 out that was not presented during trial, which was a
11 violation of his oath as a juror.

12 So I think the characterization this Court made
13 about Mr. Bibbs is correct. There is no doubt in this
14 Court's mind but that he was not truthful when he was
15 questioned during voir dire.

16 And my view on Mr. Bibbs has no bearing on any
17 ruling this Court will make in the subsequent retrial of
18 Mr. Flowers. There is no indication that Mr. Flowers had
19 anything to do with Mr. Bibbs being untruthful with the
20 Court.

21 Now, as to Miss Purnell, you know, there was
22 testimony that she had talked to Mr. Bibbs, visited him
23 at the jail and had phone calls from him. But again,
24 there is no indication that Mr. Flowers put Miss Bibbs --
25 Miss Purnell up to that. There has been no evidence ever
26 to that effect.

27 With no evidence to the contrary, this Court
28 considers that Mr. Flowers did not have anything to do
29 with that and that Miss Purnell was a free agent and for

1 whatever reason decided to commit perjury. The same with
2 Mr. Bibbs.

3 So my views in the retrial of this matter, what they
4 did, does not have anything to do with how this case -- I
5 mean how this Court views this case and Mr. Flowers.
6 Right now Mr. Flowers stands innocent before the Court,
7 and he will stand innocent until proven guilty beyond a
8 reasonable doubt. That is how the Court looks at all
9 cases. That is how the Court will look at this case.
10 And I do not feel that my view on Mr. Bibbs would
11 necessitate a recusal in this case.

12 So I am going to deny your oral Motion to Recuse.

13 MS. STEINER: Thank you, Your Honor.

14 It's not a happy motion ever to make and I -- not
15 have to have to renew it.

16 THE COURT: The Court does not take any offense
17 to the motion. I want to assure you of that. I told
18 somebody a long time ago, you have to have a thick hide
19 to sit where I sit.

20 MS. STEINER: Where I sit too, Your Honor.

21 THE COURT: Well, I agree. Anybody that is
22 practicing law - defense, prosecution or any other type
23 law - is not for the -- is not for the weak-hearted nor
24 for the thin-skinned.

25 MS. STEINER: Thank you, Your Honor.

26 I'll submit a motion, or I guess it's on the record.
27 Do you want an order on that again, Your Honor?

28 THE COURT: We have got everything. I mean --

29 MS. STEINER: Thank you.

1 THE COURT: I don't see -- I mean we have got
2 the court reporter here and everything that is being
3 spoken is being taken down.

4 MS. STEINER: All right. I will move on.

5 Having not recused yourself, Your Honor, I would
6 like to call up my Supplemental Motion to Preclude Death
7 Penalty Procedures.

8 This motion -- this is a motion to -- assuming the
9 State can go forward, double jeopardy and due process
10 don't bar trying to hold Mr. Flowers in, in danger of
11 deprivation of liberty, that holding him in danger of
12 deprivation of life violates the Fifth, Sixth, Eighth and
13 Fourteenth Amendments of the Mississippi -- of the United
14 States Constitution and the corresponding constitutional
15 provisions of the Mississippi Constitution.

16 We have made a prior motion which we call
17 Vindictiveness Misconduct Motion with respect to seeking
18 the death penalty in the fifth trial after having elected
19 to forego seeking it in the fourth. And we are now
20 adding an ulterior purpose and a due -- even if it were
21 not purposeful, a violative of due process and equal
22 protection and the Sixth Amendment effect of death -- of
23 seeking this death penalty for one of two purposes.

24 Either under *Pearce* it's punishing Mr. Flowers for
25 having successfully deflected or prevented a conviction
26 and the death penalty is being now sought just in
27 vindictive retaliation for that in a trial where there
28 would have been a reversal and *Pearce* would clearly have
29 barred it.

1 But this motion goes to the fact that the -- for the
2 reasons stated in both the cases and the extensive
3 scholarship cited in this motion, one of the accepted
4 sociological facts is that death qualifying a jury not
5 only gets a jury that can consider the death penalty, it
6 also gets a jury that completely associated with that is
7 more likely to convict. The attitudes of jurors who are
8 excluded -- who are permitted under *Witherspoon* are
9 sociologically demonstrated to be more prosecution prone
10 is the term of art.

11 And that under these circumstances, especially where
12 there is a component of vindictiveness and the State has
13 withdrawn the death penalty once, it should be precluded,
14 not only for the reasons in the prior motion, which we
15 renew in subsequent motion here, but under this simply
16 because of the -- either the purpose or effect of
17 creating a jury that does not represent a fair cross
18 section and is with respect to attitudes is, in fact,
19 prosecution prone for the tactical advantage and to the
20 prejudice of the defendant.

21 And therefore in light of the Court's ruling that
22 the Double Jeopardy Clause does not permit -- does not
23 prohibit further retrial of Mr. Flowers, that we would at
24 least request that the Court bar the seeking of the death
25 penalty which will make this trial a whole lot easier, as
26 well for the Court.

27 The interest of judicial economy, I think, here is
28 completely in favor of doing so as well. But the
29 constitutional issues are what this motion is about.

1 That's a policy argument supporting them.

2 THE COURT: Mr. Hill.

3 MR. HILL: Your Honor, this is -- this is a
4 death penalty case. It always has been. There is
5 certainly no retaliation. It started off as a death
6 case. It was tried three times as a death case. The
7 district attorney did make a decision on the fourth trial
8 to try to seek a conviction without it. But that
9 apparently availed us nothing. We tried this case the
10 last time as a death penalty case.

11 We have the same opinion now that basically we have
12 always had; it's a death penalty case. This is one of
13 the unique cases in my career that if this isn't a death
14 penalty case, there is no such thing. So absent a
15 showing of any retaliation or any such thing as that,
16 those are mere allegations by defense counsel.

17 I don't think there is any shred of evidence that we
18 have not always considered this a very, very, very
19 serious, the most serious of cases. And I don't know of
20 any rule that prohibits us from going forward as a death
21 penalty case under the indictment. So that is my -- that
22 is my brief and simple response, Your Honor.

23 THE COURT: The *Pearce* case that was cited does
24 not mention anything about prosecutorial misconduct or
25 anything else. It -- or vindictiveness on the part of
26 the prosecution. It dealt specifically with whether a
27 judge could sentence somebody on a retrial to a greater
28 sentence than had previously been imposed.

29 Throughout the *Pearce* case it talked about

1 vindictiveness against the defendant from the trial
2 court's perspective for, I guess, having successfully got
3 the trial court reversed. And the Supreme Court did say
4 in that case that there had to be reasons stated in the
5 record why a sentence was increased from, from a previous
6 sentence.

7 But here we don't have that situation, because Mr.
8 Flowers did not get -- did not get to the second phase of
9 either -- I mean in the fourth trial, there wouldn't have
10 been a second phase. Certainly didn't get to the second
11 phase in the trial in the fifth case.

12 But I don't think *Pearce* stands for the proposition
13 that the State cannot seek the death penalty on
14 subsequent prosecutions because it did not do so
15 previously. And I have not been able to find any case
16 that says that anywhere. And I assume that if defense
17 counsel had such case, it would be presented to me. And
18 I have every confidence, because I have confidence that
19 the defense counsel is skillful in the knowledge of the
20 law in this area. And so --

21 MS. STEINER: Your Honor, I assure you we would
22 not sandbag the case if you were unfavorable --

23 THE COURT: Well, I, I --

24 MS. STEINER: -- preference, precedent but
25 there is --

26 THE COURT: I --

27 MS. STEINER: We have given you everything we
28 have, and we believe it makes a persuasive case for why
29 you should rule in our favor.

1 THE COURT: As I say, I just do not think
2 Pearce stands for the proposition that you are arguing.
3 I understand the argument, but I don't think it's -- I
4 don't think there has been any showing that, that he is
5 facing the death penalty because somehow the previous
6 jury hung up.

7 Mr. Hill said, and I assume, probably the fourth
8 trial was done for the purpose of expediting the trial
9 and getting it over with. As you said, it could make it
10 quicker if the death penalty weren't on the table. And
11 yet when they took it off the table, it didn't have any
12 effect either way. So they decided on the fifth one to
13 go back and seek the death penalty, but I don't think
14 jeopardy ever attached.

15 The death penalty is part of the indictment. It was
16 never dismissed as far as I can see. So you know, it's
17 not a situation where jeopardy ever attached.

18 And I, I even think there is a U.S. Supreme Court
19 case that I didn't get my hands on, because I really just
20 thinking about it now. And it's been one within the last
21 few years where someone got their capital murder
22 conviction set aside. And then the Supreme Court of the
23 United States said they could seek the death penalty even
24 though they had not gotten the death penalty previously.
25 Because again, jeopardy did not attach, because the jury
26 did not acquit when they found somebody not deserving the
27 death penalty. So it did not bar the death penalty being
28 sought again.

29 So I don't -- I don't see any -- I don't have any

Notice of Renewal and Adoption of Motions from...

1 case law to guide me to say that it has to be dismissed
2 or that there is some violation of his constitutional
3 rights by going forward with the death penalty.

4 And so I am going to deny the motion.

5 MS. STEINER: Thank you, Your Honor.

6 The next one we shall call up is our Notice of
7 Renewal and Adoption of Motions from the Previous Five
8 Trials, which includes within it making any objections to
9 evidence that would be continuing, you know, continuing
10 into this trial.

11 This is -- we filed this trial before the --
12 certainly before the fifth trial for the other four. We
13 rely on the prior Court's rulings and on our own
14 arguments, the defense arguments, all of them, with one
15 exception, on Page 2 of 4. In the second trial, there
16 was a motion to suppress statement that, that was heard
17 by Judge Morgan in the course of the trial outside the
18 presence of the jury. We have nothing factual to add to
19 that.

20 But I would add here that with respect to Mr.
21 Flowers, the case of *Missouri versus Siebert* had not yet
22 come down when Mr. Lumumba and Mr. Evans argued the law
23 on suppression of statements. And the *Siebert* case is
24 the case where if there is questioning, unmirandized and
25 unadvised questioning of a defendant prior to then
26 administering Miranda warnings and obtaining statements,
27 it's not the same as fruit of poisonous tree. But it is
28 still improper under Miranda to use any statements that
29 are the product of the prior interview.

1 In this case I believe the testimony is that when
2 Mr. Flowers was initially called in, he was questioned
3 fairly extensively about his whereabouts that day before
4 ever being questioned with respect to a particular
5 suspicion. And that therefore on the facts as they exist
6 in that case, which I -- we think that *Missouri versus*
7 *Siebert* would make a different outcome. And since you
8 didn't preside, Your Honor, just in the interest of speed
9 --

10 THE COURT: I think --

11 MS. STEINER: -- I think they testified that he
12 wasn't arrested at the time that happened but --

13 THE COURT: I think the best thing is if you
14 want to renew this motion do so --

15 MS. STEINER: Separately.

16 THE COURT: -- separately, because I didn't
17 hear the motion before. And I don't -- I don't -- I
18 can't sit here with any degree of knowledge about what
19 transpired. So if you want to renew that motion and be
20 heard on it during the trial, then I would prefer that it
21 be renewed at that time.

22 MS. STEINER: May we have that heard prior to
23 voir dire so if the Court alters the ruling, in light
24 of --

25 THE COURT: We can.

26 MS. STEINER: I mean I can't do it today,
27 obviously.

28 THE COURT: Well, no, I was going to suggest we
29 are -- the jurors are going to be brought back on Friday.

1 MS. STEINER: Okay.

2 THE COURT: I mean the jurors are going to be
3 brought in on a Friday to go through the legal
4 qualifications, and voir dire is going to start on
5 Monday. So I think we could have time on that Friday
6 before the actual voir dire starts on Monday to take the
7 motion up if we need to.

8 MS. STEINER: Okay, Your Honor.

9 THE COURT: Just, you know, without having any
10 knowledge about what took place. And honestly, the only
11 motion, the only rulings that I feel comfortable in
12 ruling on are the ones that I ruled on that are listed on
13 Page 3 of 4.

14 You know, I mean I see -- I mean there are a number
15 of these motions that were done in previous trials that,
16 that obviously -- like Assertion of the Right to be
17 Present, I don't ever intend to have Mr. Flowers not
18 present when something is going on. We did have a
19 special venire, you know.

20 I mean there is a number of cases of, of these
21 previous motions that, you know, would be just granted
22 without much thought by the Court because they are
23 appropriate. But unless -- you know, if there is
24 anything specific about these previous motions listed as
25 54 in the previous four trials, I would like the
26 opportunity to be -- to, to hear them before I just
27 re-adopt what previous judge may have ruled on them.

28 But as I say, most of the -- you know, the vast
29 majority of them are things that just to me are just

Notice of Renewal and Adoption of Motions from...

1 standard operating procedure for any, any court to
2 follow.

3 MS. STEINER: Your Honor, with respect to the
4 ones that you heard prior to the fourth trial in the
5 fifth trial, this is just a matter of preserving that we
6 made those objections and incorporate them in here. I
7 have nothing to add or detract from what was previously
8 ruled, but I do want to have any issues raised so we
9 don't have to laundry list them all.

10 THE COURT: Well, I -- you know, without
11 argument further on, you know, what's listed on the
12 motions as 55 through 61, the previous motions, I will
13 readopt the rulings that I made on those particular
14 motions.

15 MS. STEINER: I believe you also were the judge
16 who ruled on 47 through 54, Your Honor, prior to fourth
17 trial. You presided at the fourth and fifth trial.

18 THE COURT: No, I didn't.

19 MS. STEINER: Oh, that's right.

20 THE COURT: I only presided over the fifth
21 trial.

22 MS. STEINER: Thank you, Your Honor. I wasn't
23 here for the fourth trial either.

24 THE COURT: But I mean most of them, you know,
25 like 47, Motion for Complete and Update Criminal
26 Histories, you know, there is a number of things that --
27 I mean all of this is pretty well standard anyway.

28 MS. STEINER: Your Honor, I will before we
29 commence on the 4th have a list of any motions that I

1 would seek an independent ruling on.

2 THE COURT: That will be fine.

3 MS. STEINER: And not accept as law of the
4 case.

5 THE COURT: And I just think also for the
6 benefit of anybody trying to put a record together, if it
7 should get to the point where a record has to be made and
8 sent to the Supreme Court, it would be a lot easier to
9 have rather than to go back through five previous trials
10 and try to resurrect rulings from each of those issues
11 from the previous trials.

12 MS. STEINER: Thank you, Your Honor.

13 THE COURT: And the Reservation of the Right to
14 File Further Motions, I have got that before me.
15 Certainly, I don't ever cut off any right to file
16 motions. If something comes up, then, you know, the
17 Court is always open to hear any motions that, that need
18 to be presented.

19 MS. STEINER: Thank you, Your Honor.

20 As I understand it, your ruling on the Request for
21 Adoption of Motions from Previous Five Trials is from the
22 fifth trial you readopt. And we maintain those as
23 continuing objections to the extent that that is -- they
24 are objecting to the introduction of evidence.

25 And the other four, before you rule, you would want
26 the opportunity to articulate it and independently visit
27 them; is that correct?

28 THE COURT: Correct. Because you know, I
29 don't -- I don't know what those rulings were in those

1 prior four trials. I mean I feel certain most them were
2 like the right to be present and things like that were
3 granted. But I don't want to -- or maybe put it this
4 way. Any motion from the four previous trials that was
5 denied maybe you might want to revisit at some point.
6 You know, because if something has been previously
7 granted then I don't --

8 MS. STEINER: We have been acting on anything

9 --

10 THE COURT: Right. Been acting on that.

11 MS. STEINER: -- that has been granted.

12 THE COURT: But if there is something that was,
13 was denied from a previous trial that needs to be
14 reconsidered, then I am open to hearing that.

15 MS. STEINER: Okay.

16 THE COURT: And --

17 MS. STEINER: Thank you, Your Honor.

18 THE COURT: And I want to make this clear on
19 the fifth. You know, most -- these motions that were
20 listed were all preliminary matters before the trial took
21 place. So I mean if there is issues that come up during
22 the course of the trial, you still have to make a
23 contemporaneous objection to it.

24 MS. STEINER: On the motions in limine, there
25 were -- I think they have been litigated several times.
26 And the parties have been complying with, you know,
27 certain rulings made with respect to like using
28 transcripts, --

29 THE COURT: Oh, yeah.

Reservation of Right to File Further Motions

1 MS. STEINER: -- hearsay, and things like that.
2 And I think some of the photos were --

3 THE COURT: I think y'all --

4 MS. STEINER: -- stickered over.

5 THE COURT: -- probably agreed. I mean it was
6 my -- during the trial that I did preside over, there was
7 a general agreement among the counsel on a number of
8 issues. And I would assume that those things that you've
9 agreed on in the past will not be disagreed on this time.

10 MS. STEINER: Right. No. I mean there were
11 things, for instance, after the second trial there was
12 fairly -- in the second trial, there was fairly
13 considerable litigation on gruesome photographs. Judge
14 Morgan ruled on what he thought was and wasn't gruesome.

15 THE COURT: What I was trying to say is if
16 there is an objection like that where -- to the
17 admissibility of some piece of evidence, then it needs to
18 either be heard by me before the trial or either a
19 contemporaneous objection needs to be made during the
20 trial.

21 Of course, you know, we -- the second trial wasn't
22 reversed on evidentiary issues. So I would assume that,
23 that probably every issue that could possibly have been
24 raised was raised in the Supreme Court. I mean that's,
25 that's generally what is done.

26 MS. STEINER: Your Honor, I will see if the
27 State 1, a gruesome photo that has been routinely used,
28 and I will try and note for the Court either before trial
29 or at the time that we are renewing that objection.

Motion for Setting of Reasonable Bail

1 But some of these, I think, we live -- just because
2 we live with what we know the evidence is doesn't mean we
3 agree with it if it's coming in over an objection.

4 THE COURT: Well, I mean I would hate for -- I
5 mean we have got to have the record clear on what takes
6 place in each of the trials. And it would be really
7 difficult to go back and say okay, well, in trial two I
8 objected to this, but in trial six I didn't, because the
9 judge ruled in trial two that it was admissible.

10 That is why I am saying the contemporaneous
11 objections have to be made, because you would have
12 transcripts of five previous trials that might have to be
13 looked at. And I don't -- that would be a cumbersome
14 thing for any reviewing court to do.

15 MS. STEINER: Thank you, Your Honor.

16 And the final motion for the Court is the Motion for
17 Setting of Reasonable Bail. And for that, in addition to
18 the declaration under penalty of perjury of Mrs. Lola
19 Flowers, which was filed in support of the motion, the
20 testimony from Chief Hargrove and Detective Johnson
21 regarding Mr. Flowers as largely cooperative behavior and
22 immediate surrender at time he was notified. I would
23 like to incorporate that in the record of this, and
24 simply state this is a motion for granting bail.

25 We agree this is a capital case. We agree that
26 especially in a capital case this Court has -- this Court
27 and its predecessors have to date denied any sort of
28 bail. But under the constitutional provision under which
29 this Court is exercising its right to deny bail, Article

1 III, Section 29 of the Mississippi Constitution says,
2 "Excessive bail shall not be required, and all persons
3 shall, before conviction, be bailable by sufficient
4 sureties, except for capital offenses when the proof is
5 evident or presumption great."

6 And in this instance, for the reasons set forth in
7 the motion, the case itself after five trials, I do not
8 think there could be any notion of presumption that the
9 evidence is going to ultimately result in a conviction.
10 It has not yet done so in a valid conviction.

11 There are four, five transcripts, all of which show
12 there are -- the material facts with respect to guilt are
13 hotly disputed. It is entirely circumstantial with the
14 exception -- the only direct testimony is the jailhouse
15 informant, who is amply impeached.

16 We have no idea if the reason there was so much
17 disagreement about guilt had to do with whether or not --
18 the believability of that testimony. This is not a case
19 where you have somebody connected by DNA to a particular
20 murder at a particular time. So that prong of the bail
21 constitutional provision is not met.

22 Moreover, there is nothing to indicate in this
23 instance and in this case that Mr. Flowers is a danger or
24 is a flight risk or would be a danger to the community to
25 let out as there was a seven-month lapse between these
26 crimes and his arrest. No other crimes or like crimes
27 were committed in the community. Mr. Flowers was not
28 arrested for anything.

29 He is -- you know, I appreciate any law enforcement

1 officer who suspects someone may know more than that,
2 someone knows about whether he has been targeted. But
3 there is nothing to indicate that Mr. Flowers didn't do
4 -- didn't keep in touch. He returned.

5 He was living with -- I think some of the discovery
6 in Exhibit 1 shows that not only was Mr. Flowers
7 interviewed, but all kinds of members of his family were
8 interviewed. The addresses of the relatives in Plano
9 were there. There were many opportunities to flee.
10 There were many opportunities to demonstrate
11 dangerousness to the community. There is nothing.

12 Mr. Flowers has no prior felony convictions or even,
13 as far as I know, accusations. He is -- if this were any
14 other crime probably up to and including simple murder,
15 he would as a matter of routine be admitted to bail given
16 his character and conduct with respect to his behavior
17 while a suspect and then in prison, except for today's
18 allegations that apparently some guard fell in love with
19 him and he succumbed to -- allegedly succumbed to
20 temptation.

21 There is nothing to indicate any escaping behavior,
22 attempt to escape or flee. There is nothing to indicate,
23 even apart from these last allegations, any kind of
24 violence or disruption that would predict bad behavior in
25 the community as a whole.

26 Given, you know, he is going to be 40. He is going
27 to be -- his mother -- and this is, everybody knows, the
28 community in which people named Flowers are no longer
29 popular. And yet Mrs. Flowers, who is retired, and

1 certainly has no obligation to support a grown son, is
2 willing, not only according to her declaration to provide
3 him home, but to subject herself, in addition to
4 whatever, if she were standing surety or putting her
5 property as surety for a bail, if there were conditions
6 of release, if the Court were to do that, you know, up to
7 and including ankle bracelets and reporting.

8 And she has made herself available to be subject to
9 conditions as a custodian. That could include reporting.
10 That could include -- you know, as I say, we understand
11 this is an extraordinary case. Mr. Flowers has not been
12 convicted of these crimes, validly convicted of these
13 crimes. He has been incarcerated for 13 years.

14 In the Court's ruling, which I read to be not only
15 to go forward with this trial but that it sees no double
16 jeopardy impediment to continued retrial, that even if
17 prosecution is not enough is enough, incarceration of Mr.
18 Flowers pending trial is.

19 It is not like he's indicated he doesn't want to
20 stand trial and be vindicated on these trials. In fact,
21 he seems -- he waived extradition and has been
22 cooperative in investigation up to the point he was
23 actually charged. And there is nothing to indicate he
24 would be a flight risk or a danger or the standards for
25 bail or that this is -- there is a great presumption that
26 conviction will ensue. And we would therefore ask that
27 he be admitted to a reasonable bail under the
28 circumstances by the evidence.

29 THE COURT: I'll hear from the State.

1 MR. HILL: Your Honor, I don't understand how
2 anybody could know the facts of this case and not believe
3 or not understand the proof is evident and the
4 presumption great. Three different juries from three
5 different parts of the state have found beyond any
6 reasonable doubt that the defendant murdered these four
7 people. I mean it looks to me like that argument doesn't
8 pass the laugh test.

9 Since I can't remember anybody else around here
10 murdering four people, I would say that that would
11 indicate that the defendant is an extremely dangerous
12 individual, and the best place for him is behind bars.

13 I realize also that he went to Texas. And, and
14 counsel's questioning earlier indicated whether or not he
15 was asked to report if he was leaving. I don't think he
16 did. But he disappeared from these parts without telling
17 anybody where he was going. And he didn't just leave and
18 move from one place -- one small town to another in
19 Mississippi; he went to Texas.

20 State's position is that he is certainly a extremely
21 violent person. If he was getting mad and his emotions
22 overwhelmed his ability to, to control his temper, we
23 don't know what would happen. We do know what happened
24 one time. And because the state constitution itself
25 says that -- makes a special exception for people charged
26 with capital offenses, we think that bail should be
27 denied, and he should remain where he is. Trial is only,
28 what, a couple of months away at the most?

29 THE COURT: Well, Mr. Hill's correctly stated

1 what the constitution of the state says about proof
2 evident or presumption great. The case has been tried
3 three times where a conviction happened and the Supreme
4 Court took each of those up. They did not reverse and
5 render. They had an opportunity to look at the evidence
6 and obviously felt like there was very sufficient
7 evidence to go forward with trial. So I think based what
8 they've done, you could say presumption would be great or
9 proof evident.

10 Also, this was, you know, a very violent crime. Mr.
11 Flowers has gone to Texas in the past. With previous
12 juries having had convicted him, he, I think, would be a
13 greater flight risk now than he would have been in the
14 past, because when he went to Texas previously he was not
15 under indictment. Now he is under indictment, and as I
16 say, has been convicted previous times.

17 And also, I'll also note that trial is just about
18 six weeks away. So it's not a great burden to be in jail
19 for six more weeks. You've noted he has been in jail for
20 13 years. So I don't think six more weeks is going to be
21 a real hardship.

22 So for these reasons, I am going to deny bail
23 pending trial.

24 I think this is all the motions that you have
25 presented to the Court; is that --

26 MS. STEINER: That is all the presently pending
27 motions the defendant has. The State didn't notice any.

28 THE COURT: The State didn't notice any. I
29 assume there are none.

1 If there is motions that need to be heard in the
2 future, I can certainly be available before the day the
3 jury is qualified to rule on -- I mean I don't have my
4 calendar with me. I don't have a specific date. But if
5 we have got other matters that, that need to be taken up
6 prior to the jury being qualified or prior to the day of
7 actual voir dire, I will certainly be back over here to
8 do it.

9 You know, a lot of times if you take matters up
10 preliminarily before the evidence begins, it can make the
11 trial flow much smoother. So if there is anything that I
12 need to take up previous to trial, please let me know,
13 and I will certainly be back over here to do so.

14 MR. HILL: Yes, sir.

15 THE COURT: But at least for this time, this
16 Court stands adjourned or recessed in this matter.

17 (THE PROCEEDING ON THIS DATE WAS CONCLUDED.)
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JURY QUALIFICATIONS

(THE FOLLOWING PROCEEDINGS WERE HAD IN
OPEN COURT ON JUNE 4, 2010, WITH ALL
COUNSEL, THE DEFENDANT, THE COURT, THE
COURT REPORTER AND THE CIRCUIT COURT CLERK
PRESENT, TO-WIT:)

(Potential Jurors Called)

BY THE COURT: The Court will come to
order. Ladies and gentlemen, the order of
business we're going to be conducting today
is we're going to go over the jury
qualifications and jury exemptions with those
of you today.

We will, actually on the case that
we're going to be handling, will start
questioning you Monday morning about specific
facts of the case. So today, what we're
going to be doing is just making sure you do
meet the legal qualifications to serve on a
jury and also take any exemptions that you
might have.

And the case is going to be the State
of Mississippi versus Curtis Giovanni
Flowers, Cause Number 2003-0071-CR.

Ladies and gentlemen, these questions
that I'm going to be asking you now are to
make sure that you meet the legal
qualifications to serve on a jury. These
questions are not asked for the purpose of
embarrassing anybody, putting you on the spot

JURY QUALIFICATIONS

1 about anything. It's strictly to make sure
2 that you do meet the legal qualifications to
3 serve on a jury.

4 If you do not meet one of the
5 qualifications, then you would need to speak
6 up and let me know that. Also, if an
7 exemption that I go over with you should
8 apply to you, then you could possibly claim
9 that exemption and be excused from jury
10 service. And I know that the clerk's already
11 given you an oath and this is your oath --
12 that was your oath that you will answer these
13 questions truthfully.

14 The first qualification you've got to
15 meet is you've got to be at least 21 years of
16 age in order to serve. So do I have anyone
17 that was summoned for jury duty for today who
18 is not at least 21 years of age?

19 Also, you have to be a qualified
20 elector of Montgomery County or a resident
21 freeholder of this county for more than one
22 year. Once again, a qualified elector or a
23 resident freeholder of this county for more
24 than one year. So do I have anybody that
25 would not be a qualified elector or resident
26 freeholder? Yes, sir, what is your
27 situation?

28 **PROSPECTIVE JUROR:** I live in Greenwood
29 now. I lived with my grandmother in Stewart

JURY QUALIFICATIONS

1 a couple of years back. I live in Greenwood
2 now. I'm registered to vote in Leflore
3 County.

4 **BY THE COURT:** So you have abandoned
5 Montgomery County as a place of residence?

6 **PROSPECTIVE JUROR:** Yes, sir.

7 **BY THE COURT:** And you have not maintained
8 a legal residence here?

9 **PROSPECTIVE JUROR:** No, sir.

10 **BY THE COURT:** What is your name?

11 **PROSPECTIVE JUROR:** Chase Gates.

12 **BY THE COURT:** All right. I'll let you
13 go. And if you would, just go right into the
14 clerk's office there and you might fill some
15 paperwork out so they can take you off the
16 voter rolls of this county, as you were
17 apparently still listed as a voter in this
18 county, but I will let you go. But, as I
19 say, if you will, please, go and have your
20 name taken off the voter rolls here. And I
21 think -- yes.

22 **PROSPECTIVE JUROR:** I live in Hinds
23 County.

24 **BY THE COURT:** And you have moved?

25 **PROSPECTIVE JUROR:** We did live in French
26 Camp, but we have moved as of February from
27 Montgomery County but I haven't changed my
28 voting yet.

29 **BY THE COURT:** But you have abandoned this

JURY QUALIFICATIONS

1 county totally as a resident and you have no
2 ties to here anymore?

3 **PROSPECTIVE JUROR:** No, sir.

4 **BY THE COURT:** And what is your name?

5 **PROSPECTIVE JUROR:** Wendy Thomas.

6 **BY THE COURT:** Okay. Ms. Thomas, and if
7 you'll do like the gentleman I just said --
8 just asked him to do and if you'll just go in
9 there and fill out the paperwork to have your
10 name removed the voter rolls here. And I
11 believe I saw -- yes.

12 **PROSPECTIVE JUROR:** Chris Harbin, and I
13 stay in Greenwood now.

14 **BY THE COURT:** Okay. And you no longer
15 maintain any residency of any kind here; is
16 that correct?

17 **PROSPECTIVE JUROR:** Yes, sir.

18 **BY THE COURT:** You may go. Mr. Harbin,
19 you may go and if you'll go in and have your
20 name taken off the voter rolls there. Yes,
21 ma'am.

22 **PROSPECTIVE JUROR:** Brandi McClain. I'm
23 currently live in Ocean Springs.

24 **BY THE COURT:** Okay. Ms. McClain, you may
25 go and -- well, I assume you don't maintain
26 any residency of any kind here now; is that
27 correct?

28 **PROSPECTIVE JUROR:** Yes, sir.

29 **BY THE COURT:** Now, you may go and go do

JURY QUALIFICATIONS

1 like these others and if you'll just go in
2 there and have your names taken off the voter
3 rolls so that, you know -- well, obviously
4 you don't live here you're not qualified to
5 vote here and also you won't be called again
6 in the future in any jury proceedings here.
7 All right. Yes, ma'am.

8 **PROSPECTIVE JUROR:** I live in DeSoto
9 County.

10 **BY THE COURT:** Okay. What is your name?

11 **PROSPECTIVE JUROR:** Adriane Brown.

12 **BY THE COURT:** Ms. Brown, you've abandoned
13 Montgomery County as the place of residence
14 and no longer have anything to do with here;
15 is that correct?

16 **PROSPECTIVE JUROR:** Right.

17 **BY THE COURT:** Okay. I'll let you go. If
18 you will, as I say, follow these others and
19 have your name removed from the voter rolls
20 of the county.

21 There are some items also, ladies and
22 gentlemen, that would disqualify you from
23 serving on the jury. If you have been
24 convicted of a felony crime, that would
25 disqualify you from serving on a jury. It
26 would not necessarily disqualify you from
27 voting but it would disqualify you from being
28 able to serve on a jury.

29 So do I have anybody -- and let me

JURY QUALIFICATIONS

1 explain what a felony crime is. I think most
2 of you probably know, but a felony crime is a
3 crime that if you were convicted of that type
4 crime, you could serve time in the state
5 penitentiary. Even if you were convicted of
6 a felony crime but were on probation or
7 received suspension of sentence, that would
8 still be a disqualification from being on the
9 jury. But with that in mind, do I have
10 anybody that's been convicted of a felony
11 crime that would disqualify them from
12 serving? Yes, sir. And what is your name?

13 **PROSPECTIVE JUROR:** James Willie Hill.

14 **BY THE COURT:** And Mr. Hill, you've been
15 convicted of a felony; is that correct?

16 **PROSPECTIVE JUROR:** Yes, sir.

17 **BY THE COURT:** And what was that
18 conviction?

19 **PROSPECTIVE JUROR:** A grand larceny
20 charge.

21 **BY THE COURT:** Okay. Well, I appreciate
22 you being here this morning and you can go.
23 Yes, sir.

24 **PROSPECTIVE JUROR:** James Bell.

25 **BY THE COURT:** Okay. Mr. Bell, I
26 appreciate you being here, and you may go.

27 **BY MRS. STEINER:** Your Honor, what --

28 **BY THE COURT:** James Bell.

29 If you are a common gambler or

JURY QUALIFICATIONS

1 habitual drunkard, you would not be qualified
2 to serve. And I hope we don't have any, but
3 if I have any common gamblers or habitual
4 drunkards, this is time to speak up. And I
5 take it by your silence and your responses
6 that we do not have any common gamblers or
7 habitual drunkards present this morning and
8 that's good.

9 Also, you could not serve if you've
10 been convicted of the sale of intoxicating
11 liquors within the past five years. So if
12 any of you have been convicted of the sale of
13 intoxicating liquors within the past five
14 years. I think that dates back to the old
15 bootlegging days and stuff like that, but
16 it's still one of those things that would
17 disqualify you. So if you have been
18 convicted of the sale of intoxicating liquors
19 within the past five years, that would be
20 something that would prohibit you from
21 serving. So do I have anybody that would be
22 disqualified for that reason?

23 Also, the law requires that you be
24 able to read and write. And, basically, if
25 you were able to complete that jury
26 questionnaire that was sent with your jury
27 summons and if you could complete that and
28 read it, then you were deemed to be able to
29 read and write enough to serve. So have I

JURY QUALIFICATIONS

1 got anybody that could not read and write
2 well enough to -- and what is your name?

3 **PROSPECTIVE JUROR:** Bobby Palmertree.

4 **BY THE COURT:** Bobby Palmertree. And did
5 somebody else fill it out for you?

6 **PROSPECTIVE JUROR:** Yes, ma'am. I mean,
7 yes, sir.

8 **BY THE COURT:** I know I'm wearing a robe,
9 but it ain't a dress. But that's fine. I
10 understand you're nervous, Mr. Palmertree.

11 **PROSPECTIVE JUROR:** I can read a little.
12 But I can't take notes and all that stuff.

13 **BY THE COURT:** Well, I'll let you go, and
14 I appreciate you being here.

15 **PROSPECTIVE JUROR:** I appreciate it.

16 **BY THE COURT:** Do I have anyone else that
17 could not read and write well enough?

18 **PROSPECTIVE JUROR:** Yes, sir.

19 **BY THE COURT:** And what is your name?

20 **PROSPECTIVE JUROR:** My name is Deborah
21 Butts. My husband filled mine out.

22 **BY THE COURT:** Okay. So you could not
23 complete that or read that; is that correct?

24 **PROSPECTIVE JUROR:** Yes, sir.

25 **BY THE COURT:** Okay. What was your name
26 again?

27 **PROSPECTIVE JUROR:** Deborah Butts.

28 **BY THE COURT:** Okay. Ms. Butts, I
29 appreciate you being here and you may go.

JURY QUALIFICATIONS

1 Ladies and gentlemen, those are the
2 legal qualifications --

3 **PROSPECTIVE JUROR:** Judge.

4 **BY THE COURT:** I'm sorry. Did I miss
5 someone?

6 **PROSPECTIVE JUROR:** I can't read and
7 write.

8 **BY THE COURT:** And what is your name?

9 **PROSPECTIVE JUROR:** Arthur Easterwood.

10 **BY THE COURT:** Okay. And did somebody
11 else fill that -- and so you were not able to
12 read that and fill it out; is that correct?

13 **PROSPECTIVE JUROR:** Yes, sir.

14 **BY THE COURT:** Okay. Well, I'll let you
15 go then, and I do appreciate you being here.

16 And now, ladies and gentlemen, those
17 are the legal qualifications that you have to
18 meet in order to serve on a jury. There are
19 also some exemptions that I'm going to go
20 over with you at this time. These exemptions
21 that I'm going to go over with you are
22 personal exemptions. You do not have to
23 claim one of these even if it applied to you
24 so I want you to understand that. Even if it
25 applied to you, you would not have to claim
26 it if you do not wish to do so. However, if
27 one of these exemptions does apply to you,
28 then you could claim it and possibly be
29 excused or exempt from jury service.

JURY QUALIFICATIONS

1 The first exemption is any person
2 over age 65, that's a privilege that the law
3 recognizes. Certainly, the Court encourages
4 persons over the age 65 to serve. But if you
5 are over 65 and you don't want to serve, then
6 that is a privilege that comes with being
7 that age. So have I got -- yes, sir, what's
8 your name?

9 **PROSPECTIVE JUROR:** Rochester Ratliff, 68.

10 **BY THE COURT:** Well, you look good for 68,
11 but you may go if you wish, Mr. Ratliff, and
12 I appreciate you being here. Yes, ma'am.

13 **PROSPECTIVE JUROR:** Zelma Mae Forrest.

14 **BY THE COURT:** Zelma Mae Forrest?

15 **PROSPECTIVE JUROR:** Eighty-one.

16 **BY THE COURT:** You make 81 look good.
17 I'll tell you that. But if you want to go,
18 I'll allow you to go and appreciate you being
19 here today, and you're excused.

20 Yes, ma'am.

21 **PROSPECTIVE JUROR:** I'm 66.

22 **BY THE COURT:** And what is your name?

23 **PROSPECTIVE JUROR:** Sarah Holmes.

24 **BY THE COURT:** Sarah Holmes? Well, I
25 appreciate you being here, Ms. Holmes.

26 (PAUSE)

27 **BY THE COURT:** You may go at any time you
28 wish.

29 **PROSPECTIVE JUROR:** Her ride is gone.

JURY QUALIFICATIONS

1 She's going to have to wait.

2 **BY THE COURT:** Oh, okay. Okay. Well,
3 that's fine. I just didn't want her to be
4 here if she didn't want to be.

5 Also, ladies and gentlemen, if you've
6 got an illness and on account of an illness,
7 you're incapable of performing jury service,
8 then that could be an exemption. But, again,
9 if you've got some kind of medical condition
10 and because of that, you're not capable of
11 performing jury service. Do I have anybody
12 that's got some kind of illness of some kind
13 where you're not physically able to serve?
14 Yes, ma'am, over here.

15 **PROSPECTIVE JUROR:** I'm under the
16 treatment for kidney stones, and I have to go
17 to Greenwood to have them removed.

18 **BY THE COURT:** Yes, ma'am. And what is
19 your name?

20 **PROSPECTIVE JUROR:** Emma Hargrove.

21 **BY THE COURT:** Ms. Hargrove, I have heard
22 that's an awful painful thing, and I'm sorry
23 that you're suffering that right now. I hope
24 you feel better soon, but I will let you go.

25 All right. Yes, sir.

26 **PROSPECTIVE JUROR:** I take a lot of
27 medicine. I have weak kidneys.

28 **BY THE COURT:** So you're on a lot of
29 medication and that would affect you in your

JURY QUALIFICATIONS

1 ability to function and serve as a juror?

2 **PROSPECTIVE JUROR:** Yes, sir.

3 **BY THE COURT:** And you feel like you could
4 not serve because of these medical problems;
5 is that correct?

6 **PROSPECTIVE JUROR:** I have to use the
7 bathroom too much.

8 **BY THE COURT:** Right. I -- what's your
9 name?

10 **PROSPECTIVE JUROR:** Roy Roberts.

11 **BY THE COURT:** Okay. Well, I'll let you
12 go, and I appreciate you being here. Yes.

13 **PROSPECTIVE JUROR:** My blood pressure
14 medicine makes me sleepy and use the bathroom
15 all the time.

16 **BY THE COURT:** And so you've got bad blood
17 pressure problems and not able to serve.

18 **PROSPECTIVE JUROR:** Yes, sir.

19 **BY THE COURT:** Are you able to work?

20 **PROSPECTIVE JUROR:** No.

21 **BY THE COURT:** Okay. And so you're
22 basically disabled because of your --

23 **PROSPECTIVE JUROR:** I ain't disabled.

24 **BY THE COURT:** Well, I mean, you're not
25 able to work because of your blood pressure?

26 **PROSPECTIVE JUROR:** I'm working but my
27 blood pressure makes me feel bad and use the
28 bathroom all the time. I won't be able to
29 sit on the jury and have to go back and

JURY QUALIFICATIONS

1 forth.

2 **BY THE COURT:** Okay. I'll let you go.
3 What's your name?

4 **PROSPECTIVE JUROR:** Annette Berry.

5 **BY THE COURT:** Okay. Yes, ma'am.

6 **PROSPECTIVE JUROR:** I'm Allie Sue
7 Scarborough, and I have a lot of -- take a lot
8 of medicine myself and I'm disabled.

9 **BY THE COURT:** Are you like drawing
10 disability or --

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **BY THE COURT:** And these medications
13 affect you where you don't feel like you
14 could function and serve as a juror; is that
15 correct?

16 **PROSPECTIVE JUROR:** Yes, sir.

17 **BY THE COURT:** And what's your name again?

18 **PROSPECTIVE JUROR:** Allie Sue Scarborough.

19 **BY THE COURT:** Okay. Well, I appreciate
20 you being here, and I'll let you go. And I
21 see a hand here in the back.

22 **PROSPECTIVE JUROR:** I have problems with
23 my legs, and my arteries will close up. And
24 I've had five or six surgeries on my legs.
25 And I just had surgery recently, and I can't
26 sit for a long period of time, plus I'm
27 taking prescription for depression and
28 anxiety, and I am disabled.

29 **BY THE COURT:** Okay. Well, I'll let you

JURY QUALIFICATIONS

1 go. And what is your name?

2 **PROSPECTIVE JUROR:** Juanita Butts.

3 **BY THE COURT:** Okay. Ms. Butts. And I
4 hope you get to feeling better from this
5 surgery you just had.

6 I see a gentleman over here. Yes,
7 sir.

8 **PROSPECTIVE JUROR:** I've got a COPD and
9 emphysema. I have to take breathing
10 treatments four to six times a day.

11 **BY THE COURT:** Well, I think you couldn't
12 serve and do that, too. So I'll let you go.
13 What's your name?

14 **PROSPECTIVE JUROR:** Claude Marlow.

15 **BY THE COURT:** Mr. Marlow, I appreciate
16 you being here, and I'll let you go. And
17 yes, ma'am. Here.

18 **PROSPECTIVE JUROR:** I have a lot of
19 medical problems and take a lot of medicine
20 and I have sleep apnea and have breathing
21 problems. I don't feel like I could sit very
22 long at a time.

23 **BY THE COURT:** You feel these would affect
24 you --

25 **PROSPECTIVE JUROR:** It would, it
26 definitely would.

27 **BY THE COURT:** -- to the extent you could
28 not serve? What is your name?

29 **PROSPECTIVE JUROR:** Carolyn McCoy.

JURY QUALIFICATIONS

1 **BY THE COURT:** Okay. Ms. McCoy, I
2 appreciate you being here, and I'll let you
3 go. I saw a gentleman standing here at the
4 back of the courtroom.

5 **PROSPECTIVE JUROR:** Yes. I'm Kenny Britt.
6 And I just went to the doctor yesterday, and
7 I have colon problems and they've got me on
8 medicine now. I can't stay still very long
9 period of time because I hurt so bad.

10 **BY THE COURT:** And Britt is your name?

11 **PROSPECTIVE JUROR:** Britt.

12 **BY THE COURT:** Okay. Well, I'll let you
13 go, Mr. Britt. And I hope you get better
14 soon. I think I saw another hand. Yes,
15 ma'am, right here, the second row.

16 **PROSPECTIVE JUROR:** I have medical
17 problems, and I'm on medication. I can't sit
18 for long periods of time. I have chronic
19 back pain and other medical problems.

20 **BY THE COURT:** And what is your name?

21 **PROSPECTIVE JUROR:** Claria Henson.

22 **BY THE COURT:** Ms. Henson? Well, I
23 appreciate you being here, and you may go.
24 And I think I saw another gentleman, yes,
25 sir.

26 **PROSPECTIVE JUROR:** I take a lot of
27 medicines and I'm disabled.

28 **BY THE COURT:** Are you drawing disability
29 now?

JURY QUALIFICATIONS

1 **PROSPECTIVE JUROR:** Yes, sir.

2 **BY THE COURT:** And you're not able to --

3 **PROSPECTIVE JUROR:** I take a lot of
4 medicine for back and neck surgeries. And
5 just sitting here a long time, it would be
6 hard on me.

7 **BY THE COURT:** Okay. And what's your
8 name?

9 **PROSPECTIVE JUROR:** John Hancock.

10 **BY THE COURT:** Okay. That's a nice name.
11 You may go.

12 **PROSPECTIVE JUROR:** Thank you.

13 **BY THE COURT:** Yes, sir.

14 **PROSPECTIVE JUROR:** My name is
15 (unintelligible), and I have sleep apnea.

16 **BY THE COURT:** What -- what -- I didn't
17 hear your name -- what's --

18 **PROSPECTIVE JUROR:** My name is Nick Davis
19 Coach, and I have sleep apnea.

20 **BY THE COURT:** And that would affect you
21 where you couldn't function and serve; is
22 that correct?

23 **PROSPECTIVE JUROR:** Yes, sir.

24 **BY THE COURT:** Okay. Well, I'll let you
25 go, and I appreciate you being here.

26 **BY MR. CARTER:** What was that last name?

27 **BY MRS. STEINER:** Coach. .

28 **BY THE COURT:** Coach. Yeah, that's it,
29 okay. Yes, sir.

JURY QUALIFICATIONS

1 **PROSPECTIVE JUROR:** Mario Townsend. I
2 just been diagnosed with adjustment disorder
3 and PTSD, and I take medicine for depression
4 and anxiety.

5 **BY THE COURT:** Posttraumatic stress?

6 **PROSPECTIVE JUROR:** Yes, sir.

7 **BY THE COURT:** And you feel like you could
8 not function or serve as a juror; is that
9 correct?

10 **PROSPECTIVE JUROR:** No, sir.

11 **BY THE COURT:** Okay. And what is your
12 name?

13 **PROSPECTIVE JUROR:** Mario Townsend.

14 **BY THE COURT:** Okay. Mr. Townsend, you
15 may go. Yes, sir.

16 **PROSPECTIVE JUROR:** Donald Thompson. I've
17 got some kind of bug. I don't whether I've
18 got the flu or what but I feel awful, weak as
19 water.

20 **BY THE COURT:** Well, we probably need to
21 let you go because I don't want anybody else
22 to get it. So what's your name again?

23 **PROSPECTIVE JUROR:** Donald Thompson.

24 **BY THE COURT:** Yes, near the back there.
25 Yes, ma'am.

26 **PROSPECTIVE JUROR:** I have back problems.
27 I'm taking a lot of strong medicine. I done
28 had three back surgeries.

29 **BY THE COURT:** Okay. And what's your

JURY QUALIFICATIONS

1 name?

2 **PROSPECTIVE JUROR:** Perine Eskridge.

3 **BY THE COURT:** What's your last name?

4 **PROSPECTIVE JUROR:** Perine Eskridge.

5 **BY THE COURT:** Okay. Eskridge. Okay.

6 Ms. Eskridge, I appreciate you being here,
7 and you may go. And I see another hand back
8 here at the back. Yes, ma'am.

9 **PROSPECTIVE JUROR:** I just injured my back
10 at work, and I'm on medication now, and I'm
11 under doctor's care. I'm supposed to go back
12 to him tomorrow.

13 **BY THE COURT:** Okay. And what's your name
14 again?

15 **PROSPECTIVE JUROR:** Denise Young.

16 **BY THE COURT:** Well, I'll let you go, Ms.
17 Young, and I hope your problem gets better
18 soon. Yes. I'm sorry.

19 **PROSPECTIVE JUROR:** I'm James Mann, and I
20 think I will exercise my age exemption.

21 **BY THE COURT:** Okay. And you're over age
22 65; is that correct?

23 **PROSPECTIVE JUROR:** Yes, sir.

24 **BY THE COURT:** Okay. Mr. Mann, I
25 appreciate your being here and you may go.
26 The next situation is if jury service would
27 cause an undue or extreme physical or
28 financial hardship to you or someone under
29 your care or supervision, that would will

JURY QUALIFICATIONS

1 result in an exemption. It's got to be a
2 situation where you would have to abandon a
3 person under your personal care or
4 supervision due to the impossibility of
5 finding substitute care for them or if you
6 would incur a cost that would have a
7 substantial adverse impact on the payment of
8 your necessary daily living expenses or
9 someone to whom you provide the principle
10 means of support for or somebody under your
11 care or supervision would possibly suffer
12 physical hardship that could result in an
13 illness or disease. That's the subcategory
14 that comes under this heading of the undue or
15 extreme physical or financial hardship. So
16 does anyone have anything that they would
17 feel would rise to the level that I've just
18 given to you that would necessitate you being
19 excused or exempt from jury service? Yes,
20 ma'am.

21 **PROSPECTIVE JUROR:** I'm Sandra Hamilton,
22 and I work night shifts at Grenada Lake
23 Medical Center. I'm a respiratory therapist,
24 and we care for the patients on life support
25 equipment and part of my problem.

26 **BY THE COURT:** Well, now, what happens if
27 you miss work, if you're sick or you go on
28 vacation?

29 **PROSPECTIVE JUROR:** Well, then somebody

JURY QUALIFICATIONS

1 has to work an extra shift to cover mine.

2 **BY THE COURT:** Well, they've had six or
3 seven weeks to know that you're going to be
4 out, so I feel like they can find somebody
5 else to take your place. Because they
6 have -- you know, we sent these out in mid
7 April. What's your name though?

8 **PROSPECTIVE JUROR:** Sandra Hamilton.

9 **BY THE COURT:** Yes, ma'am.

10 **PROSPECTIVE JUROR:** Tabitha Williams, and
11 I'm a single parent of an eight-year-old.

12 **BY THE COURT:** Of an eight-year-old. Do
13 you have anybody that could look after this
14 child if you were to be up here for --

15 **PROSPECTIVE JUROR:** No, his father is
16 disabled so, and he lives with me.

17 **BY THE COURT:** And the child lives with
18 you --

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **BY THE COURT:** -- and you don't have any
21 substitute caregiver or anything like that?
22 Okay. What is your name again?

23 **PROSPECTIVE JUROR:** Tabitha Williams.

24 **BY THE COURT:** Okay. Ms. Williams, I'll
25 let you go. Yes, sir.

26 **PROSPECTIVE JUROR:** Dwight Stewart. I'm
27 self-employed. If I don't work, there's no
28 money coming in and no bills get paid.

29 **BY THE COURT:** What type work is this?

JURY QUALIFICATIONS

1 **PROSPECTIVE JUROR:** I move dirt and do
2 trackhoe work.

3 **BY THE COURT:** What happens if you go on
4 vacation or anything like that?

5 **PROSPECTIVE JUROR:** I don't take
6 vacations.

7 **BY THE COURT:** So you just work all the
8 time? Okay. What's your name again?

9 **PROSPECTIVE JUROR:** Dwight Stewart.

10 **BY THE COURT:** Okay. Mr. Stewart, I'll
11 let you go. Yes.

12 **PROSPECTIVE JUROR:** Theresa Graves. I was
13 keeping my grandbaby this morning for my
14 daughter-in-law to go to college.

15 **BY THE COURT:** Does she have anybody else
16 that could --

17 **PROSPECTIVE JUROR:** There's no one.

18 **BY THE COURT:** So she doesn't have any
19 relatives or friends or anyone?

20 **PROSPECTIVE JUROR:** She's from Missouri
21 originally.

22 **BY THE COURT:** And does the child -- is it
23 staying with you during, I guess, most all
24 the time?

25 **PROSPECTIVE JUROR:** It's started Monday.

26 **BY THE COURT:** From -- okay. Well, I'll
27 let you go. I appreciate you being here. I
28 think I saw another hand. Yes.

29 **PROSPECTIVE JUROR:** I'm Gloria Welch, and

JURY QUALIFICATIONS

1 I am self-employed. I have a wedding and
2 catering business, and there's no one else.
3 We have several weddings scheduled like this
4 weekend and forward, and there's no one else
5 that can do what I do.

6 **BY THE COURT:** I think June is one of the
7 big months for weddings. I'll -- and you
8 absolutely don't have anybody that could --
9 this would shut down and mess a bunch of
10 weddings up, I assume?

11 **PROSPECTIVE JUROR:** No, sir. There's no
12 one else that can do what I do. We have
13 part-time help, but no one does what I do.

14 **BY THE COURT:** And what's your name?

15 **PROSPECTIVE JUROR:** Gloria Welch.

16 **BY THE COURT:** I'll let you go then,
17 Ms. Welch. I believe I see a gentleman's
18 hand back here.

19 **PROSPECTIVE JUROR:** My name is Jason
20 Simmons, and we have a heating and cooling
21 business in Grenada. I do have a partner,
22 but he'll be completely overwhelmed. There's
23 no way he can keep up with all the air
24 conditioning we have going on.

25 **BY THE COURT:** And what kind of hardship
26 is this going to be? Is this going to create
27 a substantial hardship for -- and you own the
28 business, correct?

29 **PROSPECTIVE JUROR:** Yes, sir, me and

JURY QUALIFICATIONS

1 another man own it. However, once we miss
2 the customer, we've lost their business.

3 **BY THE COURT:** And you're Mr. Simmons?

4 **PROSPECTIVE JUROR:** Yes, sir.

5 **BY THE COURT:** Okay. I'll let you go,
6 Mr. Simmons. I see one more hand, maybe two
7 more hands. Yes, ma'am.

8 **PROSPECTIVE JUROR:** I don't have any child
9 care. My mother usually does, but she's out
10 of town for the rest of the month.

11 **BY THE COURT:** And so you don't have
12 anybody else that could come in?

13 **PROSPECTIVE JUROR:** I don't.

14 **BY THE COURT:** It looks like you brought
15 your excuse with you. What is your name?

16 **PROSPECTIVE JUROR:** Glenda Bennett.

17 **BY THE COURT:** Okay. Ms. Bennett. And I
18 saw one hand back here. Yes, sir.

19 **PROSPECTIVE JUROR:** My name is Lloyd
20 Chism, and I have a trucking business. I
21 have 22 truck drivers that depend on me to
22 dispatch them.

23 **BY THE COURT:** And you are the owner of
24 the business?

25 **PROSPECTIVE JUROR:** I am.

26 **BY THE COURT:** And do you have anybody
27 that could fill in for you?

28 **PROSPECTIVE JUROR:** No, sir, I do not.

29 **BY THE COURT:** And what happens -- you

JURY QUALIFICATIONS

1 probably don't ever take any time off either,
2 though?

3 **PROSPECTIVE JUROR:** No, sir. I keep a
4 cell phone with me all the time.

5 **BY THE COURT:** Okay. Well, I'll let you
6 go, Mr. Chism.

7 **PROSPECTIVE JUROR:** Thank you.

8 **BY THE COURT:** And the next situation is
9 have I got any nursing mothers. That's
10 another exemption that I think might have
11 come up already on the previous exemption,
12 but if I've got anybody that's like a nursing
13 mother that has small children.

14 Also, if you've served as a petit
15 juror within the past two years where you
16 actually came up here and you sat in the jury
17 box and you tried a case or if you served on
18 a grand jury within the past two years.
19 Either of these things, grand jury service or
20 petit jury within the past two years. Yes,
21 ma'am.

22 **PROSPECTIVE JUROR:** Robin Cummings.

23 **BY THE COURT:** And when was that?

24 **PROSPECTIVE JUROR:** The term before last.

25 **BY THE COURT:** So that's been within two
26 years. Okay. You may go. Yes, ma'am.

27 **PROSPECTIVE JUROR:** I served on a grand
28 jury with Ms. Cummings.

29 **BY THE COURT:** And when was that?

JURY QUALIFICATIONS

1 **PROSPECTIVE JUROR:** It was with Robin
2 Cummings.

3 **BY THE COURT:** Okay. And what is your
4 name?

5 **PROSPECTIVE JUROR:** Wanda Huggins.

6 **BY THE COURT:** Okay. Ms. Huggins, I'll
7 let you go, and I see somebody right here.

8 **PROSPECTIVE JUROR:** Grand jury in Oxford
9 this year.

10 **BY THE COURT:** Okay. And what is your
11 name?

12 **PROSPECTIVE JUROR:** Robert Kemp.

13 **BY THE COURT:** Okay, Mr. Kemp. Well, I
14 appreciate it, and you may go. Yes, ma'am.

15 **PROSPECTIVE JUROR:** It's Ruby Robinson
16 Clark. I served on grand jury last year.

17 **BY THE COURT:** Your name is Clark?

18 **PROSPECTIVE JUROR:** Ruby Robinson Clark.

19 **BY THE COURT:** Okay. Ruby Robinson Clark.
20 Okay, Ms. Clark. Well, I'll let you go, and
21 I appreciate you being here. Yes, sir.

22 **PROSPECTIVE JUROR:** Tommy Adkins. I
23 served on the grand jury.

24 **BY THE COURT:** And when was that?

25 **PROSPECTIVE JUROR:** I'm not sure. It was
26 recently, but I'm not sure.

27 **BY THE COURT:** Okay. It has to have been
28 within the past two years, so I'll let you
29 go. What's your name again?

JURY QUALIFICATIONS

1 **PROSPECTIVE JUROR:** Tommy Adkins.

2 **BY THE COURT:** Okay, Mr. Adkins.

3 **PROSPECTIVE JUROR:** Lula Brown, served on
4 the grand jury.

5 **BY THE COURT:** And when was that?

6 **PROSPECTIVE JUROR:** I believe it was with
7 that gentleman. It was September.

8 **BY THE COURT:** Okay. You have September
9 2008, so that's been within the past two
10 years but you may go. At the back there in
11 the green.

12 **PROSPECTIVE JUROR:** Richard McKee. I
13 served on I think 2008.

14 **BY THE COURT:** Yes, sir.

15 **PROSPECTIVE JUROR:** Petit jury 2009.

16 **BY THE COURT:** 2009? And you actually
17 were on a trial jury that went -- jury went
18 to trial and that was last year.

19 **PROSPECTIVE JUROR:** It was.

20 **BY THE COURT:** Okay. And what is your
21 name?

22 **PROSPECTIVE JUROR:** Octavious Topps.

23 **BY THE COURT:** Okay. Mr. Topps, I
24 appreciate you being here. Yes, sir.

25 **PROSPECTIVE JUROR:** Served on a grand
26 jury, but I don't know if it was two years
27 ago.

28 **BY THE COURT:** Okay. And what's your
29 name?

JURY QUALIFICATIONS

1 **PROSPECTIVE JUROR:** Jessie Crawford. I
2 said I served on the grand jury, but I don't
3 know if it's been two years.

4 **BY THE COURT:** It's been further back than
5 two years, apparently. Anything, anyone
6 else? All right. I'll ask you to think over
7 the questions that I've gone over with you
8 now because we have now completed the
9 questions process as far as your
10 qualifications go. But, you know, some of
11 you may have had something you thought about
12 you didn't bring up earlier. If you have
13 thought about something now that you realize
14 you should have spoken up about previously,
15 then this is that last opportunity. So do I
16 have anybody? Yes.

17 **PROSPECTIVE JUROR:** My name is Larry Sims,
18 and I'm a minister.

19 **BY THE COURT:** And you're what?

20 **PROSPECTIVE JUROR:** I'm a preacher.

21 **BY THE COURT:** That's not in itself an
22 exemption.

23 **PROSPECTIVE JUROR:** I don't believe in
24 judging nobody.

25 **BY THE COURT:** Okay. We'll have to take
26 that up next week when we have to get into
27 it, because that's not a disqualification.

28 **PROSPECTIVE JUROR:** Yes, sir. I'm in
29 dental school in Jackson. I'm in school 40

JURY QUALIFICATIONS

1 hours a week. I'm already getting behind
2 being here today.

3 **BY THE COURT:** And would that have a real
4 substantial adverse impact on your education
5 and your means of support if you miss for a
6 week?

7 **PROSPECTIVE JUROR:** Yes, sir.

8 **BY THE COURT:** Okay. What's your name?

9 **PROSPECTIVE JUROR:** Justin Dyre.

10 **BY THE COURT:** Okay. Well, I'll let you
11 go. And I believe that's all. Yes, sir.

12 **PROSPECTIVE JUROR:** Robert Harris. I'm a
13 youth pastor, and we've got Bible school next
14 week.

15 **BY THE COURT:** Is there anybody that can
16 fill in for you?

17 **PROSPECTIVE JUROR:** I've got an intern,
18 but she's only been working for several
19 months now. She's never had Bible school.

20 **BY THE COURT:** I understand if you don't,
21 but I was going to say something so I'm going
22 to let you go because that that type work and
23 that goes on one time a year. What's your
24 name?

25 **PROSPECTIVE JUROR:** Robert Harris.

26 **BY THE COURT:** And I see one person back
27 here.

28 **PROSPECTIVE JUROR:** William Bryan. I've
29 got a cattle operation, farming operation and

JURY QUALIFICATIONS

1 nobody but me to take care of it from day to
2 day.

3 **BY THE COURT:** And what kind of operation
4 is this you have and what do you do?

5 **PROSPECTIVE JUROR:** I have a cattle and
6 farming operation, hay operation and stuff
7 like that.

8 **BY THE COURT:** Would that create a
9 substantial adverse impact on the operation
10 of the farm if you are not there?

11 **PROSPECTIVE JUROR:** Nobody there to take
12 care of it.

13 **BY THE COURT:** So everything would --
14 nothing would get done. Is what you're
15 saying?

16 **PROSPECTIVE JUROR:** No, sir.

17 **BY THE COURT:** What's your name?

18 **PROSPECTIVE JUROR:** William Bryan.

19 **BY THE COURT:** Okay. Well, I'll let you
20 go then. I appreciate you being here.

21 Yes, sir.

22 **PROSPECTIVE JUROR:** I'm a claims
23 supervisor for a crop insurance company over
24 Louisiana, Arkansas, Tennessee, Mississippi.
25 29 people that work for me. I wouldn't be so
26 bad concerned with it, but I'm supposed to go
27 to Texas in a week for a training meeting.

28 **BY THE COURT:** For what?

29 **PROSPECTIVE JUROR:** For work?

JURY QUALIFICATIONS

1 **BY THE COURT:** Well, I feel like they've
2 had seven weeks to know that you were going
3 to be up here so I --

4 **PROSPECTIVE JUROR:** Well, I mean, that's
5 true. I'm just --

6 **BY THE COURT:** Thought you'd bring it up?

7 **PROSPECTIVE JUROR:** Well, I thought I'd
8 bring it up. But there are a lot of people
9 that work for me but, I mean, if you don't
10 think that's good enough.

11 **BY THE COURT:** Well, as I say, I feel like
12 it's going to be a hardship for your bosses
13 probably but -- you know, a company you work
14 for, but it's got to be a personal hardship
15 for the individual and not the place where
16 you work and that's, you know, the difference
17 here. And as I say, they've had a number of
18 weeks to prepare for you to be gone. Yes,
19 sir. I see another.

20 **PROSPECTIVE JUROR:** I'm John Newman. We
21 do landscaping, and I'm the only machine
22 operator he got.

23 **BY THE COURT:** Well, is it your business
24 or somebody else's?

25 **PROSPECTIVE JUROR:** It's somebody else's.

26 **BY THE COURT:** Well, again, if it's a
27 hardship to them, they're just going to have
28 to make do without you.

29 **PROSPECTIVE JUROR:** And I'm related to the

JURY QUALIFICATIONS

1 Flowers -- Curtis.

2 **BY THE COURT:** Now, how are you related to
3 him?

4 **PROSPECTIVE JUROR:** On his daddy's side.

5 **BY THE COURT:** If you'll stick around a
6 little while longer, we might can take
7 another matter up with you a little bit later
8 when we address it. What is your name?

9 **PROSPECTIVE JUROR:** John Newman.

10 **BY THE COURT:** Okay. Yes, ma'am.

11 **PROSPECTIVE JUROR:** My name is Lawanda
12 Duren, and I don't think that I would be
13 actually physically -- mentally and
14 physically able to serve on the jury. I have
15 a sick daughter that's going through a lot of
16 stuff right now, anxiety and depression and
17 stuff, and she's on medication and she is
18 sick.

19 **BY THE COURT:** And are you saying -- are
20 you her primary caregiver?

21 **PROSPECTIVE JUROR:** Well, I mean, I am for
22 the top priority of seeing to her, yes.

23 **BY THE COURT:** And how old is this child?

24 **PROSPECTIVE JUROR:** She is 17 years of
25 age.

26 **BY THE COURT:** And have you got anybody
27 else?

28 **PROSPECTIVE JUROR:** No. I am the number
29 one key for her getting her medical

JURY QUALIFICATIONS

1 assistance.

2 **BY THE COURT:** And what you're saying is
3 you've got this sick child that you would
4 provide care to and you're not able to take
5 care of her if you were up here; is that
6 right?

7 **PROSPECTIVE JUROR:** Yes, Your Honor.

8 **BY THE COURT:** And what is your name?

9 **PROSPECTIVE JUROR:** Lawanda Denise Duren.

10 **BY THE COURT:** Okay, Ms. Duren. Well,
11 I'll let you go.

12 And now, ladies and gentlemen, if you
13 would, please stand and raise your right
14 hand --

15 **PROSPECTIVE JUROR:** I'm taking summer
16 school that I can't get out of.

17 **BY THE COURT:** Okay. Did you say -- you
18 were saying you were in summer school?

19 **PROSPECTIVE JUROR:** I need them, and I
20 can't get out of these classes.

21 **BY THE COURT:** Are you going every day?

22 **PROSPECTIVE JUROR:** No, sir. They're
23 online, and I have stuff to do every day.

24 **BY THE COURT:** Well, I know if you were on
25 a jury you can't be using a computer. And is
26 that going to have a substantial bad adverse
27 impact on your education and on your future
28 ability to earn a living and things?

29 **PROSPECTIVE JUROR:** Yes, sir.

JURY QUALIFICATIONS

1 **BY THE COURT:** Okay. And what is your
2 name?

3 **PROSPECTIVE JUROR:** Kacey Vanderlip.

4 **BY THE COURT:** Okay. Well, I'll let you
5 go. All right. Now, if the remainder of you
6 will stand and raise your right hand.

7 (Oath Given)

8 **BY THE COURT:** Now, Ladies and gentlemen,
9 as I told you as we first began -- and you
10 can sit down for a minute -- this is a case
11 where we're actually going to start the
12 questioning process which is referred to as
13 voir dire on Monday morning. So I'm going to
14 let you go for now, and I'll ask that you be
15 back here on Monday morning.

16 Now, if you are actually selected to
17 serve on the trial, you will be sequestered
18 for the duration of the trial. That means
19 you will kept together as a group once
20 selected and you would not be allowed to
21 return home until the trial is concluded. So
22 in order to ensure that you have adequate
23 clothing and other personal items that you
24 night need, you probably need to bring these
25 items to the courthouse with you on Monday.
26 This could save you the trouble of having to
27 have somebody like family or friends bring
28 the items to you that you might need while
29 you are serving.

JURY QUALIFICATIONS

1 Also, I need to advise you that you
2 are not permitted to have cellular telephones
3 or any other electronic means of
4 communication with you, so please do not pack
5 something like that with you and bring it to
6 the courthouse with you on Monday.

7 Also, from now until your jury
8 service is concluded, I'll ask that you do
9 not talk about this case with anyone. Do not
10 listen to anyone discussing the case. Do not
11 discuss it yourself with anyone. Do not
12 communicate in any manner about this case
13 with anyone.

14 Additionally, do not read any
15 newspaper articles, Internet articles or any
16 other written forms of communication about
17 this case. Do not listen to any radio,
18 telephone, Internet or other type broadcast
19 about this case. Also, you're not permitted
20 to view any scenes or locations involved in
21 the case or go out and make your own
22 investigation over the weekend.

23 Again, if you will report back Monday
24 morning at nine o'clock, and we will proceed
25 at that time.

26 **PROSPECTIVE JUROR:** I work at the justice
27 court here in the office in the courthouse.

28 **BY THE COURT:** Okay. If you'll hang
29 around a minute. I've got this gentleman

JURY QUALIFICATIONS

1 over here, and we might can take some matters
2 up with you, too.

3 Yes.

4 **PROSPECTIVE JUROR:** I am a sister-in-law
5 to Curtis.

6 **BY THE COURT:** Okay. If you'll just hang
7 around, too, and we'll try to take this up.

8 Yes, sir. What's your name?

9 **PROSPECTIVE JUROR:** Howard Richardson.

10 **BY THE COURT:** I didn't hear what you
11 said.

12 **PROSPECTIVE JUROR:** Howard Richardson.
13 I'm kin to him.

14 **BY THE COURT:** Okay. Well, if you'll have
15 a seat for a few minutes. And the remainder
16 of you can go, but so, if you four will come
17 forward.

18 (PROSPECTIVE JURORS LEAVES THE
19 COURTROOM)

20 (ALL COUNSEL APPROACH THE BENCH FOR A
21 CONFERENCE HELD OUT OF THE HEARING OF THE
22 REST OF THE PROSPECTIVE JURORS:)

23 **BY THE COURT:** It looks like we got maybe
24 four people that have got situations where I
25 suspect will eventually they would be excused
26 for cause. I don't know if y'all want me to
27 take these up and save them from having --
28 because one of them said she was a
29 sister-in-law of Mr. Flowers, and I think he

JURY QUALIFICATIONS

1 said -- two other relatives out there, and
2 this is the justice court clerk, and I don't
3 know if y'all want me to take them up today
4 and go ahead and let them go if they say that
5 would affect them from being a fair and
6 impartial juror or if you want me to wait til
7 Monday.

8 **BY MR. EVANS:** The Court could do it today
9 as far as a we're concerned --

10 **BY MR. CARTER:** We don't have any
11 objection.

12 **BY MR. EVANS:** -- if they say it would
13 affect them.

14 **BY THE COURT:** Okay. I'll just when
15 everybody clears out, I'll just take those
16 matters up. And they may say it would not
17 affect them. If they are saying that it
18 would be something where they couldn't be
19 fair and impartial, then I will go ahead and
20 excuse them. I'll just wait til everybody
21 clears out before I take those.

22 (BENCH CONFERENCE CONCLUDED)

23 (A PROSPECTIVE JUROR APPROACHES THE
24 BENCH)

25 **BY THE COURT:** Yes, ma'am.

26 **PROSPECTIVE JUROR:** I have a guilty plea
27 that was nonadjudicated.

28 **BY THE COURT:** Okay. Well, you don't have
29 a conviction right now then.

INDIVIDUAL VOIR DIRE - JURY OUT

1 **PROSPECTIVE JUROR:** Right.

2 **BY THE COURT:** And what is your name?

3 **PROSPECTIVE JUROR:** Christi Bartlett.

4 **BY THE COURT:** Okay. Well, then you're
5 not a convicted felon.

6 **PROSPECTIVE JUROR:** I just wanted to make
7 sure.

8 **BY THE COURT:** Well, I appreciate you
9 mentioning that.

10 **PROSPECTIVE JUROR:** Is that -- so I need
11 to be back?

12 **BY THE COURT:** Counsel, if you'll approach
13 again on some other issue.

14 (COUNSEL APPROACH BENCH FOR A
15 CONFERENCE HELD OUT OF THE HEARING OF THE
16 AUDIENCE IN THE COURTROOM)

17 **BY THE COURT:** Yeah. I just had a lady,
18 Christi Bartlett, came up and she advised --
19 of course, now she does not -- she does not
20 have a conviction. She pled guilty to some
21 crime somewhere but was nonadjudicated. So,
22 you know, if they're nonadjudicated, that
23 means you're not a felon. I mean, she could
24 be if the plea was accepted at some later
25 point. But at this point, she's qualified
26 still as far as -- as far as the law goes,
27 because it's only if you've been convicted a
28 felon. And a nonadjudication is not
29 conviction. But I wanted to still make clear

INDIVIDUAL VOIR DIRE - JURY OUT

1 that that was on the record.

2 **BY MRS. STEINER:** That's juror Christy
3 Bartlett.

4 **BY THE COURT:** And apparently the bailiff
5 advised I've got a few people -- I don't know
6 what their situation is, that want -- that
7 are eventually going to want to come up and
8 say stuff, but they're going to be saying
9 whatever they say on the record.

10 **BY MRS. STEINER:** Do you want to do that
11 at the bench since we're going to have
12 several people hanging around?

13 **BY THE COURT:** I think what I'll do is
14 just have everybody step out that wants --
15 that feels like they need to bring something
16 to my attention because it's so much easier.
17 It gets crammed up here when everybody else
18 gets close and it's probably more convenient
19 for the court reporter. So I'll just have
20 everybody step out that felt like they needed
21 to bring something up.

22 **BY MRS. STEINER:** And what about the other
23 venire members?

24 **BY THE COURT:** Well, I'll just take them
25 up -- have them step out and call them in
26 individually.

27 (BENCH CONFERENCE CONCLUDED)

28 **BY THE COURT:** I know that we had four
29 people that I asked to hang around and then

INDIVIDUAL VOIR DIRE - JURY OUT

1 apparently there's a few others that the
2 clerk and the bailiffs notified me that maybe
3 needs to say something to me. So if all of
4 you will step out of the courtroom and I'll
5 have the bailiffs bring each of you in
6 individually, and we'll take up any matters
7 that you might have.

8 Those first four, if you'll bring
9 each one of them in individually.

10 (JUROR HOWARD RICHARDSON ENTERS THE
11 COURTROOM)

12 **BY THE COURT:** Yes, sir. If you'll come
13 on forward. You can just come on up here to
14 the bench. And what is your name?

15 **PROSPECTIVE JUROR:** Howard Richardson, Jr.

16 **BY THE COURT:** And, Mr. Richardson, you
17 indicated there was some --

18 **PROSPECTIVE JUROR:** Kinfolk.

19 **BY THE COURT:** Okay. And how are you
20 related to Mr. Flowers?

21 **PROSPECTIVE JUROR:** His grandmother and my
22 grandmother are two sisters.

23 **BY THE COURT:** So you're third cousins?

24 **PROSPECTIVE JUROR:** Right.

25 **BY THE COURT:** Well, now, are you in a
26 situation where you feel like because of your
27 kinship you could not be a fair and impartial
28 juror?

29 **PROSPECTIVE JUROR:** Right.

INDIVIDUAL VOIR DIRE - JURY OUT

1 **BY THE COURT:** So you would not be able to
2 sit in judgment on him because you are a
3 relative of his; is that correct?

4 **PROSPECTIVE JUROR:** Yes, sir.

5 **BY THE COURT:** And so family pressures and
6 family ties and all of that would just keep
7 you from being able to serve?

8 **PROSPECTIVE JUROR:** Yes, we were close.

9 **BY THE COURT:** And y'all were close to
10 each other?

11 **PROSPECTIVE JUROR:** Right.

12 **BY THE COURT:** Well, I guess still are but
13 he has been locked up for a while. But you
14 were close and had a really close
15 relationship with him; is that correct?

16 **PROSPECTIVE JUROR:** Yes, sir.

17 **BY THE COURT:** Well, I'm going to go ahead
18 and let you go and I will not require you to
19 be back Monday. What's your name again,
20 first name?

21 **PROSPECTIVE JUROR:** Howard.

22 **BY THE COURT:** Okay. Mr. Richardson, I
23 will let you go, and I appreciate you going
24 ahead and bringing that up and, as I say, you
25 may go.

26 (JUROR VICKY ADAMS ENTERS THE
27 COURTROOM)

28 **BY THE COURT:** Who are you?

29 **PROSPECTIVE JUROR:** I'm Vicky Adams. My

INDIVIDUAL VOIR DIRE - JURY OUT

1 dad served as a witness on this trial, Porky
2 Collins.

3 **BY THE COURT:** And, of course, I assume
4 you've got a lot of facts about this case; is
5 that correct?

6 **PROSPECTIVE JUROR:** Of course.

7 **BY THE COURT:** And did you ever actually
8 listen in on any of the trials when he was
9 testifying?

10 **PROSPECTIVE JUROR:** Yes, sir.

11 **BY THE COURT:** So you actually sat through
12 court proceedings?

13 **PROSPECTIVE JUROR:** Yes, sir.

14 **BY THE COURT:** Would the fact that you're
15 his daughter affect you in being a fair and
16 impartial juror in this case?

17 **PROSPECTIVE JUROR:** Yes, sir.

18 **BY THE COURT:** And so you've fixed your
19 mind up on -- you've got a fixed opinion and
20 could not be changed; is that correct?

21 **PROSPECTIVE JUROR:** Well, I just -- I
22 don't feel like I have any business being
23 here.

24 **BY THE COURT:** So you feel like you could
25 not be a fair and impartial juror in this
26 case then?

27 **PROSPECTIVE JUROR:** Right.

28 **BY THE COURT:** Is that correct?

29 **PROSPECTIVE JUROR:** Yes, sir.

INDIVIDUAL VOIR DIRE - JURY OUT

1 **BY THE COURT:** I'm just going to go ahead
2 and excuse you. What's your name?

3 **PROSPECTIVE JUROR:** Vicky Adams.

4 **BY THE COURT:** Vicky Adams.

5 (JUROR LEAVES THE COURTROOM)

6 **BY MRS. STEINER:** Well, I had some
7 questions that I had.

8 **BY THE COURT:** I mean, Counsel, if
9 somebody comes in and says they had the
10 relationship she had, you know, with her
11 father -- but if somebody comes in that you
12 think does not need to be excused for cause I
13 want you to speak up. But, I mean, I think
14 most of them will be so obvious that it's not
15 any real question about it.

16 (JUROR JOHN NEWMAN ENTERS THE
17 COURTROOM)

18 **BY THE COURT:** Yes, sir, and what is your
19 name?

20 **PROSPECTIVE JUROR:** John Newman.

21 **BY THE COURT:** And, Mr. Newman, I believe
22 you were advising that you were related to
23 Mr. Flowers; is that correct?

24 **PROSPECTIVE JUROR:** Right. But I'm still
25 the only person on my job that can run the
26 machine, too.

27 **BY THE COURT:** How are you related to
28 Mr. Flowers?

29 **PROSPECTIVE JUROR:** Third cousin.

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1 **BY THE COURT:** Third cousin? And did you
2 have a pretty close relationship with him?

3 **PROSPECTIVE JUROR:** Back in the day when
4 we were going around.

5 **BY THE COURT:** When he was out?

6 **PROSPECTIVE JUROR:** The family, yeah.

7 **BY THE COURT:** And, now, what side of the
8 family are you?

9 **PROSPECTIVE JUROR:** His father's side.

10 **BY THE COURT:** His father's side? So
11 you're related -- your, I guess, grandparents
12 were probably related to each other or
13 something?

14 **PROSPECTIVE JUROR:** Something like that.

15 **BY THE COURT:** Would that affect you in
16 being a fair and impartial juror?

17 **PROSPECTIVE JUROR:** It would.

18 **BY THE COURT:** So you feel like you could
19 not serve and sit in judgment of Mr. Flowers
20 because you are his cousin; is that correct?

21 **PROSPECTIVE JUROR:** Right.

22 **BY THE COURT:** And you feel like those
23 family ties and things would just prevent you
24 from being able to serve?

25 **PROSPECTIVE JUROR:** I do.

26 **BY THE COURT:** Counsel, does either side
27 have any questions?

28 **BY MR. EVANS:** No, sir.

29 **BY THE COURT:** I'll let you go then and

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1 you're excused. Thank you, sir.

2 **BY THE BAILIFF:** Your Honor, I know you
3 had four that you told to wait around and
4 they're still waiting for some of them to
5 come in, but I've got oodles of folks out
6 there waiting, saying they want to come in.

7 **BY THE COURT:** Well, bring that -- I think
8 the lady was a justice court clerk, and I
9 think the --

10 **BY THE BAILIFF:** We want to do them that
11 you told to wait.

12 **BY THE COURT:** Right. And then we can
13 bring these others in.

14 **BY THE BAILIFF:** Okay. We're going to do
15 the ones that the judge told you to wait
16 first and then we're going to see everyone
17 else.

18 (JUROR CHRISTY HARRIS ENTERS THE
19 COURTROOM)

20 **BY THE COURT:** And what is your name,
21 please?

22 **PROSPECTIVE JUROR:** Christi Harris.

23 **BY THE COURT:** And you work in the justice
24 court office; is that correct?

25 **PROSPECTIVE JUROR:** Yes, sir.

26 **BY THE COURT:** And you felt like you
27 needed to bring something to our attention
28 about potential --

29 **PROSPECTIVE JUROR:** You know, we see

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1 everybody, both sides. And they just kind of
2 come in and out. And not necessarily that
3 they talk about the case, but I just wanted
4 to make that known, that is something you
5 said that I just don't need to have any part
6 of any of the --

7 **BY THE COURT:** Well, has anything up to
8 this point caused you to form an opinion on
9 the facts of the case or anything?

10 **PROSPECTIVE JUROR:** I mean, I would be
11 willing to stick around if I feel --

12 **BY THE COURT:** So you can lay aside
13 anything --

14 **PROSPECTIVE JUROR:** Right now, yes, sir.

15 **BY THE COURT:** -- and base your decision
16 only on the evidence? So you're not, right
17 now, telling us that you would be
18 disqualified from this jury?

19 **PROSPECTIVE JUROR:** Not at this time.

20 **BY THE COURT:** And I guess what you're
21 saying is you could see some of the lawyers
22 coming in and out of the office and might see
23 witnesses. But can you ignore any -- well, I
24 mean, just from now til Monday, do not have
25 any discussion with anyone about the case or
26 have any contact with the -- I mean, you
27 might pass one of the lawyers out in the hall
28 or something today, but they're not going to
29 speak to you.

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1 **PROSPECTIVE JUROR:** Right.

2 **BY THE COURT:** And they're not going to be
3 intending to offend you by not doing that.
4 But I appreciate you bringing that up. If
5 you'll just come back in on Monday.

6 (JUROR HARRIS LEAVES THE COURTROOM.

7 JUROR VOTRICE FLOWERS ENTERS THE
8 COURTROOM)

9 **BY THE COURT:** Yes, ma'am. And what is
10 your name, please?

11 **PROSPECTIVE JUROR:** Votrice Roshell Huffin
12 Flowers.

13 **BY THE COURT:** You're Mr. Flowers'
14 sister-in-law; is that correct?

15 **PROSPECTIVE JUROR:** I'm married to his
16 brother, Archie.

17 **BY THE COURT:** And I would assume that
18 would affect you in being a fair and
19 impartial juror?

20 **PROSPECTIVE JUROR:** It wouldn't. To be
21 honest with you, it wouldn't.

22 **BY THE COURT:** You feel like you could sit
23 as a juror on the case and you could sentence
24 him to death if the facts justified it?

25 **PROSPECTIVE JUROR:** Well, I don't believe
26 in the death penalty.

27 **BY THE COURT:** Well, could you --

28 **PROSPECTIVE JUROR:** I could still sit on
29 the jury, though.

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1 **BY THE COURT:** You feel like you could
2 judge --

3 **PROSPECTIVE JUROR:** I wasn't married to
4 Archie at the time.

5 **BY THE COURT:** How long have you been
6 married to Archie?

7 **PROSPECTIVE JUROR:** Going on three years.

8 **BY THE COURT:** And I think his daddy's
9 name is Archie, too?

10 **PROSPECTIVE JUROR:** Yeah, Archie Sr., but
11 I'm married to Archie, Jr.

12 **BY THE COURT:** Yeah. I just wanted to
13 make everything clear for the record, because
14 everything that's spoken in the courtroom, if
15 we don't clear things up, it might be
16 confusing later and that's why I was making
17 sure of that.

18 **PROSPECTIVE JUROR:** Yes, sir.

19 **BY THE COURT:** But if you were to convict
20 Mr. Flowers, would you feel like you owed
21 your husband, your daddy-in-law, your
22 relatives any explanation for the way you
23 ruled on the case?

24 **PROSPECTIVE JUROR:** No, sir.

25 **BY THE COURT:** So you are telling me that
26 you could be a completely fair and impartial
27 juror. Have you heard this case discussed in
28 the family?

29 **PROSPECTIVE JUROR:** It's been a while.

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1 I'm going to be honest with you, yes, I have,
2 but it's been a while.

3 **BY THE COURT:** And you're saying even
4 after all this family discussion?

5 **PROSPECTIVE JUROR:** Yeah, even after all
6 those family discussions.

7 **BY THE COURT:** Well, at this point, you
8 can report back on Monday, and we'll proceed
9 from there.

10 **BY MR. EVANS:** What was her name, Your
11 Honor?

12 **PROSPECTIVE JUROR:** Votrice Roshell
13 Huffin.

14 **BY MR. EVANS:** Huffin, okay. Thank you.

15 **BY THE COURT:** Okay. You may go.

16 (JUROR LEAVES THE COURTROOM)

17 **BY THE COURT:** Now, obviously as things
18 progress, that might be one that I take up
19 for cause at some point in the future. But,
20 you know, I don't feel like I've got enough
21 right now to justify any excuse.

22 (JUROR CHARLES CURRY ENTERS THE
23 COURTROOM)

24 **BY THE COURT:** And what is your name and
25 what's your situation?

26 **PROSPECTIVE JUROR:** My name is Charles
27 Curry, Your Honor, and my situation is I had
28 a previous incident with the Flowers case.
29 My wife was a potential lone juror that was

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1 struck off the jury back on another case that
2 went before the Supreme Court, and it was
3 mentioned that she had worked with his sister
4 and her husband had disregard for the law,
5 which I feel like I could serve but because
6 of that incident -- that was Vicky Curry --
7 and because of that incident, I don't want to
8 prejudice the jury. And I want to see a fair
9 trial carried out, and I would -- so whereby
10 it won't be any bias. I just want to bring
11 it to the Court before I take up all this
12 time with this Court.

13 **BY THE COURT:** Well, now, have these --
14 and I'm not totally -- because I, you know,
15 some of the trials I didn't -- and this is
16 obviously one of the trials I did not
17 conduct. But you're saying that your wife
18 was a potential juror that was struck?

19 **PROSPECTIVE JUROR:** Right, and that the
20 Supreme Court overturned --

21 **BY THE COURT:** Right.

22 **PROSPECTIVE JURORS:** -- and why he was
23 granted a new trial.

24 **BY THE COURT:** Because her or somebody
25 else should not have been struck from the
26 jury?

27 **PROSPECTIVE JUROR:** Right. Vicky Curry,
28 she was that sole potential juror. Right.

29 **BY THE COURT:** And there were things that

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1 were said about you during the --

2 **PROSPECTIVE JUROR:** Right. It was some of
3 why she was struck was that it was stated by
4 the defense that her husband had disregard
5 for law, which is not -- I don't feel it's
6 true. But since the incident did occur, then
7 I'd rather not prejudice the jury.

8 **BY THE COURT:** Well, has anything that --
9 have those things caused you to reach a
10 conclusion in your mind that you just could
11 not be a fair juror in the case?

12 **PROSPECTIVE JUROR:** Uh-huh.

13 **BY THE COURT:** I mean, can you lay that
14 aside and just listen to the evidence if
15 you're selected and base your decision only
16 on the evidence in court or would you hold
17 that against someone and feel like you just
18 could not be fair because of that?

19 **PROSPECTIVE JUROR:** Well, Your Honor, I
20 feel like really -- it's kind of hard to
21 explain. I just feel that with me not being
22 there, it would be better for the State and
23 better for Curtis Flowers to get a fair
24 trial.

25 **BY THE COURT:** So you're feeling like
26 you've got some problems that would affect
27 you in being fair?

28 **PROSPECTIVE JUROR:** Because of this
29 situation with me, I just -- because of the

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1 way the situation went that she was struck
2 and it was overturned like that, I'm just
3 kind of having a little doubt about how the
4 justice is being put out as is it all across
5 the board and --

6 **BY THE COURT:** Okay. Does either State or
7 Defense counsel want to ask a question?

8 **BY MR. CARTER:** Yes, I have a question. I
9 get the impression you're saying you have
10 some question about whether justice that have
11 already been meted out was done fairly.
12 However, you know, with a trial, people take
13 the witness stand and you make the decision
14 as to guilt or innocence or life or death
15 based on the witnesses that take the witness
16 stand. Can you put aside whatever misgivings
17 you may have about the defense or about the
18 prosecution and make a decision as to
19 Mr. Flowers' guilt or innocence based totally
20 on what you hear witnesses say in the
21 courtroom?

22 **PROSPECTIVE JUROR:** I feel -- I feel that
23 I can do that, but -- I feel like I can do
24 that without any prejudice but the only thing
25 about it, since I was -- since it happened
26 like that, then I'd rather -- you know, if
27 I'm going to really have a chance to be a
28 potential juror, I'd rather not come back for
29 the next three days and then find out this is

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1 Curry -- this is Vicky Curry's husband that
2 we had the problem with that the statement
3 was made by him by part of the defense lawyer
4 team, prosecutor's lawyer team, then I don't
5 want to sit here three days and then not get
6 a chance to serve. That's my feeling on
7 that.

8 **BY THE COURT:** Well, Mr. Curry, there will
9 be a num- -- there will be lot of people that
10 will be up here for, you know, several days
11 that won't end up serving because your
12 name -- I don't know where it will fall on
13 the jury list and sometimes people -- just
14 because they're far down on the list, they
15 don't end up serving. And it's nothing that
16 they've done that caused them not to serve.
17 It was just strictly because of where they
18 happened to fall on the jury list.

19 So you might be up here for a couple
20 of days and not serve, but it won't be
21 because of anything you did or said that was
22 wrong. So, I mean, I want you to understand
23 that that -- you know, you may not end up
24 being selected but it might be for any number
25 of reasons including, as I say, where your
26 name happened to fall on the jury list at so,
27 you know.

28 So I guess I'm trying to make a point
29 that nobody right now is looking and saying,

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1 Well, we're not going to have Mr. Curry on
2 that jury. You know, nobody is looking at
3 you that way today. They're -- you know,
4 right now you're going to strictly, you know,
5 we're going to -- you know, when we start
6 asking questions on Monday morning, they're
7 going to be a bunch of questions from both
8 sides and from the Court, because what we do
9 want ultimately is 12 people who can sit over
10 in that jury box and be fair to both
11 Mr. Flowers and the State of Mississippi, and
12 we want them to not come in with any ideas
13 about the case ahead of time or anything like
14 that. And so, you know, with that in mind,
15 do you feel like you could sit up here and be
16 a fair juror if you were selected?

17 **PROSPECTIVE JUROR:** Yes, I do.

18 **BY THE COURT:** Okay. Well, I appreciate
19 you bringing these things to the Court's
20 attention, and if you'll be back here Monday
21 morning. Thank you, sir.

22 **BY THE BAILIFF:** Your Honor, the rest of
23 the ones out there -- there's a good many
24 more out there that raised their hand that
25 want to come in.

26 **BY THE COURT:** Well, I guess we can bring
27 them in.

28 (JUROR JAMES DANIELS ENTERS THE
29 COURTROOM)

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1 **BY THE COURT:** And what is your name, sir?

2 **PROSPECTIVE JUROR:** James Daniels.

3 **BY THE COURT:** Mr. Daniels, you indicated
4 that you may had something you needed to
5 bring up about your jury service?

6 **PROSPECTIVE JUROR:** Yes, sir.

7 **BY THE COURT:** And what is that?

8 **PROSPECTIVE JUROR:** Well, at the time in
9 '96, the Flowers and they was employed at the
10 same company with me.

11 **BY THE COURT:** So you worked with the same
12 company as somebody in Mr. Flowers' family?

13 **PROSPECTIVE JUROR:** Brother and sister.

14 **BY THE COURT:** And where did y'all work
15 together?

16 **PROSPECTIVE JUROR:** At Anel Corporation.

17 **BY THE COURT:** And what was --

18 **PROSPECTIVE JUROR:** Mr. Golden used to
19 work there.

20 **BY THE COURT:** One of the victims of the
21 shootings, Robert Golden worked at Anel with
22 you at some point?

23 **PROSPECTIVE JUROR:** Right. Couple of
24 years prior. And now me and Mr. Golden's
25 brother, we are --

26 **BY THE COURT:** What is Mr. Golden's
27 brother's name?

28 **PROSPECTIVE JUROR:** Willie Golden.

29 **BY THE COURT:** Willie Golden?

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1 **PROSPECTIVE JUROR:** Right. We in the same
2 hunting club.

3 **BY THE COURT:** So y'all are in the same
4 hunting club?

5 **PROSPECTIVE JUROR:** Right.

6 **BY THE COURT:** So you know basically some
7 of the victim's family and then you knew some
8 of Mr. Flowers' family?

9 **PROSPECTIVE JUROR:** Right.

10 **BY THE COURT:** So you know people on both
11 sides of this issue?

12 **PROSPECTIVE JUROR:** Right.

13 **BY THE COURT:** Now, is that going to in
14 any way affect you in being a fair and
15 impartial juror in this case?

16 **PROSPECTIVE JUROR:** Well, you know, on
17 both sides, we're still pretty close, still
18 pretty close on both sides, the family.

19 **BY THE COURT:** Well, I understand, but can
20 you lay aside these factors and if you were
21 selected and sitting over there in that jury
22 box, could you lay those factors aside and be
23 a fair juror to both sides or would you
24 somehow have some influence, something that
25 would influence you where you feel like you
26 could not serve?

27 **PROSPECTIVE JUROR:** Well, you know,
28 that -- that's the reason I'm saying that it
29 might influence me on both sides the other

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1 way because of that.

2 **BY THE COURT:** But would you listen to the
3 facts of the case?

4 **PROSPECTIVE JUROR:** To the facts.

5 **BY THE COURT:** And base your decisions
6 strictly on the facts as they're brought to
7 you in this court and not on anything outside
8 the court?

9 **PROSPECTIVE JUROR:** Well, you know, being
10 that close to them, I could listen at both
11 sides, you know, information on both sides of
12 the case. And I think it would --

13 **BY THE COURT:** So you feel like you could
14 not be fair and impartial --

15 **PROSPECTIVE JUROR:** Right.

16 **BY THE COURT:** -- because of something
17 that either the Goldens or the Flowers have
18 told you at some point; is that what you're
19 telling me?

20 **PROSPECTIVE JUROR:** Right.

21 **BY THE COURT:** So you feel like you could
22 not lay those facts aside that you've heard
23 in the past --

24 **PROSPECTIVE JUROR:** Right.

25 **BY THE COURT:** -- and base your decision
26 on the evidence here in court?

27 **PROSPECTIVE JUROR:** Right.

28 **BY THE COURT:** Counsel, do you have any
29 questions?

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1 **BY MR. EVANS:** No.

2 **BY MR. CARTER:** I have some. You're
3 saying that you're close to the Goldens,
4 especially one of the brothers and you know
5 several of the Flowers?

6 **PROSPECTIVE JUROR:** Right.

7 **BY MR. CARTER:** Are you also saying you're
8 close to them?

9 **PROSPECTIVE JUROR:** Yes, sir, I am.

10 **BY MR. CARTER:** And would you say that the
11 feelings that you have for the Goldens and
12 Flowers, is it equal, kind of equal or do you
13 like -- is one side -- closer to one side
14 than to the other?

15 **PROSPECTIVE JUROR:** No, about the same.

16 **BY MR. CARTER:** About the same?

17 **PROSPECTIVE JUROR:** Mr. Golden, his
18 brother, we were classmates. And his other
19 brother, you know, same hunting club. We
20 hunt together and -- but, at the time of the
21 incident, his sister and his brother, we were
22 employed at the same company, and we are
23 still pretty close every time we see each
24 other.

25 **BY MR. CARTER:** Have you formed an opinion
26 as to Mr. Flower's guilt or innocence?

27 **PROSPECTIVE JUROR:** Well, I try to, you
28 know, leave that aside, make it --

29 **BY MR. CARTER:** You can just say yes or

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1 no. You have or you haven't formed an
2 opinion as to his guilt or innocence, if you
3 know, if you can say?

4 **PROSPECTIVE JUROR:** Yes, I have.

5 **BY MR. CARTER:** Okay. And as a result of
6 having already formed that opinion, you don't
7 feel that you could be equally fair to both
8 sides; is that what you're saying?

9 **PROSPECTIVE JUROR:** Well, what I'm saying
10 is I just, you know, don't want to have to
11 come to that decision, make that choice.

12 **BY MR. CARTER:** So you're saying you're
13 uncomfortable?

14 **PROSPECTIVE JUROR:** Right.

15 **BY MR. CARTER:** And we can certainly
16 understand that. And the fact that you're
17 uncomfortable, you're worried that it might
18 lead you to pick one side over the other?

19 **PROSPECTIVE JUROR:** No, I'm not worried.
20 I'm just uncomfortable, just, you know,
21 making a decision like that based on it.

22 **BY MR. CARTER:** No further questions.

23 **BY THE COURT:** If you'll step in there
24 just for a second.

25 (JUROR LEAVES THE COURTROOM)

26 **BY THE COURT:** I really don't have any --
27 I'll hear from you, and obviously this is
28 getting in -- you know, my intent was to have
29 people that had issues concerning their

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1 qualifications. And, in fact, it's turned
2 more into something else than I intended.
3 And after this gentleman -- we can make a
4 decision on him -- I'm going to bring
5 everybody else in here and advise that only
6 if they have got issues as it pertains to
7 their qualifications to serve.

8 You know, I did feel like a couple of
9 people, you know, like his sister -- however,
10 his sister-in-law said she could be fair.
11 But I don't -- you know, this is almost
12 turning into a mini voir dire, which is not
13 what I intended. I thought it was just
14 issues strictly pertaining to people who had,
15 you know, hardships or something that they
16 had not spoken up about. But I have -- I'm
17 open to ideas on Mr. Daniels.

18 **BY MR. EVANS:** Your Honor, he's clearly
19 said he's formed an opinion and because of
20 his relationships to both sides couldn't be
21 fair and impartial, so I don't think there's
22 any way he could serve and be fair to either
23 side. And, you know, of course, we don't
24 know which side he's favoring as far as
25 having an opinion, but I think just from what
26 he said, he can't serve.

27 **BY MR. CARTER:** And we take the position,
28 Your Honor, that he equivocated -- that he
29 said some things that cast doubt about that

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1 and that he probably should be voir dired
2 more extensively to determine whether he can,
3 in fact, sit and be fair to both sides. The
4 fact that he feels a pull, an equal pull from
5 both sides, in my view, leaves him still in
6 the ballpark. I am nervous that I don't know
7 what that opinion is, I have to admit that,
8 what opinion he's formed.

9 **BY THE COURT:** Well, I think at this
10 point, I can let him come back. It appears
11 to me that ultimately he's going to end up
12 being excused for cause, because he seemed
13 pretty fixed in his ideas. But, you know, I
14 will not cut off the possibility of him
15 rehabilitating himself or being rehabilitated
16 in voir dire, so I will allow him to come
17 back. But, again, you know, it kind of leads
18 me pretty much to the conclusion that he will
19 eventually be excused for cause unless his
20 opinions change.

21 (To the bailiff) If you'll just tell
22 him to be back Monday. If you'll bring
23 everybody else in here, I just need to tell
24 them as a group.

25 (PROSPECTIVE JURORS ENTER THE
26 COURTROOM)

27 **BY THE COURT:** Ladies and gentlemen, I
28 wanted to explain, I only want to take up
29 issues with you that would pertain to your

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1 qualifications or potential exemptions. If
2 there's some other thing, I can take that up
3 on Monday, but I only want to know if you've
4 got some kind of hardship about being able to
5 serve or if there's something concerning your
6 qualifications that you did not speak up and
7 felt like you needed to speak up to now but
8 had not done so earlier.

9 So those are the only issues right
10 now that I'm prepared to take up with you is
11 something that pertains to your actual legal
12 qualifications to serve or any potential
13 exemption you might have to jury service.

14 So do any of you have anything that
15 pertains to that issue, your legal
16 qualifications to serve or some exemption
17 that might apply to you? Do any of you have
18 any? Okay. So you three are the only
19 ones -- or you four -- concerning potential
20 exemptions or your qualifications to serve;
21 is that correct?

22 **PROSPECTIVE JUROR:** Would that apply to
23 me, law enforcement officers?

24 **BY THE COURT:** Well, I can take you up,
25 too. And then if those of you that it does
26 not apply strictly to your qualifications or
27 to some exemption, then you may go now and be
28 back here on Monday. You know, only those,
29 as I say, that need to stick around that deal

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1 strictly with qualifications or a possible
2 exemption need to stay. If it's anything
3 else, then that needs to be taken up Monday
4 or later in the trial. So I think, as I say,
5 I had four of you. Okay. If y'all want to
6 stay around, then the rest of you, you can
7 make your way on and be back on Monday.

8 And if the remainder of you will just
9 step out the door here, and I'll have the
10 bailiffs call you back in. Okay. You can --
11 just whoever wants.

12 (JUROR MOSES NEWMAN ENTERS THE
13 COURTROOM)

14 **BY THE COURT:** What's your name, please?

15 **PROSPECTIVE JUROR:** Moses Newman.

16 **BY THE COURT:** And have you got something
17 about the qualifications or exemptions or
18 something that --

19 **PROSPECTIVE JUROR:** I'm the only one works
20 in the household, and I have two boys.

21 **BY THE COURT:** You're the only one
22 working?

23 **PROSPECTIVE JUROR:** Yes.

24 **BY THE COURT:** And would that create a
25 substantial and adverse impact on you?

26 **PROSPECTIVE JUROR:** Yes.

27 **BY THE COURT:** And where you work, if you
28 were on jury service, would you get paid by
29 your employer?

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1 **PROSPECTIVE JUROR:** They would.

2 **BY THE COURT:** So your employer would pay
3 you right along even if you were up here?

4 **PROSPECTIVE JUROR:** Only so much.

5 **BY THE COURT:** Where do you work?

6 **PROSPECTIVE JUROR:** ADF corporation.

7 **BY THE COURT:** And --

8 **PROSPECTIVE JUROR:** Right now, I'm set up
9 on -- like I have a couple of loans out, and
10 I can't miss any payments on those so it
11 would really mess it up for me, create a real
12 strain.

13 **BY THE COURT:** I want you to go call where
14 you work because some employers if you've got
15 an employer -- some companies will pay --

16 **PROSPECTIVE JUROR:** Like I said, the
17 corporation will pay, you know, the
18 difference, but I have bills that are due.
19 Like I have three paid loans that I took out.

20 **BY THE COURT:** Yeah, but what I'm getting
21 at is if they go ahead and pay your salary
22 just the same as you were at work, then that
23 would not create any hardship.

24 **PROSPECTIVE JUROR:** But I don't get that
25 check right away. These loans are going to
26 be due that day, especially the three payday
27 loans that I have out. I also have a auto
28 loan out and not to mention electric bills
29 and the other bills will be coming in. It's

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1 not going to be enough to cover it if I'm
2 missing days here. And I've got -- because
3 they're going to want their money right then.
4 They're not going to wait.

5 **BY THE COURT:** But what you're saying that
6 where you work does not pay right --

7 **PROSPECTIVE JUROR:** I would have to wait
8 maybe seven working days, maybe more or
9 longer.

10 **BY THE COURT:** Well, how long do you have
11 to work if you get a regular weekly paycheck?

12 **PROSPECTIVE JUROR:** My regular paycheck
13 will be falling this Friday on the 11th.
14 That's when the bills are due. I have
15 already set up payments for me to pay those
16 bills on the 11th. I got to pay them.

17 **BY THE COURT:** And so you're saying that
18 this would create a substantial adverse
19 impact on you paying the bills?

20 **PROSPECTIVE JUROR:** Yes, it would.

21 **BY THE COURT:** I'll excuse you,
22 Mr. Newman. Thank you, sir. You do not have
23 to come back on Monday.

24 **PROSPECTIVE JUROR:** Yes, sir.

25 (JUROR BONITA SEAWOOD ENTERS THE
26 COURTROOM)

27 **BY THE COURT:** Yes, ma'am, you can come on
28 up here. And what is your name?

29 **PROSPECTIVE JUROR:** My name is Bonita

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1 Seawood.

2 **BY THE COURT:** And, yes, ma'am, is this
3 concerning your qualifi- --

4 **PROSPECTIVE JUROR:** Yes, sir. Well, I
5 just thought about it, you know, I served
6 last year in October and over in this year.

7 **BY THE COURT:** So you've served as a
8 juror --

9 **PROSPECTIVE JUROR:** Yes, sir.

10 **BY THE COURT:** -- last year?

11 **PROSPECTIVE JUROR:** And then this year.

12 **BY THE COURT:** Let me ask the clerk.

13 **PROSPECTIVE JUROR:** March of 2010.

14 **BY THE COURT:** And you want to claim that
15 exemption --

16 **PROSPECTIVE JUROR:** Yes, sir.

17 **BY THE COURT:** -- and be excused because
18 of prior jury service? Okay. Well, I'll let
19 you go then.

20 **PROSPECTIVE JUROR:** Thank you.

21 (JUROR PAMELA PHILLIPS ENTERS THE
22 COURTROOM)

23 **BY THE COURT:** And what is your name,
24 please?

25 **PROSPECTIVE JUROR:** Pamela Phillips.

26 **BY THE COURT:** Ms. Phillips, and you've
27 got something concerning your qualifications
28 or potential exemption?

29 **PROSPECTIVE JUROR:** Yes, sir.

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1 **BY THE COURT:** What is your situation?

2 **PROSPECTIVE JUROR:** It would be a
3 financial hardship for me to take off.

4 **BY THE COURT:** Now, what type of
5 situation? You've got to explain a little
6 more.

7 **PROSPECTIVE JUROR:** I'm a nurse, and I'm
8 the only income in my home.

9 **BY THE COURT:** And where are you employed?

10 **PROSPECTIVE JUROR:** Winona Manor.

11 **BY THE COURT:** And does Winona Manor have
12 any policy where you're on jury service they
13 will pay your salary?

14 **PROSPECTIVE JUROR:** Yes, sir, they do.

15 **BY THE COURT:** So they would pay your
16 salary to you even if you were up here?

17 **PROSPECTIVE JUROR:** Yes, they would.

18 **BY THE COURT:** So how is that going to be
19 a financial hardship if you will keep getting
20 your money?

21 **PROSPECTIVE JUROR:** Well, actually, when I
22 bring the check from here to there, I don't
23 know how long they will take to turn it in.
24 But if I don't get it in before my pay period
25 ends, then I just don't get paid. And if
26 they get it in like a month later, then I
27 just miss a day of work.

28 **BY THE COURT:** So what you're saying is if
29 you were up here serving and it might take a

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1 few weeks to get your check from the county?

2 **PROSPECTIVE JUROR:** Right. Then I don't
3 get paid.

4 **BY THE COURT:** Then you would not get this
5 pay --

6 **PROSPECTIVE JUROR:** Exactly.

7 **BY THE COURT:** -- for jury service until
8 some time --

9 **PROSPECTIVE JUROR:** Until that check gets
10 to Winona.

11 **BY THE COURT:** -- some weeks later?

12 **PROSPECTIVE JUROR:** Exactly, and that
13 would be a hardship for me.

14 **BY THE COURT:** Would that affect you in
15 paying your daily necessary living
16 expenses --

17 **PROSPECTIVE JUROR:** Yes, sir, it would.

18 **BY THE COURT:** -- for those or somebody
19 you provide support to?

20 **PROSPECTIVE JUROR:** Yes, sir.

21 **BY THE COURT:** I'll let you go then.

22 **PROSPECTIVE JUROR:** Thank you.

23 **BY MR. CARTER:** I have a question, Your
24 Honor. I'm trying to understand. Not
25 necessarily objecting, but you're saying if
26 you come up here and you serve on this
27 jury --

28 **PROSPECTIVE JUROR:** Uh-huh.

29 **BY MR. CARTER:** -- you still get paid,

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1 right, by Winona Manor?

2 **PROSPECTIVE JUROR:** No, not until I get
3 the check from the Court.

4 **BY THE COURT:** So what you're saying, you
5 would have to turn the check from the court
6 in to them --

7 **PROSPECTIVE JUROR:** Exactly.

8 **BY THE COURT:** -- and then they would
9 write you a check for the amount of money
10 that you would have made while you were up
11 here?

12 **PROSPECTIVE JUROR:** Exactly.

13 **BY THE COURT:** But it could be a several
14 week lag?

15 **PROSPECTIVE JUROR:** Exactly.

16 **BY MR. CARTER:** And not having that check
17 for a week or two would be --

18 **PROSPECTIVE JUROR:** That would cut off my
19 utilities, and I would lose my home possibly.

20 **BY THE COURT:** Okay. Well, I'll let you
21 go.

22 **PROSPECTIVE JUROR:** Thank you.

23 (JUROR MELINDA KIRKWOOD ENTERS THE
24 COURTROOM)

25 **BY THE COURT:** What is your name, please?

26 **PROSPECTIVE JUROR:** Melinda Kirkwood.

27 **BY THE COURT:** And do you have something
28 concerning your qualifications or potential
29 exemption?

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1 **PROSPECTIVE JUROR:** Right. This is my
2 first time so I really didn't know, but I'm
3 in the middle of an application process with
4 a company in Memphis, and you said something
5 about not having a cell phone. Well, that's
6 the number they've got for me. That's the
7 only kind of contact I have. I haven't
8 worked in four years, and I'm trying to get a
9 job.

10 **BY THE COURT:** Well, Ms. Kirkwood, if you
11 would just -- can you just call that company
12 today?

13 **PROSPECTIVE JUROR:** I don't have the --
14 the first interview was with their
15 headquarters in Maryland, and they sent my
16 paperwork to Memphis, so I don't know who to
17 contact.

18 **BY THE COURT:** Well, do you have the
19 contact number to the people in Maryland?

20 **PROSPECTIVE JUROR:** Yeah.

21 **BY THE COURT:** Well, what I need you to do
22 then is just call them and tell them that you
23 might be on jury service. And if you were,
24 that you might not be available for telephone
25 contact, you know, for a few days and then
26 also give them a number of somebody that they
27 could call on your behalf. Like, you know,
28 if you've got any friend or relative or
29 anybody that they could call them instead of

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1 you, and I think that would resolve the
2 situation.

3 **PROSPECTIVE JUROR:** Okay. What about the
4 situation that I'm real close with Curtis?

5 **BY THE COURT:** We'll take those issues up
6 on --

7 **PROSPECTIVE JUROR:** Monday?

8 **BY THE COURT:** Right.

9 **PROSPECTIVE JUROR:** All right.

10 **CIRCUIT CLERK:** What is your name?

11 **PROSPECTIVE JUROR:** Melinda Kirkwood.

12 (JUROR ARTHUR KNIGHT ENTERS THE
13 COURTROOM)

14 **BY THE COURT:** What is your name, please?

15 **PROSPECTIVE JUROR:** Arthur Knight.

16 **BY THE COURT:** And do you have any issues
17 that would concern your qualifications or
18 being exempt or anything like that?

19 **PROSPECTIVE JUROR:** Well, the only problem
20 I got is I'm married to his cousin and one of
21 the victims was my cousin.

22 **BY THE COURT:** Well, what I will ask you
23 to do is just -- we're going to go into
24 detail Monday on those type issues.

25 **PROSPECTIVE JUROR:** All right.

26 **BY THE COURT:** So if you'll just be back
27 Monday, and we'll go in detail about those
28 particular issues on Monday. But I
29 appreciate you sticking around today, though,

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1 and bringing that to my attention.

2 (JUROR TOMMY BIBBS ENTERS THE
3 COURTROOM)

4 **BY THE COURT:** What is your name, please?

5 **PROSPECTIVE JUROR:** Tommy Bibbs. I helped
6 the officers on the investigation.

7 **BY THE COURT:** So you have been involved
8 with the investigators and looked into these
9 matters and feel like you -- I assume you're
10 of the opinion you could not be a fair and
11 impartial juror?

12 **PROSPECTIVE JUROR:** Yes, sir.

13 **BY THE COURT:** And would have to go
14 against a potential -- whether it's your
15 chief and a bunch of others if you sat up
16 here and you voted to acquit Mr. Flowers, you
17 would be basically rejecting their
18 investigation, I guess?

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **BY THE COURT:** So you're saying you just
21 could not be a fair and impartial juror?

22 **PROSPECTIVE JUROR:** Yes, sir.

23 **BY THE COURT:** Does either counsel have
24 any questions?

25 **BY MR. EVANS:** No, sir.

26 **BY THE COURT:** I will excuse you,
27 Mr. Bibbs, and I appreciate you going ahead
28 and bringing that up today.

29 **PROSPECTIVE JUROR:** Thank you, sir.

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1 (JUROR GLENN TROTTER ENTERS THE
2 COURTROOM)

3 **BY THE COURT:** What is your name, please?

4 **PROSPECTIVE JUROR:** My name is Glenn
5 Trotter.

6 **BY THE COURT:** And what is your situation?

7 **PROSPECTIVE JUROR:** I intend to --

8 **BY THE COURT:** The reporter is over here,
9 so she needs to see what you're saying and
10 counsel can all see what you're saying.

11 **PROSPECTIVE JUROR:** Okay.

12 **BY THE COURT:** Now, what is your
13 situation? Does it involve your
14 qualifications or possible exemptions?

15 **PROSPECTIVE JUROR:** Yes, sir.

16 **BY MR. HOWIE:** And what is that situation?

17 **PROSPECTIVE JUROR:** Okay. I was
18 questioned on the last time.

19 **BY THE COURT:** On the last --

20 **PROSPECTIVE JUROR:** Last one.

21 **BY THE COURT:** -- jury panel?

22 **PROSPECTIVE JUROR:** Yes, sir.

23 **BY THE COURT:** Was that the one in --

24 **PROSPECTIVE JUROR:** In April, I think it
25 was.

26 **BY THE COURT:** You're talking about this
27 past court term?

28 **PROSPECTIVE JUROR:** Yes, sir.

29 **BY THE COURT:** And were you a juror at

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1 that court term? Go ahead and just tell me.

2 **PROSPECTIVE JUROR:** Just I was just
3 questioned, but I wasn't a juror at that
4 particular time.

5 **BY THE COURT:** So you did not actually
6 serve on a jury or on the grand jury?

7 **PROSPECTIVE JUROR:** No, sir.

8 **BY MR. CARTER:** Okay. Is there anything
9 else?

10 **PROSPECTIVE JUROR:** Also, I work with his
11 sister.

12 **BY MR. CARTER:** You work with Mr. Flowers'
13 sister?

14 **PROSPECTIVE JUROR:** Yes, sir.

15 **BY THE COURT:** If it's just strictly some
16 kind of situation where you know a family
17 person or something, we're going to just take
18 those matters up Monday. So what I want to
19 do today was strictly if there was some
20 reason why you were not legally qualified to
21 serve or if you had some exemption that you
22 had meant to bring up and thought about it
23 and wanted to.

24 **PROSPECTIVE JUROR:** Yes, sir.

25 **BY THE COURT:** But if it's any other
26 issues, then I'm going to take those up on
27 Monday. So do you have any other issues?

28 **PROSPECTIVE JUROR:** No, sir.

29 **BY THE COURT:** Okay. Mr. Trotter, we'll

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1 see you Monday.

2 (JUROR PATRICIA JEFFCOAT ENTERS THE
3 COURTROOM)

4 **BY THE COURT:** If you'll kind of stand
5 over by there so they can see you and I can
6 see you. What's your name?

7 **PROSPECTIVE JUROR:** Patricia Jeffcoat. My
8 child is doing summer school, doing it Monday
9 and Thursday. It's in the morning. That's
10 not a problem. But if I have to go and be --
11 stay gone, my husband works daytime but
12 sometimes it's 8:00 or 9:00 o'clock before he
13 gets home.

14 **BY THE COURT:** Why don't you try this
15 weekend to work out some arrangements with
16 your husband where he could possibly get off
17 a little earlier?

18 **PROSPECTIVE JUROR:** He's the only one
19 working. I've been laid off, and I don't
20 have a job.

21 **BY THE COURT:** Well, maybe, you know, I
22 can take this up on Monday, maybe. But I
23 want you first to try to see if he could, you
24 know, to be -- well, what time does your kid
25 get out of summer school?

26 **PROSPECTIVE JUROR:** 11:30.

27 **BY THE COURT:** What age is this child?

28 **PROSPECTIVE JUROR:** Seven.

29 **BY THE COURT:** Do you have any relatives,

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1 friends, or family that could --

2 **PROSPECTIVE JUROR:** Not here. There's a
3 day care that could, but they close at 5:30.

4 **BY THE COURT:** Well, why don't you try to
5 work with your husband and see if he can be
6 available around 5:30 for the next few days
7 to take up that child care, and I'll take the
8 issue up back on Monday. But try to work to
9 see if that can be done.

10 (JUROR LEAVES THE COURTROOM. JUROR
11 OLIVER FLOWERS ENTERS THE COURTROOM)

12 **BY THE COURT:** And what is your name?

13 **PROSPECTIVE JUROR:** Oliver Flowers.

14 **BY THE COURT:** And what is your situation?

15 **PROSPECTIVE JUROR:** I'm related to the
16 Defendant.

17 **BY THE COURT:** And how is that?

18 **PROSPECTIVE JUROR:** Well, I'm a cousin.

19 **BY THE COURT:** What, you know, first or
20 second, third? Do you know?

21 **PROSPECTIVE JUROR:** Well, I'm probably
22 third cousin to his father.

23 **BY THE COURT:** And is there anything about
24 that that would influence you or be a factor
25 of you being a fair juror in this case?

26 **PROSPECTIVE JUROR:** I think it would
27 influence my decision.

28 **BY THE COURT:** So you feel like you could
29 not be a fair and impartial juror and --

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1 **PROSPECTIVE JUROR:** Right.

2 **BY THE COURT:** -- you would tend to --
3 well, I'm assuming you would probably tend to
4 favor the side of your relatives?

5 **PROSPECTIVE JUROR:** I've known his father
6 all my life.

7 **BY THE COURT:** And you feel like if you
8 voted to convict Mr. Flowers, you would feel
9 ill at ease being around Mr. Archie, Sr.?

10 **PROSPECTIVE JUROR:** I would.

11 **BY THE COURT:** You would feel like because
12 of that, you just could not be fair; is that
13 correct?

14 **PROSPECTIVE JUROR:** That's correct.

15 **BY THE COURT:** Do y'all want to question?

16 **BY MR. CARTER:** I have one question.
17 Mr. Flowers, have you formed an opinion as to
18 guilty or not guilty?

19 **PROSPECTIVE JUROR:** I've not really formed
20 an opinion.

21 **BY MR. CARTER:** Okay.

22 **BY THE COURT:** If you'll step in there
23 just a second and I'll allow you -- I'll
24 confer with counsel.

25 (JUROR LEAVES THE COURTROOM)

26 **BY THE COURT:** It seems to me he said
27 clearly he can't be fair and impartial. I
28 can excuse him now or let him come back
29 Monday. But I don't think ultimately that

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1 he's going to serve.

2 **BY MR. CARTER:** I probably agree with you,
3 Your Honor.

4 **BY MR. HILL:** We move to excuse him now.

5 **BY THE COURT:** Well, I'll just go ahead
6 and excuse him now. If you'll bring him back
7 in.

8 (JUROR FLOWERS ENTERS THE COURTROOM)

9 **BY THE COURT:** Mr. Flowers, I'm going to
10 go ahead and excuse you. I appreciate you
11 being here, and you don't have to come back.

12 **PROSPECTIVE JUROR:** Thank you.

13 (JUROR ROBERT BUTTS ENTERS THE
14 COURTROOM)

15 **BY THE COURT:** If you'll just come on up
16 here. And if you'll just kind of stand maybe
17 where everybody can see. And what is your
18 name?

19 **PROSPECTIVE JUROR:** Butts, Robert Butts.

20 **BY THE COURT:** And, Mr. Butts, do you have
21 something about your qualifications or
22 potential exemptions you need to bring up?

23 **PROSPECTIVE JUROR:** Yes, sir.

24 **BY THE COURT:** And what is that?

25 **PROSPECTIVE JUROR:** His mother -- I was
26 practically raised with his mother and his
27 father. And from day one, I never believed
28 he was a capable of doing all that, because I
29 watched him grow up, too.

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1 **BY THE COURT:** Well, could you sit as a
2 juror up here and listen to the facts and
3 base your decision on the facts of the case?
4 Or are you saying that you just could not be
5 fair and impartial to both sides because you,
6 I guess, were pretty much raised along with
7 his family? Are y'all related in any way or
8 just real close as far as --

9 **PROSPECTIVE JUROR:** Well, his mother and I
10 were practically raised together, although
11 she was about two to three years older than I
12 am. Went to same high school. And his
13 father, I been knowing his father for about
14 40 years, and we had a -- not a personal
15 relationship, but we were well acquainted
16 with one another. And from the beginning,
17 from the beginning I never thought he was
18 capable of doing that. I just didn't believe
19 it.

20 **BY THE COURT:** Well, have you ever
21 discussed the facts of the case with anybody?

22 **PROSPECTIVE JUROR:** Not really, no more
23 than hearing conversations and just the
24 media. But as far as my personal concern, I
25 don't believe -- I don't believe he could.

26 **BY THE COURT:** But if you sat as a juror
27 and heard the evidence, could the evidence --
28 I mean, if you sat and listened to the
29 evidence in the case and you -- based on the

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1 evidence, you then reached a conclusion that
2 he did do it, could you vote to find him
3 guilty at that point? Or are you in a
4 situation you just feel like you could not
5 vote guilty even if you sat here and heard
6 the evidence and believed him to be guilty?

7 **PROSPECTIVE JUROR:** I don't think so.

8 **BY THE COURT:** So you're just --

9 **PROSPECTIVE JUROR:** That's what I'm
10 saying.

11 **BY THE COURT:** So you're saying you could
12 not vote him guilty under any circumstance?

13 **PROSPECTIVE JUROR:** That's what I'm
14 saying.

15 **BY THE COURT:** Even if the proof justified
16 that verdict, you could not vote that way
17 because of ties with his family?

18 **PROSPECTIVE JUROR:** Well, I believe myself
19 also that he wasn't capable of doing it, and
20 that's the reason I say I don't believe I can
21 give you a fair verdict as -- because of my
22 belief. I don't believe it. Like I said, I
23 watched him grow up, and I don't believe he
24 was capable of doing it. I don't think I
25 could be partial or fair either way.

26 **BY THE COURT:** Okay. Does either side
27 want to --

28 **BY MR. CARTER:** I have a question, and
29 it's pretty much the question the judge

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1 asked, but I'm not sure if he understand it.
2 So if you got selected as a juror and you
3 heard the facts of the case, and if the facts
4 convinced you that he was guilty would you be
5 able to vote guilty?

6 **PROSPECTIVE JUROR:** Well, let me put it
7 like this: I have pretty much already made
8 up my mind, like I said, that I didn't think
9 he was capable of doing it.

10 **BY MR. CARTER:** Okay.

11 **BY THE COURT:** So you could not vote
12 guilty?

13 **PROSPECTIVE JUROR:** Right.

14 **BY THE COURT:** Okay. If you'll step out
15 just a second.

16 (JUROR LEAVES THE COURTROOM)

17 **BY MR. CARTER:** We don't have any
18 objection.

19 **BY THE COURT:** Okay. I'll go ahead and
20 excuse him.

21 (JUROR BUTTS ENTERS THE COURTROOM)

22 **BY THE COURT:** Mr. Butts, I'm going to go
23 ahead and excuse you. I appreciate you being
24 here today, and you do not have to come back
25 on Monday.

26 **PROSPECTIVE JUROR:** Well, I was just
27 trying to be fair.

28 **BY THE COURT:** And I do appreciate that,
29 Mr. Butts. I very, very much thank you.

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1 I think we've got one more.

2 (JUROR MICHAEL FORREST ENTERS THE
3 COURTROOM)

4 **BY THE COURT:** And what is your name?

5 **PROSPECTIVE JUROR:** Michael Forrest.

6 **BY THE COURT:** And you have something
7 concerning your qualifications or potential
8 exemptions?

9 **PROSPECTIVE JUROR:** That's my cousin.

10 **BY THE COURT:** Mr. Flowers is your cousin?

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **BY THE COURT:** And what, first, second,
13 third? Do you have any idea?

14 **PROSPECTIVE JUROR:** It's my second.

15 **BY THE COURT:** Second cousin? And is that
16 on your mama's or daddy's side?

17 **PROSPECTIVE JUROR:** My daddy's.

18 **BY THE COURT:** Your daddy's? Your dad is
19 kin to his mother or father?

20 **PROSPECTIVE JUROR:** My dad is kin to his
21 father.

22 **BY THE COURT:** And do y'all have close
23 family ties with each other?

24 **PROSPECTIVE JUROR:** Yes, sir.

25 **BY THE COURT:** And has these family ties
26 caused you to form an opinion about his guilt
27 or innocence?

28 **PROSPECTIVE JUROR:** Not really.

29 **BY THE COURT:** Well, could you be a fair

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1 juror in spite of the fact that you're
2 related to him?

3 **PROSPECTIVE JUROR:** Yes, sir.

4 **BY THE COURT:** So that would not influence
5 you? The fact that you're a relative would
6 not influence you on being a fair juror; is
7 that correct?

8 **PROSPECTIVE JUROR:** Well, I don't want to
9 be no judge.

10 **BY THE COURT:** But could you lay aside any
11 family ties or any connections you had with
12 the family and base your decision on the
13 evidence and that alone?

14 **PROSPECTIVE JUROR:** Yes.

15 **BY THE COURT:** So you could do that?

16 **PROSPECTIVE JUROR:** Oh, no.

17 **BY THE COURT:** So you could not do that?
18 So these family relationships would override
19 anything that might be said in the courtroom,
20 and you're saying you could not be fair to
21 both sides in this case?

22 **PROSPECTIVE JUROR:** That's right.

23 **BY THE COURT:** Do either of you want to
24 question him any further?

25 **BY MR. EVANS:** I think that's enough, Your
26 Honor.

27 **BY MR. CARTER:** You don't have any
28 questions, Alison?

29 **BY MRS. STEINER:** (Shaking head).

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1 **BY THE COURT:** If you'll step in here.

2 (JUROR LEAVES THE COURTROOM)

3 **BY THE COURT:** He seems pretty equivocal
4 in his statements to the Court. Do either of
5 you object to him being excused for cause?

6 **BY MR. EVANS:** No, sir.

7 **BY MR. CARTER:** No, sir.

8 **BY THE COURT:** Okay. You can bring him
9 in.

10 (JUROR FORREST ENTERS THE COURTROOM)

11 **BY THE COURT:** Mr. Forrest, I'm going to
12 go ahead and excuse you, and you will not be
13 required to be back here on Monday.

14 **PROSPECTIVE JUROR:** Thank you.

15 **BY THE COURT:** That will be all. And I
16 guess we'll recess now until the next group
17 is brought in at one o'clock.

18 (FOLLOWING THE NOON RECESS, PROCEEDINGS
19 CONTINUED IN OPEN COURT OUTSIDE THE
20 HEARING AND PRESENCE OF THE PROSPECTIVE
21 JURORS, TO-WIT:)

22 **BY THE COURT:** Okay. I've got, I don't
23 know, at least one motion to take up but
24 there may be others. But I'll take up the
25 motion to quash a subpoena that was filed on
26 June 2nd. And as the State of Mississippi
27 filed it, are you ready to proceed?

28 **BY MR. WHITFIELD:** Yes, Your Honor.

29 **BY THE COURT:** Is the Defense ready to

MOTION TO QUASH - JURY OUT

1 hear this motion?

2 **BY MR. CARTER:** Yes, sir, we're ready.

3 **BY THE COURT:** You can proceed.

4 **BY MR. WHITFIELD:** Yes, Your Honor. On
5 June 1st, this Court was here conducting a
6 hearing that day. And as soon as those
7 hearings had completed, defense counsel had
8 ADA Clyde Hill subpoenaed as a witness in the
9 trial of this matter. As he walked up to the
10 table, he was served. And Mr. Carter made
11 the statement that now Mr. Hill could not sit
12 at the table.

13 The State maintains that this was
14 done for tactical advantage to obtain or to
15 boot our senior trial counsel, who's tried
16 this case numerous times, from the table and
17 is not attempting to obtain any admissible
18 evidence based on this subpoena.

19 And as their response, they are
20 trying to have Mr. Hill testify to
21 conversations he had with a potential State's
22 witness in preparation for this trial. The
23 first barrier they must overcome is to show
24 that Mr. Hill would be a necessary witness in
25 this matter. The courts have held -- and I
26 would point the Court to a 2010 decision,
27 *Thompson v. State*, handed down April 27th,
28 2010. It doesn't have a book cite, but it's
29 2010 WL 1664934 that says -- this issue was

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1 brought up where the defense tried to
2 subpoena an assistant district attorney who
3 was trying a case to have him testify about a
4 search warrant where he was present. The
5 Court held that as the Defendant has a
6 constitutional right to call and confront
7 witnesses against him, he doesn't have a
8 right to call just anybody he just wants to,
9 and he must first have -- show that Mr. Hill
10 would be a necessary witness.

11 In that case, the Court prohibited
12 him from calling the assistant district
13 attorney at that point because they could not
14 make any showing that he was a necessary
15 witness. Their proffer to us, by the way of
16 their response, is that he's going to testify
17 or they expect to use him to impeach or
18 bolster the testimony of Marcus Moore, a
19 witness for the defense, as to conversations
20 that were had between Mr. Moore and Mr. Hill.

21 Now, as this Court has previously
22 ruled in other cases that this would be a
23 violation of Rule 608 of the Rules of
24 Evidence that you cannot bring in extrinsic
25 evidence to impeach or bolster the testimony
26 or credibility of a witness.

27 I would point to the Court, *Jackson*
28 *v. State*, 645 So.2d 921. This evidence could
29 be cross-examined of Mr. Moore on the witness

MOTION TO QUASH - JURY OUT

1 stand, but the testimony of Mr. Hill would
2 not be allowed under Rule 608 as it is
3 extrinsic evidence on a collateral matter
4 dealing with the testimony or the statements
5 between the two of them and not to an issue
6 of the trial. They may only be inquired
7 about on cross-examination, and that was the
8 *Jackson* case upholding, and quoting from
9 *Lewis v. State*, a 1991 Mississippi Supreme
10 Court case, 580 So.2nd 1279.

11 So for this purpose, Mr. Clyde,
12 first, would not be a necessary witness.
13 Other persons by their own documents were
14 present for these conversations that could
15 have come in. But for the most part, it's
16 inadmissible evidence because these
17 statements would be a violation of Rule 608
18 where they're trying to introduce extrinsic
19 evidence to support the con- -- or bolster
20 the credibility of a witness. Therefore, we
21 would ask that the subpoena be quashed at
22 this time.

23 **BY THE COURT:** Response?

24 **BY MR. CARTER:** Your Honor, I don't have
25 much of a response, to be quite honest. I
26 wasn't ready for those cases. I haven't read
27 them. However, I would simply argue that
28 Mr. Hill, in fact, has talked to Marcus
29 Moore, who we are considering calling.

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1 Marcus Moore is the son of Connie Moore. And
2 Mr. Hill provided us a memo to Curtis
3 Flowers, a document that shows he talked to
4 Mr. Moore, he and attorney Ray Baum. And we
5 have information that's not documented that
6 Mr. Hill and Willie Blackmon or someone else
7 had talked to Mr. Moore subsequent to this.

8 We simply argue that since Mr. Hill
9 was out interviewing witnesses for whatever
10 reason, that he has made him a witness that
11 can be called in this trial. To be quite
12 honest, I don't really care whether Mr. Hill
13 sits at the counsel table at all. In fact, I
14 don't have a problem with him sitting at
15 counsel table. But I still, unless ordered
16 not to, plan to call him as a witness.

17 And I don't know that the -- if that
18 would preclude me from doing it. This is,
19 quite frankly, something I haven't done
20 before but based on information I received, I
21 kind of felt compelled to do it. And
22 whatever the Court's ruling is, I'll accept
23 it, although I'll admit that I plan to
24 research this further. And even if you deny
25 it today, apparently revisit this issue upon
26 further research and make an effort to
27 continue to have the opportunity to call
28 Mr. Hill.

29 **BY THE COURT:** Well, it sounds like you

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1 subpoenaed him at this point without any idea
2 what he would testify to or without any basis
3 for. You know, the prosecutors usually talk
4 to their potential witnesses before they're
5 called, just as I think defense counsel
6 usually talks to their witnesses before
7 they're called. A lawyer interviewing a
8 witness does not then make him a potential
9 witness in a trial. And from what I'm
10 hearing from you, that's the only basis for
11 having this subpoena issued at this point.
12 Am I missing something?

13 **BY MR. CARTER:** One moment, Your Honor.

14 **BY MRS. STEINER:** I'm sorry, Your Honor.

15 (DEFENSE COUNSEL CONFERRING)

16 **BY MR. CARTER:** I'm sorry, Your Honor.

17 And I apologize, Your Honor. After looking
18 at that, I don't remember the question you
19 asked me.

20 **BY THE COURT:** I was saying at this point,
21 you have not shown the Court any reason --
22 the only thing you've said is that he
23 interviewed a witness that might be called at
24 a trial. Well, I think the prosecutors
25 usually interview the witnesses they're going
26 to call just as defense counsel does. And
27 without more, I have not seen any
28 justification or anything that would
29 necessitate the assistant DA being called as

MOTION TO QUASH - JURY OUT

1 a witness. So what is your purpose of -- I
2 mean, I'm sure that he has talked to a lot of
3 witnesses, just as you have, but that does
4 not make him a witness then at the trial that
5 they have prepared to try. So what
6 purposes --

7 **BY MR. CARTER:** Yeah, I don't have
8 anything else, Your Honor, that I want to
9 present right now.

10 **BY THE COURT:** Well, at this point, the
11 Court has been presented nothing that would
12 show Mr. Hill as a necessary witness or that
13 he would be a witness of any kind so the
14 subpoena's quashed.

15 Are there any other matters? I
16 didn't know if there was any other motions or
17 if this was the only one.

18 **BY MR. EVANS:** Your Honor, there is
19 another matter that I'd like to bring up.
20 When we last were before the Court -- I'm not
21 even sure what day that was -- the Court
22 ordered the defense, at that time, to give us
23 any summary of the supposed expert witness,
24 Mr. Johnson, that they had listed. We
25 finally got a brief summary at 8 o'clock last
26 night, even though it did not follow the
27 Court's request.

28 As of today, we have gotten furnished
29 two different statements, one supposedly

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1 taken in 2006 by the Defense and one in 2007,
2 I believe. And I think the Court has made it
3 clear that discovery is supposed to have been
4 furnished a long time ago. And here we are,
5 the jury has already started coming in, we're
6 still getting discovery. We would ask that
7 the Court compel the defense if they have any
8 other discovery to furnish it immediately
9 today.

10 **BY THE COURT:** I think that's appropriate.
11 If it's not furnished before we leave today,
12 it's not going to be admitted. Y'all have
13 had this case for many, many years, and the
14 case has been set for trial for about eight
15 months now so I can't imagine that there
16 would be any reason why any other witnesses
17 or their statements have not been provided
18 til now. So if there's anything else that
19 has not been provided to the State, it must
20 be done so before this Court recesses today
21 or it will not be allowed to be admitted.

22 **BY MRS. STEINER:** If the Court please, may
23 I be heard?

24 **BY THE COURT:** You may.

25 **BY MRS. STEINER:** The two witnesses'
26 statements -- these are individuals who had
27 not previously been listed as witnesses by
28 either ourselves or the prior counsel when I
29 was compiling the list of possible witnesses

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1 for the Court's use in voir dire. I could
2 not find any evidence that those -- those had
3 been provided. As the Defense, we only have
4 to provide statements where we are doing
5 that. With Mr. Lott, we had previously
6 designated him. I could -- it was of an
7 abundance of caution that I did that. Maybe
8 we've provided that in the past.

9 And on the expert, we had -- you
10 know, we've only had the Court's order on
11 Tuesday, and we did the best we could. As I
12 put in there, Mr. Johnson, our expert, has
13 been submitted. We had a conference, and I
14 have asked him to either prepare or approve a
15 more detailed one, which I can't guarantee it
16 will by the end of today, Your Honor.

17 **BY THE COURT:** Well, I can guarantee you
18 if it's not, his testimony is not going to be
19 allowed because there is no excuse at all for
20 this not having been provided until -- you
21 know, I mean, the trial has started because
22 we've selected -- we are qualifying a jury.

23 And the case -- you've had the
24 case -- I mean, you've known for eight
25 months. You have been representing -- your
26 office has -- Mr. Flowers for probably close
27 to ten years. And so I -- you know, I cannot
28 imagine that there would be any excuse why
29 this hasn't been done already. But if you

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1 want to share one, I will listen.

2 **BY MRS. STEINER:** Thank you, Your Honor.
3 First of all, it's only been seven years.

4 Second of all, at the point at which
5 we finally received the information that made
6 us believe it would be useful to have an
7 expert review evidence, it really was on that
8 discovery hearing on April 20th.

9 **BY THE COURT:** So his testimony is going
10 to be totally limited to what was brought out
11 in discovery hearings?

12 **BY MRS. STEINER:** No, Your Honor. But
13 that was a part of -- before he offered an
14 opinion, he did express an interest in having
15 that testimony. I will contact him as soon
16 as I can and try and get authority with
17 respect to a more specific draft disclosure
18 and print that out and provide that today. I
19 had -- if it's the statement --

20 **BY THE COURT:** Because I don't see
21 anything --

22 **BY MRS. STEINER:** -- and he's certainly
23 available for interview at any time.

24 **BY THE COURT:** I don't see anything that
25 happened at the discovery hearing -- because
26 all the discovery hearing was you asking
27 different witnesses if they had different
28 documents, which it turned out most -- they
29 didn't have, by large measure, and it ended

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1 up being that most of the things that you
2 were asking for that in that hearing had
3 already been provided to you to start with by
4 the State, so I don't see that that's a real
5 good excuse for waiting until the day the
6 trial is starting to still not have
7 reciprocal discovery.

8 If the State was doing that, the
9 Defense would be jumping up and down, would
10 be wanting a continuance or wanting me to
11 sanction the prosecution for doing that, and
12 here you are doing what you would be
13 criticizing them if they were doing.

14 **BY MRS. STEINER:** Thank you, Your Honor.
15 As it happens, actually, a fairly detailed
16 disclosure was given last night. It was a
17 very brief one on Tuesday. It was
18 supplemented with very specific opinions and
19 the documents on which those were relied. It
20 was expanded. Very frankly, I thought that
21 was in compliance with the Court's order. I
22 have filed a copy with the Court. It's of
23 the Court -- of record for the Court's
24 review. And I believe *Box v. State* is the
25 remedy. They have in response already
26 retained an expert to make --

27 **BY THE COURT:** Let me put it this way: If
28 I continue the case on their request because
29 you didn't provide discovery, then you are

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1 going to pay the cost of the jury. Just let
2 me make that clear, because this county has
3 no reason to continue this case because you
4 didn't supply a witness in time. And so if
5 there's a continuance, there's going to be
6 lawyers paying for the costs of court up to
7 this point. But now, I don't see any reason
8 why you cannot go ahead and get this witness
9 to supplement whatever he's going to say. I
10 think that could be done today, and I have
11 every confidence that it will be.

12 **BY MRS. STEINER:** Your Honor, I will --
13 I -- the witness has proposed expanded
14 disclosure in his hands. And if he can get
15 me approval to serve it today, I will.

16 **BY THE COURT:** That will be all, then.
17 We'll take up the rest of the jury -- we'll
18 qualify the rest of the jury.

19 **BY MRS. STEINER:** Let me say for the
20 record, *Box v. State* provides in the first
21 instance, not for a complete continuance of
22 the trial but for a brief recess, during
23 which a response is formulated. And in its
24 progeny, frequently the Supreme Court has
25 approved, even over the objection of the
26 surprised party, merely a brief recess in
27 *Ross v. State* --

28 **BY THE COURT:** I'm aware of what *Box* says,
29 believe me. But I'm saying if it

MOTION TO COMPEL - JURY OUT

1 necessitated a continuance where this trial
2 could not go forward. I'm not saying that
3 that would be the case.

4 **BY MRS. STEINER:** But the State has not
5 served us a motion requesting such. All they
6 have served us is without a report a resume
7 of the witness -- of the expert they have
8 retained.

9 **BY MR. EVANS:** Your Honor, we cannot talk
10 to an expert at this point without knowing
11 what they're trying to claim. We have talked
12 to two different experts. We have already
13 furnished one name even though we have
14 nothing to submit to them. We may have
15 several depending on what their expert
16 finally furnishes us. But at this point, we
17 have furnished one name and a CV, even though
18 we don't know what they've claimed, just to
19 try to speed things up. And I just want to
20 put that in the record so that it will be
21 there.

22 **BY THE COURT:** I mean, this seems like the
23 same type thing that the Defense tried to
24 spring in the trial before last where right
25 at the last minute you come in with somebody
26 that you want to testify on identification
27 procedures that have not been presented til
28 right at the last minute. Because I read
29 that motion that Judge Morgan heard back at

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1 the trial before last. So this is not
2 anything other than it seems your method of
3 operation, and it's not appropriate. And
4 it's not going to be tolerated by this Court.

5 We'll recess until we voir dire the
6 remainder -- or qualify the remainder of the
7 jurors this afternoon.

8 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
9 CONTINUED IN OPEN COURT OUTSIDE THE
10 HEARING AND PRESENCE OF THE PROSPECTIVE
11 JURORS, TO-WIT:)

12 **BY THE COURT:** Well, I've been advised
13 that -- I didn't know -- apparently Honorable
14 Ray Baum has been served some kind of
15 subpoena of some kind, and I guess on his own
16 is raising a motion to quash. And so I'll
17 hear that at this time as well.

18 **BY MR. BAUM:** Yes, sir, Your Honor. And
19 for the record, Ray Baum, attorney from
20 Winona, Mississippi. I was served a subpoena
21 the other day, a couple of days ago, I guess
22 it was, in this matter. I haven't talked to
23 anyone for the Defense, so I have no idea why
24 I've been subpoenaed. And I would move to
25 quash.

26 **BY MR. CARTER:** Same as before, Your
27 Honor. He was involved with talking with
28 Mr. Moore, somebody we intend to call. We --

29 **BY THE COURT:** Well, Mr. Moore is your

MOTION TO QUASH - JURY OUT

1 client; is that correct?

2 **BY MR. BAUM:** Yes, sir, Your Honor.

3 Mr. Marcus Moore.

4 **BY THE COURT:** So you're saying a lawyer
5 can't talk to his client?

6 **BY MR. CARTER:** Talking to him about this
7 case. He was present when Mr. Hill
8 interviewed him regarding this case and about
9 testifying in this case. Based on that,
10 without revealing my strategy, I feel that
11 that made him a witness, a necessary witness
12 in this case, and that's basically all I've
13 got to say.

14 **BY MR. BAUM:** Your Honor -- and just to
15 clarify, Mr. Moore is my client. I'm a
16 public defender of Carroll County. Mr. Moore
17 had a pending charge. Evidently, he may be a
18 witness in this case, and Mr. Hill wanted to
19 speak to him, and he contacted me so that I
20 could be present while he interviewed a
21 witness. And that's -- that's all that
22 happened. So other than that, I know nothing
23 about this case and, you know, I know about
24 my client's case in Carroll County. I can't
25 imagine -- and no one from the Capital
26 Defense has contacted me as to what I may or
27 may not know because, you know, I'm kind of
28 at a loss here as to why someone would
29 subpoena a witness without having talked to

MOTION TO QUASH - JURY OUT

1 that witness first. And that's why I'm
2 asking the Court to quash this subpoena.

3 **BY THE COURT:** Well, subpoenas cannot be
4 issued wholesale just for no purpose at all.
5 And, again, I've been offered nothing that
6 would indicate that Mr. Baum is a necessary
7 witness, and you haven't even stated what
8 Mr. Moore may be saying about it.

9 And so at this point, there is no
10 purpose for him being under subpoena. He's
11 not been shown to be a necessary witness.

12 Additionally, if there was a
13 conversation between Mr. Baum and his client,
14 it would probably very well be covered by
15 attorney/client privilege to begin with. But
16 since I've been offered nothing that would
17 indicate that he's a necessary witness or for
18 any reason for this subpoena being issued,
19 I'll quash.

20 **BY MR. CARTER:** Your Honor, I accept that.
21 And at some point, I'm going to show how he's
22 necessary. And when that's --

23 **BY THE COURT:** Well, why can't you show it
24 now?

25 **BY MR. CARTER:** Because I don't want to
26 reveal my strategy.

27 **BY MR. BAUM:** Your Honor, you know, just
28 as a preliminary matter, I'll be glad to have
29 a conversation with Mr. Carter. If he thinks

MOTION TO QUASH - JURY OUT

1 I have some discoverable -- or any kind of
2 information or testimony, I'll be glad to
3 talk to him.

4 **BY THE COURT:** Well, that's fine, and you
5 can. But, you know, with counsel unwilling
6 to tell why anybody's a necessary witness,
7 the Court doesn't have any grounds for
8 keeping them under subpoena at this point, so
9 there's no --

10 **BY MR. CARTER:** Yes, sir, I accept that,
11 Your Honor.

12 **BY THE COURT:** That will be all.

13 (FOLLOWING A BRIEF RECESS, THE
14 PROSPECTIVE JUROR ROLL WAS CALLED BY THE
15 CLERK AND THE JURY WAS SWORN)

16 **BY THE COURT:** Ladies and gentlemen, be
17 seated, please. Court will come back to
18 order.

19 Ladies and gentlemen, the order of
20 business we're going to conduct today is
21 we're going to go through the legal
22 qualifications with you that have been called
23 for jury service.

24 You are potential jurors in the case
25 of the State of Mississippi v. Curtis
26 Giovanni Flowers. So what we're going to do
27 today is we're going to go through the legal
28 qualifications, actually the qualifications
29 the law requires for you to meet in order to

JURY QUALIFICATION

1 serve on a jury. There are also some legal
2 exemptions that could apply that might result
3 in you being exempt from jury service, and
4 we're going to go through these exemptions
5 today as well.

6 Then those of you that are not exempt
7 and do meet the qualifications, I'll ask that
8 you will be back here on Monday morning.
9 Then we'll go through what's called voir
10 dire. That's where the Court questions you
11 about the specific facts of the case and
12 questions you to make sure that you can be
13 fair and impartial in the case.

14 Now, I know the clerk's already given
15 you an oath to truthfully answer these
16 questions so I'll get right into it now.

17 These are the qualifications you've
18 got to meet in order to serve on the jury.
19 The first one is you've got to be at least 21
20 years of age in order to serve. So is there
21 anyone that was summoned for jury duty who is
22 not at least 21 years of age?

23 Also, you have to be a qualified
24 elector of Montgomery County or a resident
25 freeholder of this county for one year. Once
26 again, either a qualified elector or a
27 resident freeholder of the county for more
28 than one year. So is there any one of you
29 that would not meet that qualification? Yes,

JURY QUALIFICATION

1 ma'am, and what is your situation?

2 **PROSPECTIVE JUROR:** I live in DeSoto
3 County. I have not lived in Montgomery
4 County since September of last year.

5 **BY THE COURT:** Okay. So you have
6 abandoned this county as residence?

7 **PROSPECTIVE JUROR:** Yes, sir, I have.

8 **BY THE COURT:** What is your name?

9 **PROSPECTIVE JUROR:** Elizabeth Bevis.

10 **BY THE COURT:** Okay. Ms. Bevis, I'll let
11 you go. If you would go to the clerk's
12 office, fill out some paperwork and remove
13 your name from the voter rolls because
14 obviously if you're not living here, you're
15 not a qualified elector anymore.

16 **PROSPECTIVE JUROR:** Yes, sir.

17 **BY THE COURT:** So if you'll please just go
18 on and you can go right through that exit and
19 right in the clerk's office there. Yes,
20 ma'am.

21 **PROSPECTIVE JUROR:** I live in Carroll
22 County; however, we own land in Montgomery
23 County.

24 **BY THE COURT:** So you reside in Carroll
25 County?

26 **PROSPECTIVE JUROR:** Uh-huh.

27 **BY THE COURT:** And are you registered to
28 vote over there, too?

29 **PROSPECTIVE JUROR:** No.

JURY QUALIFICATION

1 **BY THE COURT:** Well, you don't reside in
2 this county and this is not where you live,
3 you would not actually be qualified to vote
4 in this county, either. I will excuse you,
5 but I will require that you go to the clerk's
6 office and have your name taken off the voter
7 rolls for this county. And what is your
8 name?

9 **PROSPECTIVE JUROR:** Linda Rawls.

10 **BY THE COURT:** Okay. Ms. Rawls, that'll
11 be fine. As I say, I'll let you go. And if
12 you'll go through there and take your name
13 off. Yes, ma'am.

14 **PROSPECTIVE JUROR:** Yes. I recently moved
15 to Grenada County, so I no longer live in
16 Montgomery County.

17 **BY THE COURT:** And you've abandoned this
18 county as residence?

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **BY THE COURT:** And don't have any intent
21 of returning in the future or foreseeable
22 future? And what is your name?

23 **PROSPECTIVE JUROR:** Latina Evans --
24 Peacock Evans.

25 **BY THE COURT:** Okay. I'll excuse you. If
26 you'll go through and go around to the
27 clerk's office and she can get the
28 information where you can have your name
29 taken off the rolls because if you don't live

JURY QUALIFICATION

1 here anymore, then you can't vote here.

2 Yes, sir. Near the back there.

3 **PROSPECTIVE JUROR:** My name is Lewis
4 Coffey, and I live over in Carroll County but
5 I have land in Montgomery County.

6 **BY THE COURT:** Where do you live now?

7 **PROSPECTIVE JUROR:** In Carrollton,
8 McCarley.

9 **BY THE COURT:** Okay. And so you don't
10 reside here anymore; is that correct?

11 **PROSPECTIVE JUROR:** Yeah.

12 **BY THE COURT:** What is your name?

13 **PROSPECTIVE JUROR:** Lewis Coffey.

14 **BY THE COURT:** Well, I'll let you go. You
15 need to go to the clerk's office and sign
16 some papers so they can take your name off
17 the voter rolls for the county. But you
18 would not be a qualified elector anymore. So
19 if you'll go on around to the clerk's office
20 there.

21 And did I see anybody else in the
22 center? Okay. Over here. Yes, ma'am.

23 **PROSPECTIVE JUROR:** I live in Choctaw
24 County. I moved last year.

25 **BY THE COURT:** Okay. And you have
26 abandoned Montgomery County as residence?

27 **PROSPECTIVE JUROR:** (Nodding head).

28 **BY THE COURT:** And what is your name?

29 **PROSPECTIVE JUROR:** Jana Guillotte.

JURY QUALIFICATION

1 **BY THE COURT:** Okay. Ms. Guillotte, I'll
2 let you go. And if you will go through in
3 the clerk's office so she can take your name
4 off the voter rolls of the county.

5 There's some items that would prevent
6 people from serving on a jury, some
7 disqualifications that I'm going to go over
8 with you. If you've been convicted of a
9 felony crime, that would disqualify you from
10 serving on a jury. A felony is a crime that
11 if you're convicted of that type crime, you
12 could receive time in the state penitentiary.
13 Even if you've been convicted of a felony and
14 not actually get sentenced to serve in the
15 penitentiary but only got suspended jail time
16 or probation, that would still be a felony
17 conviction.

18 So, again, a felony conviction is a
19 crime that could carry time in the state
20 penitentiary. So do I have anybody that
21 would be disqualified from jury service
22 because of a prior felony conviction? Yes,
23 sir, what's your name?

24 **PROSPECTIVE JUROR:** Deandras Woods.

25 **BY THE COURT:** And what was that
26 conviction?

27 **PROSPECTIVE JUROR:** Burglary.

28 **BY THE COURT:** Okay. Well, I'll let you
29 go, and I appreciate you being here.

JURY QUALIFICATION

1 **PROSPECTIVE JUROR:** Do I have to sign any
2 papers, Judge?

3 **BY THE COURT:** No, unless you need
4 something to return to work. You know, some
5 people need an excuse for work, but if you
6 don't need any excuse or anything from the
7 clerk's office, you know, you don't need
8 anything else.

9 **PROSPECTIVE JUROR:** All right. Have a
10 nice day.

11 **BY THE COURT:** Thank you. You, too.

12 Yes, sir. In the back.

13 **PROSPECTIVE JUROR:** Yes, sir. Sylvester
14 Lattimore. It's been over 30 years ago.

15 **BY THE COURT:** And what was that?

16 **PROSPECTIVE JUROR:** Aggravated assault.

17 **BY THE COURT:** Okay. Lattimore, is that
18 your last name?

19 **PROSPECTIVE JUROR:** Lattimore.

20 **BY THE COURT:** Okay. Mr. Lattimore, I
21 appreciate your being here and I'll let you
22 go. You're excused.

23 Here in the center, yes, sir.

24 **PROSPECTIVE JUROR:** Joel Collins. It was
25 about ten years ago, assault in Memphis.

26 **BY THE COURT:** In Memphis?

27 **PROSPECTIVE JUROR:** Yes, sir.

28 **BY THE COURT:** And that was a felony in
29 Tennessee?

JURY QUALIFICATION

1 **PROSPECTIVE JUROR:** I think it was. I got
2 probation for a year.

3 **BY THE COURT:** Well -- and Collins?

4 **PROSPECTIVE JUROR:** Yes, sir.

5 **BY THE COURT:** What did you say your first
6 name was?

7 **PROSPECTIVE JUROR:** Joel.

8 **BY THE COURT:** Joel Collins. Okay.
9 Mr. Collins, I'll let you go, and I
10 appreciate you being here.

11 I see a hand right there at the back.
12 I can't really see your face. Yes, ma'am.

13 **PROSPECTIVE JUROR:** Bertha Allen.

14 **BY THE COURT:** And you've been convicted
15 of a felony?

16 **PROSPECTIVE JUROR:** Yes, six years ago.

17 **BY THE COURT:** And what was that
18 conviction for?

19 **PROSPECTIVE JUROR:** Manslaughter.

20 **BY THE COURT:** Okay. Well, I'll let you
21 go, and I appreciate you being here, and
22 you're excused.

23 Right in the back over here.

24 **PROSPECTIVE JUROR:** Michael A. Wilson.

25 **BY THE COURT:** What's your name again?

26 **PROSPECTIVE JUROR:** Michael A. Wilson.

27 **BY THE COURT:** Okay. And you've got a
28 felony conviction?

29 **PROSPECTIVE JUROR:** Yes, sir. Drug

JURY QUALIFICATION

1 dealer.

2 **BY THE COURT:** Okay. Well, I'll excuse
3 you, and I appreciate you being here.

4 Yes.

5 **PROSPECTIVE JUROR:** Ray Winstead. Rayford
6 Winstead, Jr.

7 **BY THE COURT:** Okay. And that was last
8 fall, wasn't it? Well, I remember. I'll let
9 you go.

10 **PROSPECTIVE JUROR:** Judge, one more thing,
11 I was here last time for Mr. Flowers. You
12 told me to go across the hall and have my
13 name removed. That would only be -- well, I
14 can't guarantee that. They ain't going to
15 give me nothing.

16 **BY THE COURT:** Well, I can't guarantee
17 that your name --

18 **PROSPECTIVE JUROR:** Can I take my name --

19 **BY THE COURT:** It's all randomly pulled
20 out of a computer of the voter rolls, so it's
21 all random selection from the computer so
22 there's no guarantee that in the future you
23 might not get another one.

24 **PROSPECTIVE JUROR:** One more thing before
25 I go. Will I be paid for it?

26 **BY THE COURT:** No.

27 **PROSPECTIVE JUROR:** Thank you, sir.

28 **BY THE COURT:** The next situation that
29 would disqualify you from serving on a jury

JURY QUALIFICATION

1 if you were a common gambler or a habitual
2 drunkard you could not serve. So do I
3 have -- so do I have any -- just one. Okay.
4 Which are you?

5 **PROSPECTIVE JUROR:** Sir?

6 **BY THE COURT:** Are you a common gambler or
7 a habitual drunkard?

8 **PROSPECTIVE JUROR:** Drunk.

9 **BY THE COURT:** You pretty much just stay
10 drunk all the time?

11 **PROSPECTIVE JUROR:** Not all the time.
12 Most of the time.

13 **BY THE COURT:** Most of the time? You had
14 anything today?

15 **PROSPECTIVE JUROR:** I had a little bit.

16 **BY THE COURT:** What's your name?

17 **PROSPECTIVE JUROR:** Tracy Woods.

18 **BY THE COURT:** Well, if you're going to
19 swear under oath that you're a common drunk
20 or a habitual drunkard, I'm not going to
21 question you. I'll let you go.

22 Okay. Which are you?

23 **PROSPECTIVE JUROR:** I gamble and drink. I
24 drink everything. I say I'll have a drink
25 every day.

26 **BY THE COURT:** So you drink every day, and
27 you had something this morning?

28 **PROSPECTIVE JUROR:** I haven't had nothing
29 this morning.

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT # : 2003-0071-CR

JURY QUALIFICATION

1 **BY THE COURT:** The type gambling, is that
2 like street-corner-type gambling or legal
3 gambling?

4 **PROSPECTIVE JUROR:** I gamble all of it.

5 **BY THE COURT:** Okay. Well, if you're a
6 drunk and gambler, then I'm going to let you
7 go. What's the name again?

8 **PROSPECTIVE JUROR:** James Adair.

9 **BY THE COURT:** Also, you must be able to
10 read and write in order to serve. If you
11 could read that jury questionnaire that was
12 included with your summons, then you're
13 deemed for purposes of serving on a jury to
14 be able to read and write.

15 So, again, if you could read that and
16 complete it without any assistance, then
17 you're deemed for purposes of serving on a
18 jury to be able read and write. So with that
19 in mind, do I have anybody that could not
20 read and write well enough to do that? Yes,
21 sir.

22 **PROSPECTIVE JUROR:** I had to get my
23 daughter to do it because I can't read, make
24 no sense out of it.

25 **BY THE COURT:** And what is your name?

26 **PROSPECTIVE JUROR:** John Costilow.

27 **BY THE COURT:** Okay. Well, I appreciate
28 you being here, Mr. Costilow, and I'll let
29 you go.

JURY QUALIFICATION

1 **PROSPECTIVE JUROR:** My name is Crystal
2 Hill, and I can't read and write and
3 understand what's going on here.

4 **BY THE COURT:** What's your name again?

5 **PROSPECTIVE JUROR:** Crystal Hill.

6 **BY THE COURT:** Okay. Well, I appreciate
7 you being here, and I'll let you go. Anyone
8 else?

9 Ladies and gentlemen, those are the
10 qualifications the law requires you to meet
11 in order to serve. There are also some
12 exemptions that are provided for by law.
13 These exemptions that I'm going to go over
14 with you at this time are personal exemptions
15 in nature. You do not have to claim one of
16 these exemptions even if it did apply to you.
17 But if one of these exemptions did apply to
18 you and you wanted to claim it, then you
19 could claim it and possibly be excused or
20 exempt from jury service.

21 If you're over age 65, that's an
22 exemption or privilege that the law
23 recognizes. Certainly, the circuit court
24 encourages persons over age 65 to serve. But
25 again, that's a privilege that the
26 legislature recognizes for persons over age
27 65. So if you are over age 65 and you do
28 wish to claim that privilege, then you may do
29 so at this time. So do I have anybody that's

JURY QUALIFICATION

1 over age 65 that has gotten here this
2 afternoon and decided that they would like to
3 exercise that privilege and be exempt? And
4 what is your name?

5 **PROSPECTIVE JUROR:** Dennis Caradine.

6 **BY THE COURT:** And Mr. Caradine, are you
7 over age 65?

8 **PROSPECTIVE JUROR:** Sixty-eight.

9 **BY THE COURT:** You look good. But I'll
10 let you go if you want to, if you want to
11 claim that exemption.

12 **PROSPECTIVE JUROR:** My wife wants me to.

13 **BY THE COURT:** Yes, ma'am. Are you over
14 65?

15 **PROSPECTIVE JUROR:** I'm over 70.

16 **BY THE COURT:** Well, again, I commend you.
17 I guess you want to claim that and be exempt;
18 is that correct?

19 **PROSPECTIVE JUROR:** I do.

20 **BY THE COURT:** Okay. Ma'am, what is your
21 name?

22 **PROSPECTIVE JUROR:** Katherine Benjamin.

23 **BY THE COURT:** Okay. Ms. Benjamin, I do
24 appreciate you being here and you may go. Do
25 I have anybody that has an age situation
26 where you want to claim age as an exemption?
27 The next situation is if jury service would
28 cause an undue or extreme physical or
29 financial hardship to you or someone under

JURY QUALIFICATION

1 your care or supervision, that could result
2 in an exemption. It usually has to fall
3 under one of these subcategories. If it
4 would put you in a position where you would
5 have to abandon a person under your personal
6 care or supervision due the impossibility of
7 obtaining substitute care. Or if you would
8 incur costs that would have a substantial
9 adverse impact on the payment of your
10 necessary daily living expenses or someone
11 that you provide the means of support to. Or
12 if someone under your care or supervision
13 would suffer physical hardship that could
14 result in illness or disease. If any of
15 those categories -- if you've got any that
16 rise to that severe a level, then that could
17 possibly result in an exemption as well. So
18 do I have anybody that has anything that
19 would fall under that category?

20 **PROSPECTIVE JUROR:** Does that pertain to
21 your child?

22 **BY THE COURT:** Well, if it's somebody that
23 you provide the means of support to or things
24 like that, then it could possibly.

25 **PROSPECTIVE JUROR:** My name is Ruby Stone,
26 and I have a child, and I don't have anybody
27 to take care of her while I'm up here. She's
28 outside.

29 **BY THE COURT:** You're a stay-at-home

JURY QUALIFICATION

1 parent?

2 **PROSPECTIVE JUROR:** Yes, sir.

3 **BY THE COURT:** No child care so you
4 wouldn't have anybody to supervise the child
5 or look after her?

6 **PROSPECTIVE JUROR:** I don't have anybody.

7 **BY THE COURT:** How old is the child?

8 **PROSPECTIVE JUROR:** She's 13.

9 **BY THE COURT:** Okay. But no relatives or
10 family around here?

11 **PROSPECTIVE JUROR:** I have relatives
12 around me, but I don't trust them to watch my
13 child.

14 **BY THE COURT:** Well, I can respect that.
15 I've got some I wouldn't leave a pet with
16 myself. What's your name again?

17 **PROSPECTIVE JUROR:** Ruby Stone.

18 **BY THE COURT:** Okay. I appreciate you
19 being here and you may go.

20 Yes, sir.

21 **PROSPECTIVE JUROR:** I have a father living
22 in the house and my wife just had a stroke.

23 **BY THE COURT:** Are you the primary
24 caregiver for your father and your wife?

25 **PROSPECTIVE JUROR:** Yes, sir, I am.

26 **BY THE COURT:** Do you have anybody that
27 could come in?

28 **PROSPECTIVE JUROR:** No, I don't.

29 **BY THE COURT:** So you're the only one

JURY QUALIFICATION

1 that's having to look after both of these
2 people; is that right?

3 **PROSPECTIVE JUROR:** Yes, sir.

4 **BY THE COURT:** What's your name?

5 **PROSPECTIVE JUROR:** Arnold Chambers.

6 **BY THE COURT:** Okay. Well, I'll let you
7 go then, Mr. Chambers.

8 I see two hands right back there.

9 **PROSPECTIVE JUROR:** I'm a self-employed
10 single parent.

11 **BY THE COURT:** And what type of work is
12 this you do?

13 **PROSPECTIVE JUROR:** Hairdresser.

14 **BY THE COURT:** And does your business --
15 would it close?

16 **PROSPECTIVE JUROR:** Yes.

17 **BY THE COURT:** And would you have no
18 source of income?

19 **PROSPECTIVE JUROR:** No.

20 **BY THE COURT:** And would that have a
21 substantial adverse impact on paying your
22 daily living expenses?

23 **PROSPECTIVE JUROR:** Absolutely.

24 **BY THE COURT:** So you wouldn't get money,
25 and it would affect your livelihood; is that
26 correct?

27 **PROSPECTIVE JUROR:** Right.

28 **BY THE COURT:** What is your name again?

29 **PROSPECTIVE JUROR:** Jill Marie Clolinger.

JURY QUALIFICATION

1 **BY THE COURT:** Okay. Ms. Clolinger, I'll
2 let you go, and I appreciate you being here.

3 In the back here, yes, sir.

4 **PROSPECTIVE JUROR:** I got three kids and a
5 wife at home, and I'm the sole breadwinner
6 right now.

7 **BY THE COURT:** Where do you work?

8 **PROSPECTIVE JUROR:** I work out of state a
9 lot right now in the cotton industry.

10 **BY THE COURT:** And does your employer pay
11 if you're on jury service? Some places where
12 you work would pay even if you were up here
13 on jury service.

14 **PROSPECTIVE JUROR:** Not that I know of.

15 **BY THE COURT:** And if you lost a week's
16 pay or however long you were gone, would that
17 have a substantial adverse impact on paying
18 your necessary daily living expenses?

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **BY THE COURT:** I'll let you go. What's
21 your name again?

22 **PROSPECTIVE JUROR:** Craig Parker.

23 **BY THE COURT:** Okay, Mr. Parker.

24 Then back here at the very back.

25 **PROSPECTIVE JUROR:** Yes. I got kids at
26 home, too; I have five.

27 **BY THE COURT:** How many?

28 **PROSPECTIVE JUROR:** Five, and I stay home
29 with them.

JURY QUALIFICATION

1 **BY THE COURT:** You stay home with them?
2 Do you have anybody that could come in and
3 look after them and/or take care of them in
4 your place?

5 **PROSPECTIVE JUROR:** No, I don't.

6 **BY THE COURT:** I guess they're all out of
7 school for the summer?

8 **PROSPECTIVE JUROR:** Yeah. I got a wife
9 there, but she stays sick a whole lot.

10 **BY THE COURT:** So you got a sick wife and
11 five kids?

12 **PROSPECTIVE JUROR:** Yeah, she takes
13 medicine.

14 **BY THE COURT:** So she's under a doctor's
15 care for medication?

16 **PROSPECTIVE JUROR:** Yes, sir.

17 **BY THE COURT:** What's your name?

18 **PROSPECTIVE JUROR:** Christopher Gee.

19 **BY THE COURT:** I'll let you go, Mr. Gee.
20 Yes.

21 **PROSPECTIVE JUROR:** I'm director of a
22 daycare. The director has been out with
23 pneumonia in the hospital, and she is still
24 under doctor's care, so the daycare is closed
25 today due to the fact that I had to come to
26 jury duty.

27 **BY THE COURT:** What would happen if you --

28 **PROSPECTIVE JUROR:** Plus I'm a single
29 parent myself.

JURY QUALIFICATION

1 **BY THE COURT:** What would happen if you
2 were sick yourself?

3 **PROSPECTIVE JUROR:** The daycare would have
4 to stay closed.

5 **BY THE COURT:** Do they close when you're
6 not there?

7 **PROSPECTIVE JUROR:** We had to close it
8 today, because I'm the director there today
9 and there's no one there to run the daycare.

10 **BY THE COURT:** Do they fill in or have
11 anybody to fill in for you if you're not
12 there?

13 **PROSPECTIVE JUROR:** No. No one else can
14 run it; it's either me or the director. And
15 the director is out under doctor's care with
16 pneumonia.

17 **BY THE COURT:** How long?

18 **PROSPECTIVE JUROR:** From three to four
19 more weeks.

20 **BY THE COURT:** So she's not going to be
21 back then?

22 **PROSPECTIVE JUROR:** No.

23 **BY THE COURT:** I guess -- what is your
24 name, ma'am?

25 **PROSPECTIVE JUROR:** Catherine Palmertree.

26 **BY THE COURT:** Because of the unique
27 circumstance where the other person that
28 usually works there is sick and can't be
29 there, I'll let you go.

JURY QUALIFICATION

Right here.

PROSPECTIVE JUROR: Well, I'm the only one that works in my household, and I drive a truck, and I lost \$150 today. I don't get paid for no time off. We don't get vacation pay or nothing.

BY THE COURT: And if you missed to be up here, would that have a substantial adverse impact on the payment of your necessary daily living expenses?

PROSPECTIVE JUROR: Very bad.

BY THE COURT: And what's your name again?

PROSPECTIVE JUROR: Michael Brandon Amason.

BY THE COURT: Okay. I'll let you go, Mr. Amason.

PROSPECTIVE JUROR: I have a granddaughter I take care of, and I'm sick myself.

BY THE COURT: And do you have a doctor's --

PROSPECTIVE JUROR: Yeah, I have a note.

BY THE COURT: I didn't know what that was in your hand.

PROSPECTIVE JUROR: My granddaughter, she's outside now.

BY THE COURT: And how old is she?

PROSPECTIVE JUROR: Seven.

BY THE COURT: And you don't have anybody that could come in and look out for her or

JURY QUALIFICATION

1 take care of her --

2 **PROSPECTIVE JUROR:** Not any.

3 **BY THE COURT:** -- or anything? And you
4 say you're under a doctor's care yourself,
5 too?

6 **PROSPECTIVE JUROR:** Yes.

7 **BY THE COURT:** Okay. What is your name?

8 **PROSPECTIVE JUROR:** Martha Mays.

9 **BY THE COURT:** Okay. Well, I'll let you
10 go then. And I see -- yes.

11 **PROSPECTIVE JUROR:** I run a construction
12 company. And I'm not there, it shuts down.

13 **BY THE COURT:** Is this a company you own
14 or is it somebody else that owns it?

15 **PROSPECTIVE JUROR:** I'm over it. I'm just
16 a supervisor.

17 **BY THE COURT:** Well, if you take off or
18 sick, do they shut it down?

19 **PROSPECTIVE JUROR:** Yes, sir. Most of the
20 workers just don't even show up.

21 **BY THE COURT:** And so would this have a
22 substantial adverse impact on your payment of
23 your necessary daily living expenses?

24 **PROSPECTIVE JUROR:** Yes, sir, because I'm
25 the breadwinner.

26 **BY THE COURT:** And tell me your name
27 again.

28 **PROSPECTIVE JUROR:** Randall Pyron.

29 **BY THE COURT:** Okay, Mr. Pyron.

JURY QUALIFICATION

1 And I see a couple of hands way in
2 the back there. Yes, sir.

3 **PROSPECTIVE JUROR:** Me and my daddy own a
4 repair shop. He's got prostate cancer right
5 now and he ain't able to stay late.

6 **BY THE COURT:** So you're the only one able
7 to run it?

8 **PROSPECTIVE JUROR:** Yes, sir.

9 **BY THE COURT:** And you're the
10 owner/operator of the business?

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **BY THE COURT:** Would that have a
13 substantial and adverse impact on your living
14 expenses and payment of them if you were
15 gone?

16 **PROSPECTIVE JUROR:** Yes, sir.

17 **BY THE COURT:** Okay. I'll let you go
18 then. Again, what's your name?

19 **PROSPECTIVE JUROR:** Jackie Vance.

20 **BY THE COURT:** I saw a gentleman over
21 here. Yes, sir.

22 **PROSPECTIVE JUROR:** I'm a truck driver,
23 and my wife is off of work right now. I'm
24 the only one that's working.

25 **BY THE COURT:** Are you the only provider
26 in the family?

27 **PROSPECTIVE JUROR:** Yes, sir.

28 **BY THE COURT:** And does the place where
29 you work, do they pay you if you're on jury

JURY QUALIFICATION

1 service or do you not get paid?

2 **PROSPECTIVE JUROR:** I do not get paid.

3 **BY THE COURT:** And would that have a
4 substantial adverse impact on the payment of
5 your necessary daily living expenses?

6 **PROSPECTIVE JUROR:** Yes, it would.

7 **BY THE COURT:** And what's your name?

8 **PROSPECTIVE JUROR:** Richard Campbell.

9 **BY THE COURT:** Okay. Mr. Campbell, I'll
10 let you go.

11 **PROSPECTIVE JUROR:** Ida Carradine. We
12 have a business being closed for half a day
13 today, just in case. It would be very bad,
14 because I don't have anybody else to run the
15 business.

16 **BY THE COURT:** And what type of business
17 are you operating?

18 **PROSPECTIVE JUROR:** We run a thrift store
19 on 51.

20 **BY THE COURT:** And would it have to be
21 shut down if you were not there?

22 **PROSPECTIVE JUROR:** It would.

23 **BY THE COURT:** It's owner/operator-type
24 business?

25 **PROSPECTIVE JUROR:** Right.

26 **BY THE COURT:** And would that have a
27 substantial adverse impact on your payment of
28 your living expenses if you were not there?

29 **PROSPECTIVE JUROR:** It would.

JURY QUALIFICATION

1 **BY THE COURT:** I'll let you go,
2 Ms. Carradine.

3 **PROSPECTIVE JUROR:** Thank you.

4 **BY THE COURT:** Okay. Yes.

5 **PROSPECTIVE JUROR:** I'm Willie Cris
6 Farmer. I have an auto repair, and it's shut
7 down right now.

8 **BY THE COURT:** Are you the owner/operator
9 of this business? And there's nobody, I
10 guess, that would do this for you while you
11 were gone?

12 **PROSPECTIVE JUROR:** No.

13 **BY THE COURT:** And would that have a
14 substantial adverse impact on your payment of
15 your living expenses if you were to miss work
16 because of being up here?

17 **PROSPECTIVE JUROR:** Very much.

18 **BY THE COURT:** Okay. I'll let you go,
19 then, Mr. Farmer.

20 Yes, ma'am.

21 **PROSPECTIVE JUROR:** My husband and I own
22 our own construction business, and I do all
23 the invoices, payroll and accounting. So if
24 I was gone for a week, that could not go on.
25 He has a lot of government jobs that I have
26 to bill out the contracts to when it's
27 finished.

28 **BY THE COURT:** Is there anybody that can
29 fill in for you?

JURY QUALIFICATION

1 **PROSPECTIVE JUROR:** No, sir.

2 **BY THE COURT:** And what type impact would
3 this have on you on your living expenses?

4 **PROSPECTIVE JUROR:** Well, we wouldn't get
5 paid so it would be bad.

6 **BY THE COURT:** So this would have a
7 substantial impact on your living expenses
8 and payment of them; is that correct?

9 **PROSPECTIVE JUROR:** Yes, sir.

10 **BY THE COURT:** And what is your name
11 again?

12 **PROSPECTIVE JUROR:** Angela Evans.

13 **BY THE COURT:** Okay. Ms. Evans, I'll let
14 you go.

15 And I saw a couple of hands, I
16 thought. There's a couple of more back here
17 first. Yes, sir.

18 **PROSPECTIVE JUROR:** I served on the grand
19 jury last session.

20 **BY THE COURT:** Okay. We were going to get
21 to that in a few minutes.

22 **PROSPECTIVE JUROR:** Oh, okay.

23 **BY THE COURT:** No. If you want to go
24 ahead, that is an exemption that the law
25 recognizes and I'll go ahead since you stood
26 up and take that up now. And what's your
27 name?

28 **PROSPECTIVE JUROR:** Henry Allman.

29 **BY THE COURT:** And as the law goes, you

JURY QUALIFICATION

1 served on a grand jury. You know -- and
2 anyone else that I have that served on a
3 jury, we'll take those up also and get
4 through with business situations.

5 Yes, sir.

6 **PROSPECTIVE JUROR:** My name is James Earl
7 Jones. I work for a timber Industry, EMI.
8 And I told them that I was coming here. They
9 said they don't pay, you know, pay for being
10 on a jury duty or to come today.

11 **BY THE COURT:** If you missed work, is that
12 going to have a substantial adverse impact on
13 your payment of your necessary daily living
14 expenses?

15 **PROSPECTIVE JUROR:** Very.

16 **BY THE COURT:** So if you miss work, you'll
17 get behind on your bills and you might not
18 catch up with them; is that right?

19 **PROSPECTIVE JUROR:** Can't do nothing.

20 **BY THE COURT:** And what is your name
21 again?

22 **PROSPECTIVE JUROR:** James Earl Jones.

23 **BY THE COURT:** All right. The actor, huh?
24 I'll let you go, Mr. Jones.

25 Yes, ma'am, back in the back.

26 **PROSPECTIVE JUROR:** Emma Crawford. You
27 have me and my daughter here, and she have a
28 small baby. When she's working, I be the one
29 that takes care of her baby for her. And so

JURY QUALIFICATION

1 if both of us is up here, we have no one at
2 home to take care of her baby.

3 **BY THE COURT:** So one of you is going to
4 have to be excused.

5 **PROSPECTIVE JUROR:** Yes, sir. I'll do it.

6 **BY THE COURT:** I understand, but the
7 baby's mama might need to be. What's your
8 daughter's name?

9 **PROSPECTIVE JUROR:** Leslie Crawford.

10 **BY THE COURT:** So if you'll stand, too.
11 Now, how old is the child?

12 **PROSPECTIVE JUROR:** Eight months.

13 **BY THE COURT:** And the exemption is if
14 there's a nursing mother, then the mother can
15 claim the exemption. One of you can claim
16 it.

17 **PROSPECTIVE JUROR:** I'll claim the
18 exemption.

19 **BY THE COURT:** Well, yeah, but your
20 daughter might take it. Are you acceptable
21 with your mama taking care of the baby if
22 you're on jury duty?

23 **PROSPECTIVE JUROR:** Yeah, that's fine.

24 **BY THE COURT:** So you can stay stick
25 around and agree to let her go?

26 **PROSPECTIVE JUROR:** Yes.

27 **BY THE COURT:** And what's your name?

28 **PROSPECTIVE JUROR:** Leslie Crawford.

29 **BY THE COURT:** Yeah, I remember that.

JURY QUALIFICATION

1 What's your mother's name again?

2 **PROSPECTIVE JUROR:** Emma Crawford.

3 **BY THE COURT:** All right. You may go.

4 Anybody else on either -- back there.

5 **PROSPECTIVE JUROR:** Constance McDonald.

6 My husband and I do some yard work and stuff.

7 It's seasonal work, and he's not able to do

8 it all by himself. He and I are the only two

9 people that do this work. Like I say, it's

10 seasonal. And if we don't work, we don't

11 have anything the rest of the year.

12 **BY THE COURT:** Is there anybody that he
13 could call to fill in or help or do anything?

14 **PROSPECTIVE JUROR:** We just try to do it
15 ourselves.

16 **BY THE COURT:** And would that have a
17 substantial adverse impact on your payment of
18 your living expenses if you're gone and this
19 work doesn't get done?

20 **PROSPECTIVE JUROR:** Well, I've already got
21 people that are waiting on me. My mother
22 passed away, and I had to be off a little
23 while for that, and I'm just kind of behind.

24 **BY THE COURT:** So would this affect you in
25 paying your bills and things if you missed
26 this work?

27 **PROSPECTIVE JUROR:** I wouldn't be able to,
28 because I wouldn't have any income the rest
29 of the year if I don't make it now.

JURY QUALIFICATION

1 **BY THE COURT:** And what is your name
2 again?

3 **PROSPECTIVE JUROR:** Constance McDonald.

4 **BY THE COURT:** Okay. I'll let you go,
5 Ms. McDonald.

6 And I saw a gentleman over here.
7 Yes, sir.

8 **PROSPECTIVE JUROR:** Yes, sir. I work in
9 international water offshore. This oil spill
10 going on is keeping us pretty slow. I have
11 to take all the work I can get right now to
12 keep my head above water, and I was supposed
13 to go back to work this upcoming week.

14 **BY THE COURT:** You were working offshore?

15 **PROSPECTIVE JUROR:** Yes, sir.

16 **BY THE COURT:** And if you don't work, is
17 this going to have a substantial adverse
18 impact on your payment of your bills and your
19 necessary living expenses?

20 **PROSPECTIVE JUROR:** Yes, sir.

21 **BY THE COURT:** And does your company pay
22 you if you're like on jury service, so you
23 would not get reimbursed by your company?

24 **PROSPECTIVE JUROR:** No, sir. I gave them
25 the notice when I got the notice in. I had
26 to make a trip back down there to take it to
27 them.

28 **BY THE COURT:** I'll let you go then.

29 **BY MR. CARTER:** What was the name?

JURY QUALIFICATION

1 **PROSPECTIVE JUROR:** Justin L. Parker.

2 **BY THE COURT:** And, yes, ma'am, up here.

3 **PROSPECTIVE JUROR:** I'm a stay-at-home
4 mom, and I'm kin to the Defendant on my
5 grandmother's side, plus I'm the only one
6 that can take care of my children.

7 **BY THE COURT:** Okay. What ages are they?

8 **PROSPECTIVE JUROR:** One and three.

9 **BY THE COURT:** And you don't have anybody
10 that could come in and take care of them?

11 **PROSPECTIVE JUROR:** Because my mama see
12 after my grandmother. I had to -- she had to
13 be with my grandmama. So I'll have to keep
14 my kids. And then my husband, he works
15 different shifts. They called him this
16 morning. And my mother-in-law, they work
17 during the day.

18 **BY THE COURT:** So you've got very small
19 children at home and you don't have anybody
20 that could look after them, and so it would
21 create a hardship for people that you provide
22 support to; is that correct?

23 **PROSPECTIVE JUROR:** Yes.

24 **BY THE COURT:** And what's your name?

25 **PROSPECTIVE JUROR:** Shawanda Loggins.

26 **BY THE COURT:** Okay. Well, I'll let you
27 go. And I think I missed somebody over here.
28 I saw a hand.

29 **PROSPECTIVE JUROR:** Yes, sir. I'm the

JURY QUALIFICATION

1 same way as that fellow. I was supposed to
2 go back offshore.

3 **BY THE COURT:** And would this -- does your
4 company -- you may work for the same company,
5 as for all I know.

6 **PROSPECTIVE JUROR:** Work for the same
7 company.

8 **BY THE COURT:** So you're like him, they
9 don't pay if you're not --

10 **PROSPECTIVE JUROR:** No, sir.

11 **BY THE COURT:** And if you miss a week of
12 work, is that going to create a substantial
13 adverse impact --

14 **PROSPECTIVE JUROR:** Yes, sir.

15 **BY THE COURT:** -- on you and the payment
16 of your living expenses?

17 **PROSPECTIVE JUROR:** Yes, sir.

18 **BY THE COURT:** I'll let you go. What's
19 your name?

20 **PROSPECTIVE JUROR:** Wilson Carpenter.

21 **BY THE COURT:** Okay, Mr. Carpenter.

22 And yes, ma'am.

23 **PROSPECTIVE JUROR:** Judge, my name is
24 Dorothy Woods. My husband had two strokes,
25 and I'd like to be available for him.

26 **BY THE COURT:** And are you -- is he in a
27 condition where you have to be at home and
28 tend to him and take care of him?

29 **PROSPECTIVE JUROR:** Yes. He's in a

JURY QUALIFICATION

1 nursing home, but I'm the only one to, you
2 know, go and take care of him.

3 **BY THE COURT:** Do you, like, do that every
4 day?

5 **PROSPECTIVE JUROR:** Yes, sir.

6 **BY THE COURT:** And you have to be there in
7 case something happens?

8 **PROSPECTIVE JUROR:** Yes, sir.

9 **BY THE COURT:** And look after him all the
10 time?

11 **PROSPECTIVE JUROR:** I like to be
12 available.

13 **BY THE COURT:** Well, I think that's -- I
14 understand. And your name is Woods?

15 **PROSPECTIVE JUROR:** Dorothy Woods. Thank
16 you.

17 **BY THE COURT:** Yes, over here. Yes,
18 ma'am.

19 **PROSPECTIVE JUROR:** Well, I take care of
20 my elderly mother-in-law during the day, and
21 I have two children at home as well. They
22 are teenagers but not self-sufficient.

23 **BY THE COURT:** Is anybody available that
24 could come in and provide substitute care for
25 your mother-in-law?

26 **PROSPECTIVE JUROR:** No.

27 **BY THE COURT:** So what type condition is
28 she in?

29 **PROSPECTIVE JUROR:** Well, she's 72 years

JURY QUALIFICATION

1 old, and she has a very hard time getting
2 around, so I'm basically her legs and I do
3 her breakfast and her lunch. It's all during
4 the day, and she has someone at night.

5 **BY THE COURT:** And that person that stays
6 at night couldn't help during the day?

7 **PROSPECTIVE JUROR:** No, they have a job.

8 **BY THE COURT:** And what's your name?

9 **PROSPECTIVE JUROR:** Melissa Donell Bailey.

10 **BY THE COURT:** Well, I'll let you go,
11 Ms. Bailey.

12 And I thought I saw a gentleman.

13 **PROSPECTIVE JUROR:** I work for J.J.
14 Ferguson and pour bridge beams. I am the
15 only level three tech they have on the prefab
16 yard at the moment. Our other supervisor
17 quit last week. They cannot pour concrete
18 without me being there; they are dead in the
19 water.

20 **BY THE COURT:** I think they can -- you
21 know, it's got to be a hardship to an
22 individual. It's not a hardship to the
23 company where you work for.

24 **PROSPECTIVE JUROR:** This would be a
25 definite for the company.

26 **BY THE COURT:** So if it's just for the
27 company then, you know, they'll just have to
28 make do.

29 Yes, ma'am.

JURY QUALIFICATION

1 **PROSPECTIVE JUROR:** I'm a single parent,
2 sole income to my home with two small
3 children. My job -- I do work outside the
4 home, but my job revolves around my children.
5 They stay at home. I feed their breakfast,
6 go to work. I work a mile from my front door
7 so we could have contact. If I were to be
8 here, I would have to hire a sitter, which it
9 would be more than a financial burden because
10 I couldn't do it.

11 **BY THE COURT:** And what type of work is
12 this?

13 **PROSPECTIVE JUROR:** I work for a home for
14 the mentally disabled.

15 **BY THE COURT:** And if you missed work and
16 were not -- do they reimburse you for a
17 jury --

18 **PROSPECTIVE JUROR:** I would get paid. I
19 mean, I would still get paid but my children
20 can't stay by themselves at home if I'm
21 further than that.

22 **BY THE COURT:** And what age are they?

23 **PROSPECTIVE JUROR:** I can be at home in
24 two minutes from my work, and I'm allowed to
25 leave at any time. They're 12 and 13.

26 **BY THE COURT:** And you wouldn't have
27 anybody available at night or --

28 **PROSPECTIVE JUROR:** No. My parents are
29 traveling, and my sister lives in Jackson. I

JURY QUALIFICATION

1 have no one that could do it for free.

2 **BY THE COURT:** So if you had to pay a baby
3 sitter to stay for a week --

4 **PROSPECTIVE JUROR:** I am the only income
5 in my home, period.

6 **BY THE COURT:** And would that have an
7 adverse substantial impact?

8 **PROSPECTIVE JUROR:** Yes, sir, it would.

9 **BY THE COURT:** And what's your name again?

10 **PROSPECTIVE JUROR:** Felicia Bennett.

11 **BY THE COURT:** Okay. I'll let you go,
12 Ms. Bennett.

13 Yes, ma'am.

14 **PROSPECTIVE JUROR:** I own my own business.
15 I'm a baker who bakes birthday cakes. I'm
16 the only one there.

17 **BY THE COURT:** And does all operations
18 cease if you're not there?

19 **PROSPECTIVE JUROR:** Oh, yeah.

20 **BY THE COURT:** Is there any -- I assume
21 you don't have anybody that could take care
22 of this operation?

23 **PROSPECTIVE JUROR:** No, sir.

24 **BY THE COURT:** And if you miss this
25 business, is it going to have a substantial
26 adverse impact on your payment of your
27 necessary daily living expenses?

28 **PROSPECTIVE JUROR:** Well, not on mine but
29 I'd have to cancel all the orders that I

JURY QUALIFICATION

1 already have, the wedding cakes and birthday
2 cakes.

3 **BY THE COURT:** So it would have a pretty
4 bad impact? I mean, if you lose this money
5 from those?

6 **PROSPECTIVE JUROR:** Oh, yeah.

7 **BY THE COURT:** It's going to have a pretty
8 bad impact on your income?

9 **PROSPECTIVE JUROR:** Yeah.

10 **BY THE COURT:** Would that be correct?

11 **PROSPECTIVE JUROR:** Right.

12 **BY THE COURT:** And what's your name?

13 **PROSPECTIVE JUROR:** Sandra Kay Vaughn.

14 **BY THE COURT:** I'll let you go, ma'am.

15 **PROSPECTIVE JUROR:** My name is Krystal
16 Miers. I just had a baby. He's six weeks
17 old, and I don't have anybody to watch him.

18 **BY THE COURT:** I imagine if you have a
19 six-week-old child, I'm sure you need to be
20 there or it needs you, I'm sure. What's your
21 name again?

22 **PROSPECTIVE JUROR:** Krystal Miers.

23 **BY THE COURT:** Okay. I'll let you go.

24 Right here at the back.

25 **PROSPECTIVE JUROR:** Yes. I'm Margaret
26 Bankston. I'm a single parent and the only
27 one bringing in the income.

28 **BY THE COURT:** And where are you working?

29 **PROSPECTIVE JUROR:** With Ansel Highway in

JURY QUALIFICATION

1 Eupora.

2 **BY THE COURT:** And do they reimburse if
3 you were off for jury?

4 **PROSPECTIVE JUROR:** Yeah, but it still
5 ain't going to help me any.

6 **BY THE COURT:** Because?

7 **PROSPECTIVE JUROR:** I'm the only one
8 paying my bills.

9 **BY THE COURT:** Would this have a
10 substantial adverse impact on your payment of
11 necessary daily living expenses?

12 **PROSPECTIVE JUROR:** Yeah.

13 **BY THE COURT:** I'll let you go. What's
14 your name again?

15 **PROSPECTIVE JUROR:** Margaret Bankston.

16 **BY THE COURT:** Okay.

17 **PROSPECTIVE JUROR:** Yes, sir. I run my
18 own business and will be shut down. I have
19 to run a piece of equipment for my own
20 business.

21 **BY THE COURT:** And what type of business
22 are you operating?

23 **PROSPECTIVE JUROR:** Logging operation.

24 **BY THE COURT:** And if you are not there,
25 your work stops?

26 **PROSPECTIVE JUROR:** Oh, yes, sir. I have
27 to run -- I run the cutter that does the
28 cutting.

29 **BY THE COURT:** And they can't go on

JURY QUALIFICATION

1 without that, I'm assuming.

2 **PROSPECTIVE JUROR:** No, sir.

3 **BY THE COURT:** And would this have a
4 substantial adverse impact on your payment of
5 your necessary daily living expenses?

6 **PROSPECTIVE JUROR:** Most definitely, yes,
7 sir.

8 **BY THE COURT:** I'll let you go then.
9 What's your name?

10 **PROSPECTIVE JUROR:** William Robert Cade,
11 Jr.

12 **BY THE COURT:** Okay. I think I saw maybe
13 one more.

14 Yes, ma'am, back there.

15 **PROSPECTIVE JUROR:** I'm a bad diabetic and
16 blood pressure problems, and I can't sit very
17 long or stand very long, and I'm also sick
18 right now.

19 **BY THE COURT:** So you've got a medical
20 problem and that would be diabetes and you're
21 feeling bad already?

22 **PROSPECTIVE JUROR:** Yes, sir.

23 **BY THE COURT:** I'll go ahead and let you
24 go. What's your name?

25 **PROSPECTIVE JUROR:** Magnolia Eskridge.

26 **BY THE COURT:** Magnolia what, ma'am?

27 **PROSPECTIVE JUROR:** Eskridge.

28 **BY THE COURT:** You may go. And that is
29 the next situation I was going to bring up is

JURY QUALIFICATION

1 if anybody's got an illness and on account of
2 the illness you're physically incapable to
3 serve and it would create a physical hardship
4 for you because of inability to serve. Again
5 due to illness, do I have anybody that's --
6 got anybody else? Yes, ma'am. What's your
7 situation, ma'am?

8 **PROSPECTIVE JUROR:** My name is Barbara
9 Keel, and I'm real bad diabetic, also. And I
10 can't sit with my legs down a long period of
11 time because they swell so bad. I have poor
12 circulation in my legs.

13 **BY THE COURT:** Well, I'll let you go
14 because, I mean, if you're sitting over here
15 for several days, you know, we would take
16 recesses, but you wouldn't be able to move
17 around a whole lot, you know, because it
18 would be pretty still most of the time, and i
19 certainly don't want any illness to be
20 brought upon -- you know, ill effects from
21 the diabetes to be brought upon you by you
22 being here. What is your name again?

23 **PROSPECTIVE JUROR:** Barbara Keel. Thank
24 you, sir.

25 **BY THE COURT:** Yes, ma'am. And I see a --
26 yes, ma'am.

27 **PROSPECTIVE JUROR:** I'm six months
28 pregnant, and I have kidney problems, and I
29 need a bathroom break every 20 to 30 minutes.

JURY QUALIFICATION

1 **BY THE COURT:** Well, I -- you know, if
2 you're six months along, I mean, you could
3 have to see the doctor. I mean, I understand
4 how that goes so I'm going to excuse you.
5 What's your name?

6 **PROSPECTIVE JUROR:** Ashley Woods.

7 **BY THE COURT:** Okay, Ms. Woods.

8 And do I have anybody else that would
9 have a situation where a possible illness --
10 yes, ma'am.

11 **PROSPECTIVE JUROR:** My name is Gwynda
12 Miers, and I have a back problem. I also
13 have a herniated and a bulging disk in my
14 neck, and I can't sit down a whole lot like
15 all day long. I take pain medication every
16 day, also.

17 **BY THE COURT:** And are you being treated
18 by a doctor for these problems?

19 **PROSPECTIVE JUROR:** Yes.

20 **BY THE COURT:** And you have been under a
21 doctor's care, I assume, for some time now?

22 **PROSPECTIVE JUROR:** Yes.

23 **BY THE COURT:** And you're taking
24 medication for that as well?

25 **PROSPECTIVE JUROR:** Tramadol.

26 **BY THE COURT:** And that's pretty strong
27 medication? And that probably affects your
28 ability to stay awake, I assume? I'll let
29 you go then. And what is your name again?

JURY QUALIFICATION

1 **PROSPECTIVE JUROR:** Gwynda Miers.

2 **BY THE COURT:** Okay, Ms. Miers, I hope you
3 get better with that problem.

4 The next situation, it would
5 probably -- we've had this occur, but do I
6 have any nursing mothers that have small
7 child and you're a nursing mother and that
8 would result in an exemption, also?

9 Also, if you have been a petit juror
10 within the past two years where you actually
11 came up here and you sat in the jury box and
12 you tried a case from where you sat on a
13 trial of a case? Or if you have served as a
14 grand juror within the past two years where
15 you served on a grand jury, that could be an
16 exemption as well. So do I have anybody that
17 has got an exemption for either of these
18 reasons? Yes, sir.

19 **PROSPECTIVE JUROR:** Jeff Vaughn. I served
20 in March.

21 **BY THE COURT:** Of this year on the grand
22 jury?

23 **PROSPECTIVE JUROR:** Yes, sir.

24 **BY THE COURT:** I think I probably
25 impaneled it last fall. I'll let you go. I
26 appreciate you being here. And I see way
27 back in the back. Yes, ma'am.

28 **PROSPECTIVE JUROR:** I served last year.

29 **BY THE COURT:** Was that the grand jury?

JURY QUALIFICATION

1 **PROSPECTIVE JUROR:** Uh-huh.

2 **BY THE COURT:** And what is your name?

3 **PROSPECTIVE JUROR:** Glenda Allen.

4 **BY THE COURT:** Okay. Ms. Allen, I'll let
5 you go.

6 And I think I saw one other person.
7 Yes, ma'am.

8 **PROSPECTIVE JUROR:** I served on the grand
9 jury in October of last year.

10 **BY THE COURT:** Last year? And what is
11 your name?

12 **PROSPECTIVE JUROR:** Natalie Bullard.

13 **BY THE COURT:** Okay. Well, I'll let you
14 go, Ms. Bullard. And I saw somebody else
15 right behind you --

16 **PROSPECTIVE JUROR:** Annice Dodd, and I
17 served on the grand jury in April of this
18 year.

19 **BY THE COURT:** Okay. And Dodd?

20 **PROSPECTIVE JUROR:** Dodd.

21 **BY THE COURT:** Okay. Ms. Dodd, I
22 appreciate you being here, and you may go.
23 Yes, ma'am.

24 **PROSPECTIVE JUROR:** Mary Lou Morman. I
25 served on the grand jury.

26 **BY THE COURT:** And what's the name again?

27 **PROSPECTIVE JUROR:** Mary Lou Morman.

28 **BY THE COURT:** Okay. Ms. Morman, I
29 appreciate it, and I'll let you go.

JURY QUALIFICATION

Yes, ma'am.

PROSPECTIVE JUROR: Sheila Vance Hodges.

I served on a grand jury. But my question is even if I served on a grand jury this past year, do -- could I still stay here?

BY THE COURT: You can serve. That's a personal exemption. You do not have to claim it if you don't wish to do so.

PROSPECTIVE JUROR: All right.

BY THE COURT: I appreciate your willingness to stay.

Yes, sir.

PROSPECTIVE JUROR: I think if I recall right it was a couple of years ago on the Baxter rape case, I was in the jury on that. Was it last year or year before that?

BY THE COURT: What's your name? The clerk --

PROSPECTIVE JUROR: Johnny Butts. It was on the Baxter -- that rape case. I served on it as a juror.

BY THE COURT: The clerk said it's been more than two years.

PROSPECTIVE JUROR: All right. And also, this case coming up, I'm a former pastor of the accused and plus relative to the family, and I still have ties to the family as pastor.

BY THE COURT: We will take those matters

JURY QUALIFICATION

1 up at a future time. You will be given an
2 opportunity to speak up about that later.

3 Anyone else that's got anything
4 concerning exemptions or qualifications?

5 Yes, ma'am.

6 **PROSPECTIVE JUROR:** Your Honor, I'm
7 severely hard of hearing. I can hear you and
8 understand you but not much else of the
9 what's going on in the courtroom.

10 **BY THE COURT:** Could we make any
11 accommodations that would help you in that
12 regard or you just feel like you -- you know,
13 if we can, I will. But if you tell me you
14 don't think you could hear, then I'll --

15 **PROSPECTIVE JUROR:** Give everybody a
16 microphone.

17 **BY THE COURT:** Hearing is one of the most
18 important things of what a juror does because
19 you listen real closely. But if you don't
20 think you can hear, then I will let you go.

21 **PROSPECTIVE JUROR:** I have to be facing.
22 I have to be -- you know, I do some lip
23 reading.

24 **BY THE COURT:** Well, I'll excuse you,
25 because I know at times some witnesses tend
26 to not talk loud. And I even sometimes,
27 sitting where I am, I have to tell them to
28 speak up, so I'll let you go and I do
29 appreciate you bringing that up to me. And

JURY QUALIFICATION

1 what is your name?

2 **PROSPECTIVE JUROR:** Laster, Deborah
3 Laster.

4 **BY THE COURT:** Okay. Ms. Laster.
5 Yes, ma'am.

6 **PROSPECTIVE JUROR:** Your Honor, I'm
7 enrolled in a summer school class that is
8 online but this class is vital to me
9 continuing my employment. I just don't know
10 if could miss a week of not being able to
11 check in online and get assignments.

12 **BY THE COURT:** And how long does this
13 course last?

14 **PROSPECTIVE JUROR:** It lasts six weeks.

15 **BY THE COURT:** So you would be missing --

16 **PROSPECTIVE JUROR:** I've just started it
17 this week.

18 **BY THE COURT:** And this would have a
19 substantial impact on your --

20 **PROSPECTIVE JUROR:** Yes, it would.

21 **BY THE COURT:** -- future income?

22 **PROSPECTIVE JUROR:** My job is dependent
23 upon me completing this class.

24 **BY THE COURT:** And what is your name?

25 **PROSPECTIVE JUROR:** I'm Debra Balle.

26 **BY THE COURT:** I'll let you go, Ms. Balle.

27 **PROSPECTIVE JUROR:** How long are the
28 breaks for in between when the case start?
29 Because I can't sit but about an hour because

JURY QUALIFICATION

1 this medicine requires that I go to the
2 restroom.

3 **BY THE COURT:** Well, what I always tell
4 all the jurors if you're actually up here
5 sitting, if at any time a juror needs a
6 break, get my attention or the attention of
7 one of the bailiffs, and we will immediately
8 recess. Because I certainly want -- I try my
9 best to take care of my jurors. Because I
10 realize that you're performing a big civic
11 duty when you're serving, so if you actually
12 sat up here and you were trying the case and
13 sitting on the jury and you needed a recess,
14 just -- you know, the bailiffs will be
15 sitting over there, and I'm sitting up here.
16 And you just pass a note to the bailiff or
17 just kind of wave at them, and we would call
18 a recess to accommodate you at any time you
19 needed one.

20 **PROSPECTIVE JUROR:** Okay.

21 **BY THE COURT:** Would that be sufficient?

22 **PROSPECTIVE JUROR:** Thank you.

23 **BY THE COURT:** Yes, ma'am. Back here in
24 the back.

25 **PROSPECTIVE JUROR:** I'm enrolled in a
26 summer school course which is three weeks
27 long.

28 **BY THE COURT:** How long is the course?

29 **PROSPECTIVE JUROR:** Three weeks.

JURY QUALIFICATION

1 **BY THE COURT:** And you would miss a good
2 part of it if you were up here. And what
3 about -- and I assume that would have an
4 adverse impact on your education and your
5 ability to pay expenses and things; is that
6 correct?

7 **PROSPECTIVE JUROR:** Yes, sir.

8 **BY THE COURT:** And what is your name
9 again?

10 **PROSPECTIVE JUROR:** Phillip Crawford.

11 **BY THE COURT:** And I think I saw one.

12 **PROSPECTIVE JUROR:** I start a new job
13 Monday.

14 **BY THE COURT:** Well, now, they've got to
15 let you off to be up here, you know. Unless
16 it's going to create some severe impact on
17 your payment of your bills. What type job is
18 this?

19 **PROSPECTIVE JUROR:** Wal-Mart.

20 **BY THE COURT:** And -- because they've got
21 to let you off. But, now, is it going to be
22 a substantial adverse impact on your income
23 if you're not there?

24 **PROSPECTIVE JUROR:** Yes, because I'm the
25 only one paying my bills.

26 **BY THE COURT:** And what's your name?

27 **PROSPECTIVE JUROR:** Latesha Ervin.

28 **BY THE COURT:** Well, I'll let you go then.
29 I think I see two more. Yes, ma'am.

JURY QUALIFICATION

1 **PROSPECTIVE JUROR:** Billie Fay Elliott,
2 and I have two appointments I got set up that
3 I was supposed to miss for next week.

4 **BY THE COURT:** And what type appointments
5 is this?

6 **PROSPECTIVE JUROR:** I'm getting a MRI did,
7 some x-rays did on my knee.

8 **BY THE COURT:** So you are having some
9 medical difficulties, and they're requiring
10 some medical attention?

11 **PROSPECTIVE JUROR:** Yes.

12 **BY THE COURT:** Are these things -- are
13 these things that could be postponed or is
14 this some emergency type, you know, where you
15 are in a lot of pain and need to see?

16 **PROSPECTIVE JUROR:** I'm in some pain. But
17 he wants me to go and get the MRI.

18 **BY THE COURT:** Well, if you've already got
19 these things scheduled, I'm sure the doctor
20 didn't order them for no reason, and I'm sure
21 you need to do it or he wouldn't have ordered
22 them. What's your name?

23 **PROSPECTIVE JUROR:** Billie Fay Elliott.

24 **BY THE COURT:** Okay, Ms. Elliott.

25 And then I saw a gentleman. Yes,
26 sir.

27 **PROSPECTIVE JUROR:** I'm also enrolled in
28 summer school.

29 **BY THE COURT:** Are you going to miss -- I

JURY QUALIFICATION

1 assume you would miss all classes?

2 **PROSPECTIVE JUROR:** It's for ten weeks.

3 **BY THE COURT:** For ten weeks? And you
4 would be missing a good bit of class and
5 would have an adverse impact on you and on
6 your education; is that correct?

7 **PROSPECTIVE JUROR:** Yes, sir.

8 **BY THE COURT:** And what's your name?

9 **PROSPECTIVE JUROR:** Deonne Moore.

10 **BY THE COURT:** Well, I appreciate your
11 being here, and you may go.

12 Now, ladies and gentlemen, if the
13 remainder of you will please stand and raise
14 your right hand and the clerk will administer
15 an oath to you. This will be your oath to
16 try the issues.

17 **CIRCUIT CLERK:** Do you and each of you
18 solely swear or affirm that you will well and
19 truly try the issues between the State of
20 Mississippi and Curtis Giovanni Flowers and a
21 true verdict give according to the evidence
22 and the law, so help you God?

23 **PROSPECTIVE JURORS:** I do.

24 **BY THE COURT:** Now, ladies and gentlemen,
25 you can be seated for a minute and then I'll
26 let you go.

27 **BY THE BAILIFF:** Your Honor, she didn't
28 get the oath.

29 **BY THE COURT:** Okay. We'll just give that

JURY QUALIFICATION

1 to her in just a few minutes, then.

2 As I told you a few minutes ago, when
3 we first started, we were going through the
4 legal qualifications and the legal exemptions
5 today. We will actually, Monday morning,
6 start asking facts specific about the case to
7 make sure that you do -- that you can be a
8 fair and impartial juror in the trial. The
9 purpose of asking those questions will be
10 strictly to make sure that we do get a fair
11 and impartial jury for the case.

12 Now, the situation is this: If you
13 are selected for the jury and you are called
14 to serve on the jury, you will be sequestered
15 for the trial. Sequester means you will be
16 kept together as a group once selected and
17 you would not be allowed to return home or go
18 anywhere until the trial is concluded.

19 You will be put up in some hotel and
20 will be staying together as a group. So to
21 ensure that you have your necessary clothing
22 items, personal items of any type that you
23 might need, you need to maybe go ahead and
24 pack a suitcase and bring it with you on
25 Monday and be prepared for an extended stay.

26 Also, I'll ask that you not bring any
27 cellular telephones or any electronic means
28 of communication with you or pack those with
29 you in your belongings that you do bring.

JURY QUALIFICATION

1 And also, from now until your jury
2 service is concluded, please do not talk
3 about this case with anyone. Do not listen
4 to anyone that is talking about it. Do not
5 discuss it with anyone or have any
6 communication with anyone about the case.
7 Please do not read any newspaper articles
8 about the case or any Internet articles or
9 any other written form of communication about
10 the case. Also, do not listen to any radio,
11 television, Internet or any other type
12 broadcast or communication about the case.

13 And obviously, you can't go out today
14 and start investigating the case or going and
15 looking at scenes or anything involved or
16 locations involved in the case. And with
17 that, ladies and gentlemen, if you'll be back
18 here at 9 o'clock Monday morning and we'll
19 proceed at that point with the actual
20 questioning of you as to the facts.

21 Yes, ma'am.

22 **PROSPECTIVE JUROR:** My name is Beverly
23 Locke, and I didn't realize there would be a
24 sequestering thing. I care for my
25 73-year-old mother who has had strokes. Her
26 mobility is very poor.

27 **BY THE COURT:** I'll take yours up in just
28 a minute. I'll go ahead let these other
29 people go, and you can stick around, and

JURY QUALIFICATION

1 we'll take that up. And then I saw a lady
2 that didn't get sworn in a minute ago, so
3 I'll take your situation up. I've got two or
4 three of you that need to hang around for
5 various reasons, and the remainder of you can
6 go, and we'll take your issues up
7 individually in a few minutes.

8 **PROSPECTIVE JUROR:** I need to talk to you.

9 **BY THE COURT:** Okay. We'll let you do
10 that. As I say, all of you go except if
11 you've got -- I saw two or three people that
12 maybe needed to bring something up.

13 (PROSPECTIVE JURORS EXIT THE COURTROOM)

14 **BY THE COURT:** Now, the only issue I'll
15 want to take up with you that remain is if
16 you've got something that specifically
17 involves your qualifications to serve or some
18 special exemption concerning jury service,
19 then I'll take those up. Any other matters,
20 I will take up later. I'll ask that you each
21 step outside. The bailiff will just bring
22 you in one at a time, and I'll hear your
23 issues that you have.

24 (JURORS LEAVES COURTROOM. JUROR IVAN
25 SANFORD ENTERS THE COURTROOM)

26 **BY THE COURT:** And what is your name, sir?

27 **PROSPECTIVE JUROR:** Ivan Glenn Sanford.
28 Your Honor, I'm having marital problems. And
29 I have been out of work since the first of

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1 the year.

2 **BY THE COURT:** If you'll tell me again,
3 I'm having trouble hearing you.

4 **PROSPECTIVE JUROR:** I said I'm having
5 marital problems right now. I'm in the
6 process of trying to get my home sold, and
7 I'm in the process of relocating and finding
8 a new job and this would really kind of slow
9 me down. I need to get all these things
10 done. I want to get all this behind me, Your
11 Honor. This is all my -- my mind would not
12 be here.

13 **BY THE COURT:** So you're saying you just
14 do not feel like you could concentrate?

15 **PROSPECTIVE JUROR:** I really don't. I'm
16 being truthful with you. I've got to get to
17 work because I'm the only one left to work.

18 **BY THE COURT:** Have you got a job lined up
19 now?

20 **PROSPECTIVE JUROR:** I'm supposed to
21 interview in Yazoo City for a job.

22 **BY THE COURT:** If you'll step outside for
23 a minute.

24 (JUROR LEAVES COURTROOM)

25 **BY THE COURT:** Have y'all got any
26 questions? I mean, I want somebody that's up
27 here that's going to give it their undivided
28 attention honest. And he said he's not going
29 to be able to do that. But if y'all want me

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1 to keep him around, I will do that, too.

2 **BY MRS. STEINER:** We don't have any
3 objection.

4 **BY THE COURT:** Does the State have any
5 objection to him?

6 **BY MR. EVANS:** No, Your Honor.

7 **BY THE COURT:** (To the bailiff) You can
8 tell Mr. Sanford he can go ahead and be
9 excused.

10 (JUROR KAREN COOPER ENTERS THE
11 COURTROOM)

12 **BY THE COURT:** What is your name?

13 **PROSPECTIVE JUROR:** Karen Cooper.

14 **BY THE COURT:** And what is your situation?

15 **PROSPECTIVE JUROR:** I didn't want to
16 advertise that we're going to be out of town
17 for the week. My husband and I had already
18 had a previous engagement. My husband and I
19 had already had the previous engagement to
20 leave Sunday for the job training in
21 Shreveport.

22 **BY THE COURT:** What type of --

23 **PROSPECTIVE JUROR:** He's going to be the
24 relief mechanic for MedStat, and he has to go
25 through a week of training there. And it
26 starts Monday, but we've got to go down
27 Sunday night to be there at 8:00.

28 **BY THE COURT:** Is this something you're
29 going to be required to be at?

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1 **PROSPECTIVE JUROR:** No, sir, I'm not
2 required to be there. I had previously taken
3 off to spend that week with him, but I'm not
4 required to be there.

5 **BY THE COURT:** If you'll will step out a
6 minute, I'll confer with counsel.

7 (JUROR LEAVES THE COURTROOM)

8 **BY MR. CARTER:** Well, I take my wife with
9 me a lot, and it's kind of hard for me to
10 stop her from doing it if she wants to do it.

11 **BY MR. EVANS:** I don't think it's a valid
12 reason. It's not something that's necessary.
13 If they were having a planned vacation for
14 some length of time, it would be a little
15 different than just wanting to go along
16 for --

17 **BY THE COURT:** I think the trip -- I got
18 the impression -- had been planned for a
19 while. But I don't know if an unhappy juror
20 is going to be a good juror.

21 **BY MR. EVANS:** Well, probably everybody
22 out there is going to be unhappy.

23 **BY THE COURT:** Yeah, but going to be more
24 than unhappy.

25 **BY MR. EVANS:** I don't have an opinion one
26 way or the other, whatever you want.

27 **BY MR. CARTER:** We certainly don't object,
28 Judge.

29 **BY MR. EVANS:** Whatever the Court finds is

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1 fine.

2 **BY THE COURT:** I know how I would feel if
3 I was sequestered when I was supposed to be
4 on a trip.

5 (To the bailiff) Just tell her she
6 can go.

7 (JUROR DOLLIE RATLIFF ENTERS THE
8 COURTROOM)

9 **BY THE COURT:** If you'll come on down,
10 ma'am. Kind of just stand there so everybody
11 can see you. And what is your name?

12 **PROSPECTIVE JUROR:** My name is Dollie
13 Ratliff.

14 **BY THE COURT:** And have you got something
15 involving your qualification?

16 **PROSPECTIVE JUROR:** No. I was going to
17 say that the Defendant, the one that's on
18 trial, him and my husband -- his dad is first
19 cousins.

20 **BY THE COURT:** So your husband and
21 Mr. Flowers' daddy?

22 **PROSPECTIVE JUROR:** Uh-huh, first cousins.
23 We're real close.

24 **BY THE COURT:** So you're real close to
25 Curtis and his family?

26 **PROSPECTIVE JUROR:** Right.

27 **BY THE COURT:** And Mr. Archie?

28 **PROSPECTIVE JUROR:** Right.

29 **BY THE COURT:** Would that influence you in

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1 being a fair and impartial juror in the case?
2 I mean, could you sit in judgment on him with
3 that family relationship?

4 **PROSPECTIVE JUROR:** We're real close.

5 **BY THE COURT:** So would that come into
6 play and affect you?

7 **PROSPECTIVE JUROR:** I imagine it would,
8 because we're real close. Archie and the
9 family, we're real close.

10 **BY THE COURT:** So you're saying you do not
11 feel like you could be fair to both sides?

12 **PROSPECTIVE JUROR:** I don't. I don't.

13 **BY THE COURT:** You could not?

14 **PROSPECTIVE JUROR:** I don't think so.
15 Like I say, when you're real close to
16 somebody you just --

17 **BY THE COURT:** I understand, ma'am. I'm
18 not trying to belittle you or anything like
19 that.

20 **PROSPECTIVE JUROR:** I'm just telling you
21 the truth, you know, when you're real close.
22 And, you know, I honestly tell the truth.

23 **BY THE COURT:** I appreciate what you're
24 saying, and I'm not questioning what you're
25 saying in the least bit. I just wanted to
26 make sure that you are saying that you pretty
27 much know in your heart right now you could
28 not be fair and impartial to both sides
29 because of this family tie.

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1 **PROSPECTIVE JUROR:** I have to think on it.
2 You know, I'm not sure if I could.

3 **BY THE COURT:** So in the back of your
4 mind, you've got a real doubt about whether
5 you could lay --

6 **PROSPECTIVE JUROR:** Right.

7 **BY THE COURT:** -- family ties aside?

8 **PROSPECTIVE JUROR:** Right. I don't know
9 if I could. Like I say, we was just close,
10 you know.

11 **BY THE COURT:** Either side have any
12 questions for Ms. Ratliff?

13 **BY MR. EVANS:** Ms. Ratliff, I understand
14 that y'all are real close. And from what
15 you're saying, all of that would enter into
16 your thoughts if you were on the jury; is
17 that right?

18 **PROSPECTIVE JUROR:** Yes, sir.

19 **BY MR. EVANS:** And because of that, it
20 would make it impossible for you to serve as
21 a juror on this particular case; is that
22 right?

23 **PROSPECTIVE JUROR:** (Nodding head).

24 **BY MR. EVANS:** That's all I have, Your
25 Honor.

26 **BY MR. CARTER:** I have one in light of
27 that. Now, Mr. Evans used the word
28 impossible. Now, you certainly have told
29 us -- and we accept it -- that you would be

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1 uncomfortable serving in this case and maybe
2 would be impossible for you to be fair to
3 both sides. So you're saying that although
4 you're uncomfortable serving in this case if
5 you got picked as a juror, not only would you
6 be uncomfortable, it would be impossible for
7 you to be fair to the prosecution and the
8 Defendant considering that you know
9 Mr. Flowers and like his family and that kind
10 of thing?

11 **PROSPECTIVE JUROR:** Probably. Because you
12 already have your opinion on it, so it
13 probably would be.

14 **BY MR. CARTER:** Okay. So you're saying
15 you already have an opinion about it. Would
16 you also, if you sat on this jury and found
17 the guilt of Mr. Flowers, would you be
18 concerned about the relationship with the
19 Flowers?

20 **PROSPECTIVE JUROR:** I don't know about the
21 relationship, you know, some -- like I say,
22 if you're related to somebody and you've
23 already done heard all about it, you already
24 have in your mind.

25 **BY MR. CARTER:** Okay. So you're saying
26 what you've heard, you don't believe you
27 could put it aside?

28 **PROSPECTIVE JUROR:** Probably couldn't.

29 **BY MR. CARTER:** Okay. No further

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1 questions.

2 **BY THE COURT:** I'm going to allow you to
3 go, Ms. Ratliff, and be excused, and you
4 don't have to come back.

5 **PROSPECTIVE JUROR:** All right. Thank you.

6 **BY THE COURT:** Yes, ma'am, thank you.

7 (JUROR LEAVES THE COURTROOM. JUROR
8 PEGGY CHAMBLEY ENTERS THE COURTROOM)

9 **PROSPECTIVE JUROR:** Where do y'all want
10 me?

11 **BY THE COURT:** You can come on up here and
12 kind of -- maybe stand next to the podium
13 there and kind of look toward all of us,
14 because the court reporter has got to hear
15 what you're saying and all the attorneys kind
16 of want to hear.

17 Now, what was your name?

18 **PROSPECTIVE JUROR:** My name is Peggy
19 Chambley.

20 **BY THE COURT:** And what is your situation?

21 **PROSPECTIVE JUROR:** I'm hearing impaired.
22 I wear hearing aids, and I have to read lips
23 quite a bit. I mean, some of these that were
24 in here today saying why they couldn't, I
25 couldn't hear what they were saying. So I'm
26 pretty much definitely totally deaf in my
27 right ear. I can hear out of my left ear to
28 a degree, but I wear them in both ears.

29 **BY THE COURT:** And certainly, we -- and,

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1 you know, if you're able to serve and you
2 want to serve, then we certainly don't want
3 to -- you know, hearing impairment -- because
4 I certainly want to accommodate anybody
5 that's got any kind of disability of any
6 kind. But if you're telling me that you do
7 not feel like you could listen and understand
8 and if there's not any accommodations that we
9 could make for you that would assist you
10 there, then --

11 **PROSPECTIVE JUROR:** Well, I could some but
12 there may be some that talks lower than
13 others and then there I'd be stuck. I mean,
14 you know. It's not like I can't hear you
15 totally.

16 **BY THE COURT:** Right.

17 **PROSPECTIVE JUROR:** But, you know, I'm
18 just afraid there may be some soft spoken
19 ones up there and there I'll be, you know.

20 **BY THE COURT:** Well, I appreciate it, and
21 I'm going to let you go, because I know from
22 every trial -- not just -- you know, every
23 trial I've ever had, there are times when
24 witnesses tend to whisper. They get to where
25 they're just kind of timid or something. And
26 certainly whoever is sitting there, we want
27 them to be able to hear every word that's
28 spoken, and so I'm going to go ahead and let
29 you go.

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1 **PROSPECTIVE JUROR:** I'm just afraid I
2 can't hear everybody clearly, and that would
3 be unfair.

4 **BY THE COURT:** And I appreciate you
5 bringing that to my attention.

6 **PROSPECTIVE JUROR:** Thank you.

7 **BY THE COURT:** Yes, ma'am.

8 (JUROR CHAMBLEY LEAVES THE COURTROOM.
9 JUROR LISA VANCE ENTERS THE COURTROOM)

10 **BY THE COURT:** If you'll just kind of
11 stand there, and you can tell us your name
12 and what you need to bring to the Court's
13 attention. What's your name, please?

14 **PROSPECTIVE JUROR:** Lisa Vance.

15 **BY THE COURT:** Lisa Vance. And what is
16 the situation, Ms. Vance?

17 **PROSPECTIVE JUROR:** I'm sorry. I should
18 have raised my hand earlier, but I really
19 feel it's my duty to serve, and I would like
20 to but I'm not sure I would be able to. I'm
21 on a lot of pain medication. My attention
22 span is kind of short.

23 **BY THE COURT:** Are you under a doctor's
24 care for it?

25 **PROSPECTIVE JUROR:** Yes. I see a doctor
26 in January once a month, and I'm on a lot of
27 narcotics, pain patch.

28 **BY THE COURT:** Do these medications affect
29 your ability to stay awake and stay alert?

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1 And what type of medications?

2 **PROSPECTIVE JUROR:** I'm on a Duragesic
3 pain patch, and I take oxycodone for break
4 through pain, and then I was just diagnosed
5 with interstitial cystitis, too, and that
6 affects my bladder and my ability to --

7 **BY THE COURT:** So you've just got multiple
8 problems health-wise right now that would
9 prevent you from physically being able to
10 serve --

11 **PROSPECTIVE JUROR:** And I would really
12 love to serve. I just don't know that I
13 would be able to.

14 **BY THE COURT:** I'll let you go, Ms. Vance,
15 and I hope your health problems improve.

16 **PROSPECTIVE JUROR:** Thank you.

17 (JUROR VANCE LEAVES THE COURTROOM.

18 JUROR MARJORIE PEARSON ENTERS THE
19 COURTROOM)

20 **BY THE COURT:** If you'll come on down,
21 ma'am, and come inside the rail here. And if
22 you'll just kind of stand up here and you can
23 just tell us all what the situation is. What
24 is your name, please?

25 **PROSPECTIVE JUROR:** Marjorie May Pearson.
26 I'm just not sure if I'm mentally capable of
27 sitting on a jury.

28 **BY THE COURT:** Have you been diagnosed
29 with learning disabilities or problems like

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1 that or what's -- what causes you to think
2 that?

3 **PROSPECTIVE JUROR:** Well, I'm distracted
4 easily, and I'm also not comfortable with
5 judging somebody. I'm a Christian Baptist.

6 **BY THE COURT:** What level of education do
7 you have?

8 **PROSPECTIVE JUROR:** I've been to some
9 college, but I didn't get a degree.

10 **BY THE COURT:** Are you under a doctor's
11 care for any psychiatric disorders or
12 anything?

13 **PROSPECTIVE JUROR:** I've been meaning to
14 go, but I just haven't. I don't really have
15 a ride and I have to -- if my brother doesn't
16 work, then I borrow his vehicle.

17 **BY THE COURT:** Are you taking any
18 medications now for any problems?

19 **PROSPECTIVE JUROR:** No.

20 **BY THE COURT:** At this time, I'll just ask
21 you to come back Monday, and we can probably
22 get further into this if we need to.

23 **PROSPECTIVE JUROR:** I get highly nervous,
24 and I just wanted you to be aware of that.

25 **BY THE COURT:** Okay. I appreciate you
26 bringing that up.

27 **PROSPECTIVE JUROR:** Thank you.

28 (JUROR PEARSON LEAVES THE COURTROOM.

29 JUROR MARTHA MCKEY ENTERS THE COURTROOM)

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1 **BY THE COURT:** Yes, ma'am, if you'll come
2 on down and just kind of stand inside here,
3 the rail of the Court and tell us what your
4 situation might be. And what's your name,
5 please?

6 **PROSPECTIVE JUROR:** My name is Martha
7 McKey.

8 **BY THE COURT:** And you needed to bring
9 something to our attention?

10 **PROSPECTIVE JUROR:** Right. We had
11 discussed the situation with the sitting, and
12 also, I'm very absentminded. I'm not just
13 saying that to get out of it. I don't
14 remember things too well. I'm afraid that if
15 I'm trying to sit and listen and pull
16 information together, I might forget
17 something and not do a good job. And I'm
18 embarrassed about having to constantly get up
19 and go out to the restroom.

20 **BY THE COURT:** So you've got some
21 medication?

22 **PROSPECTIVE JUROR:** Yes. I have that -- I
23 don't have my purse so I can't tell you the
24 name of the high blood pressure medication
25 that causes me to --

26 **BY THE COURT:** Frequently have to leave?

27 **PROSPECTIVE JUROR:** Right.

28 **BY THE COURT:** So you have high blood
29 pressure and this affects your --

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1 **PROSPECTIVE JUROR:** Even when I worked,
2 this was a situation when I wasn't under
3 medication but I had an agreement with my
4 principal that I could leave the classroom so
5 I would go out. Because my doctor said I had
6 to keep my urinary tract clear.

7 **BY THE COURT:** And are you retired now or
8 taking some disability retirement or --

9 **PROSPECTIVE JUROR:** Oh, no. I don't have
10 a disability. I'm just retired.

11 **BY THE COURT:** Oh. Well, are you -- you
12 feel like if I -- you know, like if you were
13 sitting on the jury and I called a recess
14 whenever you asked for one, do you think that
15 would help?

16 **PROSPECTIVE JUROR:** I don't mind, but I
17 just don't want to inconvenience other people
18 because, you know, when I -- like when I went
19 out just then, I tried to sit a long time.
20 And so when I finally went out, then I'm real
21 nervous from holding it so long. And then
22 this lady come out to the restroom and said,
23 "He didn't excuse you." Well, I understood
24 that I wasn't excused, but I was hating to
25 leave for fear I would miss something. And
26 then I was like, You wasn't excused. Well, I
27 knew that. I left my things on the seat.

28 **BY THE COURT:** Well, I -- do not worry
29 about inconveniencing anybody because, again,

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1 I want to make sure my jurors are taken good
2 care of. And that's, you know -- I got two
3 concerns when I'm trying a case. That's to
4 make sure that I'm a completely fair and
5 impartial judge and rule on all matters that
6 come before me that way. And the second
7 concern is my jury, because I want the jurors
8 to be taken care of and accommodated in any
9 possible way that we can do so.

10 **PROSPECTIVE JUROR:** And I have one other
11 concern. And seriously, I'm not looking for
12 excuses but I'm just sharing --

13 **BY THE COURT:** Yes, ma'am.

14 **PROSPECTIVE JUROR:** -- because I don't
15 want to be -- something happens and they say,
16 Well, you didn't say this or that. In the
17 accommodations where we have -- do we have to
18 share a room with people?

19 **BY THE COURT:** No, you will not.

20 **PROSPECTIVE JUROR:** Because I'm paranoid
21 about sleeping with strangers.

22 **BY THE COURT:** Well, I don't blame you.
23 I'm not a good -- well, I mean, I wouldn't
24 like to be put up with some stranger I didn't
25 know, either. So you will be in a room --

26 **PROSPECTIVE JUROR:** Okay, then. I can use
27 the restroom. I don't have to sleep with
28 strangers. I will probably be fine.

29 **BY THE COURT:** You will be in a room by

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1 yourself.

2 **PROSPECTIVE JUROR:** Okay.

3 **BY THE COURT:** And also, again, when we're
4 going through the process if, you know, at
5 any time you need a break to go the restroom,
6 let me know that. Wave your hand or
7 something. Also, on Monday, you know, we'll
8 be questioning the jury like we did today
9 except we'll be going into more details on
10 things. And if you need a break at any time
11 during that process, please just let me know
12 that because, as I say, you know, my concern
13 is your concern.

14 **PROSPECTIVE JUROR:** Okay. And remember,
15 I'm absentminded, so if I say that I didn't
16 do this and then later on I remember, I'd
17 hate to go to jail based on my absentminded.

18 **BY THE COURT:** Well, you're not going to
19 go to jail. I mean, if you're listening to
20 the testimony, you can have a note pad and
21 you can write down notes the entire trial if
22 you want to do that, too.

23 **PROSPECTIVE JUROR:** Okay.

24 **BY THE COURT:** So you can take extensive
25 notes and you -- you know, but as I say, you
26 know, you can be sure I'm going to make sure
27 you're taken care of.

28 **PROSPECTIVE JUROR:** Okay. Thank you.

29 **BY THE COURT:** Yes, ma'am. I think

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1 maybe -- okay. You got that second oath.
2 Okay. That will be all, then, Ms. McKey, and
3 if you'll just be back in here on Monday
4 morning.

5 (JUROR MCKEY LEAVES THE COURTROOM.

6 JUROR JOHNNY BUTTS ENTERS THE COURTROOM)

7 **BY THE COURT:** If you'll kind of stand
8 here so everybody can see you and hear you.
9 Now, what is your name?

10 **PROSPECTIVE JUROR:** Johnny Albert Butts.

11 **BY THE COURT:** What's the name again?

12 **PROSPECTIVE JUROR:** Johnny Albert Butts.

13 **BY THE COURT:** Johnny Albert Butts. Okay.
14 And you --

15 **PROSPECTIVE JUROR:** I'm a former pastor of
16 the Flowers' family and also a spiritual
17 counselor. And I've kind of been with them
18 since day one as one of their spiritual
19 counselors.

20 **BY THE COURT:** And have you discussed this
21 case with them --

22 **PROSPECTIVE JUROR:** No. I haven't. We
23 haven't got into the case. You know, pastors
24 and members have their -- have things that
25 they talk about. And we don't share others.

26 **BY THE COURT:** I understand you've got a
27 pastor confidence --

28 **PROSPECTIVE JUROR:** Right.

29 **BY THE COURT:** -- and people tell you --

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1 **PROSPECTIVE JUROR:** They talk to me about
2 it, and we've been sharing about it since it
3 happened. But they are not my members any
4 longer, but we still have ties and being a
5 close relative, too. And as I have been a
6 pastor with him, I just don't think I could
7 really handle dealing with this case.

8 **BY THE COURT:** And are you related as
9 well?

10 **PROSPECTIVE JUROR:** Yes, related and
11 pastor -- former pastor.

12 **BY THE COURT:** And how are you related?

13 **PROSPECTIVE JUROR:** As a matter of fact,
14 my dad -- my dad -- my dad's mother and his
15 mother they are, I think, like first or
16 second cousins so that gives us pretty close
17 ties.

18 **BY THE COURT:** And would these factors
19 influence you in being a fair and impartial
20 juror or are you saying you do not feel you
21 could be fair --

22 **PROSPECTIVE JUROR:** I just wouldn't want
23 to deal with it. I've been a pastor and
24 related to them, too, dealt with the children
25 and worked with them. I've shared with them
26 and given them advice in life and then to sit
27 there and to make a decision on the, you
28 know, outcome of his future. I just don't
29 think as an ex-pastor and cousin I would like

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1 sit there and deal with that.

2 **BY THE COURT:** And so are you telling me
3 that those factors --

4 **PROSPECTIVE JUROR:** Yes. They would
5 possibly have some -- you know, some leaning
6 on which way I would --

7 **BY THE COURT:** So you could not be fair
8 and impartial because of those family ties?

9 **PROSPECTIVE JUROR:** No. I don't think I
10 could, to be fair with you.

11 **BY THE COURT:** Well, I appreciate that.
12 So you're just saying --

13 **PROSPECTIVE JUROR:** I'd just rather not.

14 **BY THE COURT:** -- you know, you know these
15 people and because of that, you could not sit
16 in judgment --

17 **PROSPECTIVE JUROR:** I've got close ties.

18 **BY THE COURT:** Right. I understand what
19 you're saying.

20 **PROSPECTIVE JUROR:** Close ties.

21 **BY THE COURT:** Either side have any
22 questions?

23 **BY MR. EVANS:** I think he's covered it,
24 Your Honor.

25 **BY MR. CARTER:** I have one, Your Honor.

26 **PROSPECTIVE JUROR:** Yes, sir.

27 **BY MR. CARTER:** Now, have you formed an
28 opinion one way or another in terms of guilt
29 or not guilty?

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1 **PROSPECTIVE JUROR:** Well, sir, being a
2 pastor and a Bible scholar and a Christian
3 myself, there is one thing that I've always
4 felt that is forgiveness -- to forgive a
5 person in a place where I'm making a decision
6 about life or death, I feel forgiving a
7 person. But as far as me making a decision,
8 life or death, that's out of my hands. I
9 don't do that.

10 **BY MR. CARTER:** Okay.

11 **PROSPECTIVE JUROR:** So to be frank with
12 you, if you want the truth from me -- I'm
13 just being truthful.

14 **BY MR. CARTER:** Okay. So if I'm
15 understanding you, you're saying that you're
16 uncomfortable --

17 **PROSPECTIVE JUROR:** Yes, yes.

18 **BY THE COURT:** -- making a decision as to
19 guilt or innocence or as to life or death?

20 **PROSPECTIVE JUROR:** Life or death.

21 **BY MR. CARTER:** That's to life or death.
22 And because you're uncomfortable with that,
23 would that cause you to be unfair to the
24 prosecution?

25 **PROSPECTIVE JUROR:** Well, like --

26 **BY THE COURT:** If you got to serve as a
27 juror --

28 **PROSPECTIVE JUROR:** Okay. Well, for
29 instance, if the prosecution asks for the

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1 death penalty, then if I would be on the jury
2 to make that decision for death, I wouldn't
3 be able to do it.

4 **BY MR. CARTER:** Okay. So you're saying
5 you couldn't consider life and death equally?
6 See, let me say --

7 **PROSPECTIVE JUROR:** I know what you're
8 saying.

9 **BY MR. CARTER:** Nobody's telling you how
10 you have to vote --

11 **PROSPECTIVE JUROR:** Right. Right.

12 **BY MR. CARTER:** But you are required to
13 consider both, both options and consider them
14 fairly. So are you saying you couldn't
15 consider --

16 **PROSPECTIVE JUROR:** Life, I would.

17 **BY MR. CARTER:** But you wouldn't even
18 consider death?

19 **PROSPECTIVE JUROR:** I wouldn't even
20 consider death.

21 **BY MR. CARTER:** No further questions.

22 **BY THE COURT:** Mr. Butts, because of your
23 family ties, because of your pastoral
24 relationship and because of these other
25 reasons, I will go ahead and excuse you and
26 not require you to be --

27 **PROSPECTIVE JUROR:** I appreciate that,
28 sir. Have a good day.

29 (JUROR BUTTS LEAVES THE COURTROOM.)

INDIVIDUAL VOIR DIRE - JURY OUT

JUROR KENNETH TOWNSEND ENTERS THE
COURTROOM)

BY THE COURT: If you'll come on down and
just stand down here with us. What is your
name, sir?

PROSPECTIVE JUROR: Kenneth Townsend.

BY THE COURT: And, Mr. Townsend, you've
had something you thought you needed to bring
up about jury service or something concerning
the case?

PROSPECTIVE JUROR: No. I got somebody
keeping my mama, and I have to be there with
her every day or she'll wander off. But who
I got keeping her, they got to go to work at
12 o'clock.

BY THE COURT: So you've got an elderly
mother that you're having to look after; is
that correct?

PROSPECTIVE JUROR: Yes, yeah.

BY THE COURT: And nobody that can --

PROSPECTIVE JUROR: Nobody.

BY THE COURT: And so does she stay with
you or you stay at her house?

PROSPECTIVE JUROR: I stay at her house.

BY THE COURT: And nobody else that could
look after her?

PROSPECTIVE JUROR: No, sir.

BY THE COURT: And how old a lady is she?

PROSPECTIVE JUROR: Eighty-two.

INDIVIDUAL VOIR DIRE - JURY OUT

1 **BY THE COURT:** Eighty-two. And she's got
2 some problem with straying or wandering off,
3 and you're saying you cannot leave her alone?

4 **PROSPECTIVE JUROR:** No, sir.

5 **BY THE COURT:** So if you were staying
6 overnight, you wouldn't have anybody there
7 that could come in and take care of her; is
8 that --

9 **PROSPECTIVE JUROR:** No.

10 **BY THE COURT:** I'm going to go ahead and
11 let you go -- because you do have somebody
12 under your care or supervision that could
13 suffer some severe problems or hardships if
14 you're not there. So I appreciate you being
15 here, Mr. Townsend.

16 **PROSPECTIVE JUROR:** Thank you.

17 **BY THE COURT:** Yes, sir.

18 (JUROR TOWNSEND LEAVES THE COURTROOM.

19 JUROR QUINCY PURNELL ENTERS THE COURTROOM)

20 **BY THE COURT:** If you'll come on down and
21 just come into the rail here and tell us your
22 situation. What is your name, please?

23 **PROSPECTIVE JUROR:** Quincy Purnell.

24 **BY THE COURT:** And you had something about
25 your service or --

26 **PROSPECTIVE JUROR:** Well, me and the
27 victim that was in this case, we was second
28 cousin.

29 **BY THE COURT:** And who is that -- you and

INDIVIDUAL VOIR DIRE - JURY OUT

1 who?

2 **PROSPECTIVE JUROR:** Me and Robert Golden.

3 **BY THE COURT:** So you were second cousins
4 with Mr. Golden?

5 **PROSPECTIVE JUROR:** Yes.

6 **BY THE COURT:** And were y'all -- y'all
7 have a close family connection --

8 **PROSPECTIVE JUROR:** Yeah.

9 **BY THE COURT:** -- during his life? And
10 would that affect you in being a fair and
11 impartial juror in the case?

12 **PROSPECTIVE JUROR:** Yes, it would.

13 **BY THE COURT:** And you could not be a fair
14 juror to Mr. Flowers because of your family
15 connection with Mr. Golden; is that correct?

16 **PROSPECTIVE JUROR:** That's right.

17 **BY THE COURT:** And so have you got an
18 opinion as to guilt or innocence already?

19 **PROSPECTIVE JUROR:** Pretty much.

20 **BY THE COURT:** Okay. Does either side
21 have any questions of Mr. Purnell?

22 **BY MR. EVANS:** No, sir.

23 **BY MR. CARTER:** I don't.

24 **BY THE COURT:** Mr. Purnell, I'll excuse
25 you. I appreciate you bringing that up, and
26 you may go.

27 (JUROR PURNELL LEAVES THE COURTROOM.

28 JUROR REVELL SUGGS ENTERS THE COURTROOM)

29 **BY THE COURT:** Yes, ma'am. If you'll come

INDIVIDUAL VOIR DIRE - JURY OUT

1 on down and you can come inside the rail here
2 at the podium down here. What is your name,
3 please?

4 **PROSPECTIVE JUROR:** Revell Suggs.

5 **BY THE COURT:** Okay. Ms. Suggs. And what
6 is your situation?

7 **PROSPECTIVE JUROR:** I got hurt on my job
8 last year. I lost part of a finger, and I'm
9 under a doctor's care, and I'm supposed to
10 have surgery again. And Dr. Wheeler told me
11 last week that he would get me ready for
12 surgery, but I don't know what date or when.
13 So my lawyer called me and told me that they
14 was getting some paperwork together, so I
15 don't know what day they might call me. I
16 don't know. I'm having to dance by their
17 music.

18 **BY THE COURT:** Can you find out this
19 afternoon as far as calling? I mean, is
20 this -- this would not be emergency surgery,
21 I take it?

22 **PROSPECTIVE JUROR:** Today is Friday.
23 Dr. Wheeler's office is not open. If I call
24 my lawyer in Jackson, all I can do is leave a
25 message because it's hard to get him because
26 he's really busy.

27 **BY THE COURT:** Since this is not an
28 emergency-type surgery and it's not something
29 that's actually set for right now or for next

INDIVIDUAL VOIR DIRE - JURY OUT

1 week, you'll have to come on back next week
2 because it's not a surgery -- you know, if it
3 was some heart surgery or some emergency
4 where you're going to have to --

5 **PROSPECTIVE JUROR:** They going to have to
6 go back in my finger. I lost the tip end of
7 it on my job, and Dr. Wheeler is going to
8 have to go back in it.

9 **BY THE COURT:** How long has it been since
10 that surgery, the first one?

11 **PROSPECTIVE JUROR:** The first one?

12 **BY THE COURT:** Or when you lost part of
13 your finger?

14 **PROSPECTIVE JUROR:** June the 24th.

15 **BY THE COURT:** So that's been a year.

16 **PROSPECTIVE JUROR:** Soon will be a year.
17 So I've been off of work. And he told me I
18 was going to have to have surgery again
19 because of the nerve. And I've been sort of
20 talking to them, when, when. He said, Well,
21 I'm getting your paperwork together and just,
22 you know -- so I don't know when he might
23 call me.

24 **BY THE COURT:** Just call your lawyer's
25 office and tell them that you might not be
26 available next week, and then they can
27 schedule it after that.

28 **PROSPECTIVE JUROR:** I will.

29 **BY THE COURT:** Okay.

INDIVIDUAL VOIR DIRE - JURY OUT

1 **PROSPECTIVE JUROR:** I'll leave a message
2 for him.

3 **BY THE COURT:** Okay. Thank you.

4 **PROSPECTIVE JUROR:** Okay.

5 (JUROR SUGGS LEAVES THE COURTROOM.

6 JUROR KATHERINE HENSON ENTERS THE
7 COURTROOM)

8 **BY THE COURT:** Yes, ma'am, if you'll come
9 on down. And what is your name, please?

10 **PROSPECTIVE JUROR:** Katherine Everett
11 Henson.

12 **BY THE COURT:** And you've got something
13 you felt needed to be brought to the Court's
14 attention?

15 **PROSPECTIVE JUROR:** Yeah. After you say
16 we had to be packed and ready Monday, I have
17 an appointment in Grenada for an ultrasound
18 to be done.

19 **BY THE COURT:** You've got what now?

20 **PROSPECTIVE JUROR:** I have an appointment
21 in Grenada for an ultrasound to be done.

22 **BY THE COURT:** And when is that
23 appointment?

24 **PROSPECTIVE JUROR:** It's Tuesday at
25 9 o'clock. It's a followup from November.

26 **BY THE COURT:** And is this something that
27 could be postponed or -- the ultrasound? Or
28 is this something where you've got an
29 emergency-type situation?

INDIVIDUAL VOIR DIRE - JURY OUT

1 **PROSPECTIVE JUROR:** Well, it's my breast.

2 **BY THE COURT:** So you've had some --

3 **PROSPECTIVE JUROR:** Well, I had a
4 mammogram did in October, November last year.

5 **BY THE COURT:** And something from that --

6 **PROSPECTIVE JUROR:** And another ultrasound
7 in November. And that's a followup, another
8 ultrasound in six months I have to repeat.

9 **BY THE COURT:** So the doctor told you you
10 might have some problems you need to keep
11 watch on?

12 **PROSPECTIVE JUROR:** Yeah. He said he was
13 looking at something. When I went in
14 November, he said he was watching something
15 and wanted me to return this month.

16 **BY THE COURT:** Do you think this would
17 be --

18 **PROSPECTIVE JUROR:** Well, I --

19 **BY THE COURT:** -- adverse to postpone the
20 appointment for a week or two or --

21 **PROSPECTIVE JUROR:** Well, it was a
22 six-months followup from November of last
23 year. I did a mammogram and then it was -- I
24 had to go back at the end of November to do
25 an ultrasound. Then he gave me six months to
26 come back to do it, and it was scheduled for
27 Tuesday at 9 o'clock.

28 **BY THE COURT:** Have y'all got any
29 questions?

INDIVIDUAL VOIR DIRE - JURY OUT

1 **BY MR. EVANS:** Ms. Henson, is this
2 something that would be bothering you and on
3 your mind next week if you were on the jury?

4 **PROSPECTIVE JUROR:** Well, then the first
5 followup, it was bothering me because I had
6 one cyst removed. Then when he told me to
7 come back the end of November, it was kind of
8 like -- but then when he told me to come
9 back, well, he's watching something and say
10 if it's anything aggressive, he'll make sure
11 he take care of it.

12 **BY MR. EVANS:** Kind of a followup?

13 **PROSPECTIVE JUROR:** But the first one
14 you're thinking about when you're -- because
15 I had the cyst removed and you mind is kind
16 of going down. But --

17 **BY MR. EVANS:** Is it something that you
18 would be okay with getting him to put off or
19 do you think it would affect your thinking
20 and concentrating if you had to put off?

21 **PROSPECTIVE JUROR:** Well, I could. You
22 know, I might could. I don't know. Well,
23 when you're thinking about something about
24 your breast, you're thinking a little bit --
25 I mean, your mind is not there. I'll put it
26 that way. Your mind is not there. But the
27 first followup, your mind wasn't looking
28 there. And this one, because he told me if
29 it's something wrong, if it's aggressive,

INDIVIDUAL VOIR DIRE - JURY OUT

1 he'll make sure he take care of it or
2 whatever, so.

3 **BY MR. EVANS:** Yes, ma'am.

4 **BY MR. CARTER:** Your Honor, I'm just -- I
5 have mixed feelings about it. I certainly
6 don't want her to miss something that's
7 really necessary that she goes to. I guess
8 I'm wondering if it's possible to check and
9 see if it could be delayed a little and to
10 see if her mind could be eased a little, I
11 guess. And if it can't be eased and she's
12 worried about it, then I have no objection --

13 **BY THE COURT:** Ms. Henson, what I'll ask
14 you to do is maybe contact the doctor this
15 afternoon and talk with them --

16 **PROSPECTIVE JUROR:** Well, my doctor have
17 to go through the doctor in Grenada, the one
18 that did the ultrasound. He is the one that
19 I go through.

20 **BY THE COURT:** Well, could you just call
21 them and ask them if there would be some -- I
22 mean, I was wondering if maybe you could find
23 out some things about it this afternoon and
24 then report back to me Monday on whether you
25 could get it -- your appointment scheduled
26 for like the week after next or something
27 like that.

28 **PROSPECTIVE JUROR:** Well, I could do that.

29 **BY THE COURT:** And then, you know, if you

INDIVIDUAL VOIR DIRE - JURY OUT

1 can't or they tell you that you need to come
2 on immediately, then I'll excuse you Monday.

3 **PROSPECTIVE JUROR:** I could call and see
4 could I reschedule that.

5 **BY THE COURT:** Right. And then if you
6 can't or they tell you you need to come on
7 now instead of waiting a couple of weeks,
8 then I will go ahead and excuse you Monday.

9 **PROSPECTIVE JUROR:** Okay, then. So I just
10 call?

11 **BY THE COURT:** Right. If you'll just find
12 out and then, you know, based on what they
13 tell you today, we'll decide Monday.

14 **PROSPECTIVE JUROR:** Okay, then. Okay.
15 Thank you.

16 **BY THE COURT:** Yes, ma'am. Thank you.

17 (JUROR HENSON LEAVES THE COURTROOM.

18 JUROR MARVIN BRIDGES ENTERS THE COURTROOM)

19 **BY THE COURT:** Yes, sir. If you'll come
20 on and you can just stand inside the rail
21 here at the podium.

22 Now, what is your name?

23 **PROSPECTIVE JUROR:** Marvin Bridges.

24 **BY THE COURT:** And you had something you
25 thought you needed to bring up?

26 **PROSPECTIVE JUROR:** Yes, sir. I work for
27 Dacus Furniture Company, and I'm the
28 appliance service man, and I'm the only one
29 that we have, which wouldn't be a hardship to

INDIVIDUAL VOIR DIRE - JURY OUT

1 the store, as far as the store wouldn't have
2 to close or anything like that. And I'm sure
3 they'd pay me if I wasn't there. But the
4 customers, if their refrigerators or deep
5 freezers or washers and dryers quit, they
6 couldn't get them repaired.

7 **BY THE COURT:** It's got to be a hardship
8 personal to you where it would create some,
9 you know, adverse impact to you. I realize
10 everybody that's working, you know, is going
11 to be some adverse impact for who they work
12 for.

13 **PROSPECTIVE JUROR:** Yes, sir.

14 **BY THE COURT:** But if it's just an
15 inconvenience for people, you know, then
16 that's not going to be --

17 **PROSPECTIVE JUROR:** Yes, sir. I was
18 thinking about the inconvenience to the
19 customers.

20 **BY THE COURT:** And I appreciate that, but
21 it's got to be a situation where it's going
22 to create some kind of hardship for you, not
23 for another person.

24 **PROSPECTIVE JUROR:** I'll have to catch up.

25 **BY THE COURT:** I understand that. But
26 that would not -- I mean, it might take a
27 week or two to catch up, but that -- it's got
28 to be strictly one of those situations where
29 it would create a substantial adverse impact

INDIVIDUAL VOIR DIRE - JURY OUT

1 for you personally and from a financial
2 impact for you personally.

3 **PROSPECTIVE JUROR:** Yes, sir.

4 **BY THE COURT:** But I appreciate you
5 bringing that up to my attention.

6 (JUROR BRIDGES LEAVES THE COURTROOM.

7 JUROR DONALD SMALL ENTERS THE COURTROOM)

8 **BY THE COURT:** Yes, sir. If you'll come
9 on down inside the rail here and at the
10 podium. Now, what's your name?

11 **PROSPECTIVE JUROR:** Donald Small.

12 **BY THE COURT:** Yes, sir. And you had
13 something you thought you needed to bring up
14 about your service or something?

15 **PROSPECTIVE JUROR:** Yeah. I was
16 wondering, I kind of already know a lot about
17 what's going on.

18 **BY THE COURT:** So you heard facts about
19 it; is that what you're saying?

20 **PROSPECTIVE JUROR:** Yes, sir.

21 **BY THE COURT:** And have you -- how have
22 you -- are you related to anybody involved in
23 this case?

24 **PROSPECTIVE JUROR:** Well, I work with his
25 brothers and sisters.

26 **BY THE COURT:** Now, you work with -- with
27 Mr. Curtis Flowers' brothers and sisters?

28 **PROSPECTIVE JUROR:** Yes, sir.

29 **BY THE COURT:** When did you do so? Are

INDIVIDUAL VOIR DIRE - JURY OUT

1 you still working with them?

2 **PROSPECTIVE JUROR:** Every day.

3 **BY THE COURT:** And where do y'all work?

4 **PROSPECTIVE JUROR:** ADP.

5 **BY THE COURT:** ADP? Do you see them every
6 day?

7 **PROSPECTIVE JUROR:** Yes, sir.

8 **BY THE COURT:** And has this case been
9 discussed? Have y'all had conversations
10 about the case?

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **BY THE COURT:** And has that caused you to
13 form an opinion as to guilt or innocence of
14 Mr. Flowers?

15 **PROSPECTIVE JUROR:** Yes, sir.

16 **BY THE COURT:** And could you be fair to
17 both sides? Could you lay aside any
18 conversations you had with others and base
19 your decision only on the evidence presented?
20 Or have you already got a fixed opinion that
21 could not be changed?

22 **PROSPECTIVE JUROR:** Well, I been around
23 the family so and the parents too, so -- his
24 parents and stuff. I wouldn't know how to
25 deal with it. You know what I'm saying?

26 **BY THE COURT:** So are you saying that you
27 do not feel like you could be fair as a juror
28 in this case because of your relationship
29 with his mother and dad and with his sister

INDIVIDUAL VOIR DIRE - JURY OUT

1 and brother and because you're working with
2 them?

3 **PROSPECTIVE JUROR:** (Nodding head.)

4 **BY THE COURT:** Is that correct?

5 **PROSPECTIVE JUROR:** Yes, sir.

6 **BY THE COURT:** And you couldn't lay those
7 facts aside and just listen to the evidence;
8 is that correct?

9 **PROSPECTIVE JUROR:** Yes, sir.

10 **BY THE COURT:** Anybody?

11 **BY MR. CARTER:** Yeah. I have a question
12 for him.

13 **BY MR. EVANS:** Very briefly, Your Honor.
14 You say you work with his sister and brother.
15 Which ones are they -- which sister?

16 **PROSPECTIVE JUROR:** One of them's name is
17 Reese and another one is named -- we call her
18 nickname Rat. We call her nickname Rat.
19 That's what her nickname is.

20 **BY MR. EVANS:** How long have you worked
21 with them?

22 **PROSPECTIVE JUROR:** Well, I've known them
23 for the last 25 years. And I been around
24 them, like we always talk, be around one
25 another. And I'm just being honest.

26 **BY MR. EVANS:** And you've talked to them
27 about facts about the case?

28 **PROSPECTIVE JUROR:** Yes, sir.

29 **BY THE COURT:** How -- and you say you've

INDIVIDUAL VOIR DIRE - JURY OUT

1 talked with his parents about facts about the
2 case?

3 **PROSPECTIVE JUROR:** Well, I've been around
4 all of them. I just feel -- just, you know,
5 what's going on.

6 **BY MR. EVANS:** All right. Were any of
7 those conversations after you were called as
8 a juror or were they before that?

9 **PROSPECTIVE JUROR:** It was before the
10 jury, before I received a paper for the jury.

11 **BY THE COURT:** Okay.

12 **PROSPECTIVE JUROR:** And I just been around
13 them. I'm just honest. I been around them,
14 the family.

15 **BY MR. EVANS:** And you're just telling us
16 because of that, all of those connections,
17 you couldn't be a fair and impartial juror in
18 this particular case?

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **BY MR. EVANS:** All right. Thank you.

21 **BY MR. CARTER:** Is ADP and Heatcraft the
22 same thing?

23 **PROSPECTIVE JUROR:** Yes, sir.

24 **BY MR. CARTER:** Oh, it is?

25 **PROSPECTIVE JUROR:** Yes, sir.

26 **BY MR. CARTER:** Okay. And you say you've
27 known them a long time. Are you just
28 acquainted with each other or you close
29 personal friends? Do y'all visit each other

INDIVIDUAL VOIR DIRE - JURY OUT

1 in your homes and --

2 **PROSPECTIVE JUROR:** Well, I guess, back
3 then, I dated his sister and I've been around
4 them ever since I've been out of high school.
5 And I been out --

6 **BY MR. CARTER:** You say you dated one of
7 his sisters?

8 **PROSPECTIVE JUROR:** Uh-huh.

9 **BY MR. CARTER:** You talked with them. Did
10 you say you had formed an opinion as to his
11 guilt or innocence? Did you or did you not?

12 **PROSPECTIVE JUROR:** I just know about what
13 all was going on. I been around.

14 **BY MR. CARTER:** You heard a lot of talk?

15 **PROSPECTIVE JUROR:** Yes, sir.

16 **BY MR. CARTER:** And as a result of that
17 talk, you have some ideas about what
18 happened?

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **BY MR. CARTER:** And those ideas, are they
21 so plain in your mind, are they so strong
22 that if you had to serve as a juror, you
23 couldn't listen to witnesses who investigated
24 the case and put aside what you might have
25 heard some of the Flowers say and decide
26 guilt or innocence based on what you heard
27 from the witness stand from witnesses who
28 actually investigated the case? Now, I
29 understand you're uncomfortable, but what I'm

INDIVIDUAL VOIR DIRE - JURY OUT

1 trying to find out is could you serve and
2 could you be fair to both sides if you got
3 picked?

4 **PROSPECTIVE JUROR:** I would -- I would say
5 like I been around them and if something was
6 to come up, it's just like --

7 **BY MR. CARTER:** You'd have a problem
8 facing them afterwards?

9 **PROSPECTIVE JUROR:** Yes, sir. It was just
10 like me and him were -- like I say, me and
11 him were real close, and we're friends. I
12 was just saying we're friends.

13 **BY MR. CARTER:** Right. And you would be
14 concerned about having to see them
15 afterwards, and you would be concerned about
16 voting in a way that might be adverse to the
17 Flowers family; is that what you're saying?

18 **PROSPECTIVE JUROR:** Yes, sir.

19 **BY MR. CARTER:** Okay. And you're so
20 concerned about that, that it wouldn't allow
21 you to be fair to both sides; is that also
22 true?

23 **PROSPECTIVE JUROR:** To be honest, yes,
24 sir.

25 **BY THE COURT:** Mr. Small, I'm going to let
26 you go, and I'll excuse you as a juror and
27 will not require you to be back on Monday.

28 (JUROR SMALL LEAVES THE COURTROOM.)

29 JUROR JOHNNIE EARL ROBINSON ENTERS THE

INDIVIDUAL VOIR DIRE - JURY OUT
COURTROOM)

1
2 **BY THE COURT:** If you'll come on down and
3 just stand inside the rail and stand up next
4 to the podium, and we'll get some information
5 from you. If you'll come on down here. Now
6 what is your name?

7 **PROSPECTIVE JUROR:** Johnnie Earl Robinson.

8 **BY THE COURT:** And, Mr. Robinson, you had
9 something you felt like you needed to bring
10 up about jury service?

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **BY THE COURT:** And what is that situation?

13 **PROSPECTIVE JUROR:** Well, my wife has got
14 to go to the doctor Wednesday, and I don't
15 know if they're going to keep her in the
16 hospital. And further, she's related to him.

17 **BY THE COURT:** What type of medical
18 situation?

19 **PROSPECTIVE JUROR:** Something's wrong with
20 her neck.

21 **BY THE COURT:** And where is that
22 appointment scheduled?

23 **PROSPECTIVE JUROR:** Jackson.

24 **BY THE COURT:** And are you supposed to be
25 going with her to that?

26 **PROSPECTIVE JUROR:** Yes, sir.

27 **BY THE COURT:** And is this an
28 emergency-type situation or is it something
29 she could postpone?

INDIVIDUAL VOIR DIRE - JURY OUT

1 **PROSPECTIVE JUROR:** No. It ain't going to
2 be nothing she could postpone it.

3 **BY THE COURT:** Is there anybody that could
4 go with her instead of you? Could you find
5 anybody else that could?

6 **PROSPECTIVE JUROR:** No, sir.

7 **BY THE COURT:** And you mentioned that she
8 was related to somebody?

9 **PROSPECTIVE JUROR:** Yes, sir.

10 **BY THE COURT:** Now, who is that?

11 **PROSPECTIVE JUROR:** Mr. Flowers.

12 **BY THE COURT:** And what's your wife's
13 name?

14 **PROSPECTIVE JUROR:** Stacy.

15 **BY THE COURT:** What was her maiden name?

16 **PROSPECTIVE JUROR:** Thompson.

17 **BY THE COURT:** Stacy Thompson?

18 **PROSPECTIVE JUROR:** Yes, sir.

19 **BY THE COURT:** And how is she related to
20 the Flowers family?

21 **PROSPECTIVE JUROR:** I guess through her
22 grandmother.

23 **BY THE COURT:** And does she maintain a
24 close family connection with them?

25 **PROSPECTIVE JUROR:** Well, they have
26 reunions.

27 **BY THE COURT:** So she goes to reunions
28 with the Flowers family?

29 **PROSPECTIVE JUROR:** Yes, sir.

INDIVIDUAL VOIR DIRE - JURY OUT

1 **BY THE COURT:** And do you -- do you go to
2 those reunions with her?

3 **PROSPECTIVE JUROR:** Yes, sir.

4 **BY THE COURT:** And have you been to any
5 where maybe Mr. Archie, Sr. and some of his
6 children are at?

7 **PROSPECTIVE JUROR:** Well, I see him at
8 church a lot.

9 **BY THE COURT:** So you go to church with
10 Mr. Archie?

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **BY THE COURT:** And what church is that?

13 **PROSPECTIVE JUROR:** At different churches,
14 gospel programs.

15 **BY THE COURT:** Where he sings?

16 **PROSPECTIVE JUROR:** Yes, sir.

17 **BY THE COURT:** Would those factors
18 influence you in being a fair and impartial
19 juror?

20 **PROSPECTIVE JUROR:** Yes, sir.

21 **BY THE COURT:** So you knowing Mr. Archie
22 and his family and knowing Curtis, you feel
23 like you could not be fair to both the State
24 of Mississippi and to Mr. Flowers?

25 **PROSPECTIVE JUROR:** That's right.

26 **BY THE COURT:** And have these factors
27 caused you to form an opinion as to the guilt
28 or innocent of Mr. Flowers?

29 **PROSPECTIVE JUROR:** Yes, sir.

INDIVIDUAL VOIR DIRE - JURY OUT

1 **BY THE COURT:** And if you were to, say,
2 find Mr. Flowers guilty, would you feel ill
3 at ease being with family?

4 **PROSPECTIVE JUROR:** No, sir.

5 **BY THE COURT:** So if you found him guilty,
6 you would not feel you owed the family some
7 reason?

8 **PROSPECTIVE JUROR:** Yes, sir, I would.

9 **BY THE COURT:** Okay. So you're saying
10 because of these family ties, you just cannot
11 be fair and impartial?

12 **PROSPECTIVE JUROR:** No, sir.

13 **BY THE COURT:** Does either side --
14 Mr. Evans, you got any questions for
15 Mr. Robinson?

16 **BY MR. EVANS:** No, sir.

17 **BY THE COURT:** Mr. Carter?

18 **BY MR. CARTER:** How often do you see the
19 Flowers, once a year at reunion?

20 **PROSPECTIVE JUROR:** No, sir. Probably
21 once or twice a week.

22 **BY MR. CARTER:** About once or twice a
23 week? You ever been to their house?

24 **PROSPECTIVE JUROR:** No, sir, not lately.

25 **BY MR. CARTER:** Now, I understand these
26 relationships will make you uncomfortable.
27 And that's understood, but you're saying not
28 only would you be uncomfortable sitting in
29 judgment of Mr. Flowers because of, you know,

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1 his family; you're also saying that because
2 of a relationship with Mr. Flowers, because
3 your wife is kin to Mr. Flowers, that you
4 couldn't sit in judgment of Mr. Flowers and
5 be fair to the State of Mississippi and to
6 Mr. Flowers?

7 **PROSPECTIVE JUROR:** That's right, because
8 you see it all over the news and TV, so.

9 **BY MR. CARTER:** Okay. You're also saying
10 that you've received a lot of information
11 about the case through the news and T.V., and
12 you're saying that -- what are you saying
13 about that? Has that --

14 **PROSPECTIVE JUROR:** It's all over T.V. so,
15 you know, you can't be fair. You know,
16 everyone going to rule their own way.

17 **BY MR. CARTER:** So as a result of seeing
18 all the news coverage that you've seen, you
19 believe that that has caused you to form an
20 opinion and that has caused you to, say, not
21 to dislike the prosecution or to dislike the
22 defense or to -- what has the effect of
23 seeing it on T.V. --

24 **PROSPECTIVE JUROR:** Well, I feel like the
25 man innocent, you know. I will just say
26 that, because of all this other stuff.

27 **BY MR. CARTER:** So if you got picked to
28 serve as a juror and if you were not excused,
29 it wouldn't matter to you what investigators

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1 who have actually investigated this case took
2 the witness stand and said occurred, you
3 would dismiss that and render a decision
4 based on an opinion you've already formed?

5 **PROSPECTIVE JUROR:** Well, because of the
6 news media and stuff.

7 **BY MR. CARTER:** Yeah, I understand how it
8 can saturate and affect your feelings and
9 opinions and cause you to form an opinion;
10 that's understood. But -- and I'm trying to
11 wrap it up because you've already said you
12 were close to the family and your wife was a
13 relative. And you were saying that you
14 couldn't put that aside, but you're also
15 saying that you couldn't put aside what
16 you've actually seen in the T.V. and the
17 newspapers?

18 **PROSPECTIVE JUROR:** That's right.

19 **BY MR. CARTER:** Okay. No further
20 questions, Your Honor.

21 **BY THE COURT:** Mr. Robinson, I'll let you
22 go. I appreciate you being here, and I will
23 not require you to be back Monday.

24 **PROSPECTIVE JUROR:** Thank you.

25 (JUROR ROBINSON LEAVES THE COURTROOM.

26 JUROR HENRY GHOLSTON ENTERS THE COURTROOM)

27 **BY THE COURT:** If you'll come on down.
28 Now, what is your name, sir?

29 **PROSPECTIVE JUROR:** Henry Lee Gholston.

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1 **BY THE COURT:** And you had something you
2 thought you needed bring up to the Court?

3 **PROSPECTIVE JUROR:** I'd like to be
4 excused.

5 **BY THE COURT:** And what would be the
6 reason?

7 **PROSPECTIVE JUROR:** Because me and my wife
8 ride together. She work at ADP, and I work
9 at Lehman-Roberts, and we ride together. I
10 drive her. She don't have any license.

11 **BY THE COURT:** So she can't drive herself
12 to work?

13 **PROSPECTIVE JUROR:** That's right.

14 **BY THE COURT:** And so you go --

15 **PROSPECTIVE JUROR:** I drop her off at ADP,
16 then I go to the store and catch up a crew
17 truck and go --

18 **BY THE COURT:** And so if you were
19 selected, you and your wife both would be out
20 of work?

21 **PROSPECTIVE JUROR:** That's right.

22 **BY THE COURT:** So she couldn't work and
23 neither could you; is that right?

24 **PROSPECTIVE JUROR:** That's right.

25 **BY THE COURT:** And would that create a
26 substantial adverse impact on your payment of
27 your bills if you're neither one able to
28 work?

29 **PROSPECTIVE JUROR:** There's right, it

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1 would.

2 **BY THE COURT:** And she doesn't have
3 anybody that she could catch a ride with; is
4 that right?

5 **PROSPECTIVE JUROR:** That's right.

6 **BY THE COURT:** Well, I'm going to excuse
7 you under substantial hardship, because your
8 payment of your necessary living expenses if
9 you and your wife both will be out of
10 paychecks --

11 **PROSPECTIVE JUROR:** That's right.

12 **BY THE COURT:** -- while you were up here.

13 **PROSPECTIVE JUROR:** That's right.

14 **BY THE COURT:** And you're free to go.

15 **PROSPECTIVE JUROR:** That's right.

16 **BY THE COURT:** You may go.

17 (JUROR GHOLSTON LEAVES THE COURTROOM.

18 JUROR NORMAN SMALL ENTERS THE COURTROOM)

19 **BY THE COURT:** Sir, if you'll come on down
20 here and stand against the podium down here
21 and tell us what your situation might be.
22 Would you tell us your name?

23 **PROSPECTIVE JUROR:** Norman Small.

24 **BY THE COURT:** Norman Small?

25 **PROSPECTIVE JUROR:** Yes, sir.

26 **BY THE COURT:** Okay. Mr. Small, what is
27 your situation?

28 **PROSPECTIVE JUROR:** My situation is
29 medical for my kids plus income.

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1 **BY THE COURT:** Okay. And what situation
2 with your children?

3 **PROSPECTIVE JUROR:** My daughter, she
4 has -- she had heart surgery when she was
5 about three months old. And my son, he got
6 to have surgery on Tuesday. And I'm the only
7 one working right now. My wife she works,
8 but she's out for the summer.

9 **BY THE COURT:** And what type of surgery is
10 your son fixing to have?

11 **PROSPECTIVE JUROR:** He has to have -- put
12 some drums in his -- tubes in his ears for
13 his ear problem.

14 **BY THE COURT:** And where are you working
15 right now?

16 **PROSPECTIVE JUROR:** Work for Sanders
17 Funeral Home.

18 **BY THE COURT:** Sanders Funeral Home?

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **BY THE COURT:** And your wife's not working
21 this summer?

22 **THE WITNESS:** No, sir. She just drawing
23 unemployment right now.

24 **BY THE COURT:** Unemployed for right now?

25 **PROSPECTIVE JUROR:** Right.

26 **BY THE COURT:** And if you miss work for,
27 say, a week, would that have a substantial
28 adverse impact on your payment of your bills?

29 **PROSPECTIVE JUROR:** Yes, sir. Hospital

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1 will not take Medicaid. We used to have
2 Medicaid, but Medicaid done stopped paying,
3 so we had to -- I had to pay the funds up
4 front myself.

5 **BY THE COURT:** And so if you're not
6 working, that would cause you to suffer
7 financial hardship?

8 **PROSPECTIVE JUROR:** Right. Right now it
9 would.

10 **BY THE COURT:** And I would assume your
11 children financial hardship, too, because
12 of --

13 **PROSPECTIVE JUROR:** Right.

14 **BY THE COURT:** -- their medical needs?

15 **PROSPECTIVE JUROR:** Yes, sir.

16 **BY THE COURT:** I'll excuse you, Mr. Small,
17 for the -- because of the substantial adverse
18 impact serving would have on your economics.

19 **PROSPECTIVE JUROR:** Thank you, sir.

20 **BY THE COURT:** Yes, sir.

21 (JUROR SMALL LEAVES THE COURTROOM.

22 JUROR BEVERLY LOCKE ENTERS THE COURTROOM)

23 **BY THE COURT:** Yes, ma'am, if you'll stand
24 there and tell us your name and what your
25 situation is.

26 **PROSPECTIVE JUROR:** My name is Beverly
27 Elaine Locke.

28 **BY THE COURT:** Ms. Locke, you had
29 something you needed to bring to our

INDIVIDUAL VOIR DIRE - JURY OUT

1 attention about serving?

2 **PROSPECTIVE JUROR:** Well, you really threw
3 me when you said the word sequestered.
4 Because I haven't made -- I hadn't already
5 made any plans for my mother. Now, she's --
6 she probably could do fine with somebody from
7 the church checking on her daily. She does
8 have a panic button, I mean, so...

9 **BY THE COURT:** Now, how old is she?

10 **PROSPECTIVE JUROR:** She's 73. She -- she
11 doesn't cook. You know, she can fix herself
12 toast and scrambled eggs and that sort of
13 thing. It's just -- I know I -- she's been
14 harping since I got the notice about to -- to
15 say that I had to be with her all the time,
16 but that's not really true. I mean, I take
17 off, and I'm gone four or five hours at the
18 time. Like I say, she has a panic button.

19 **BY THE COURT:** Do you live with her?

20 **PROSPECTIVE JUROR:** Yes, I live with her.

21 **BY THE COURT:** Maybe over the weekend,
22 just check with some people and see if you
23 could have people that could check in on her.

24 **PROSPECTIVE JUROR:** We have church people
25 down the road not too far. I just would
26 have to need --

27 **BY THE COURT:** Yeah, if you would --

28 **PROSPECTIVE JUROR:** -- a few days to get
29 her used to the idea.

INDIVIDUAL VOIR DIRE - JURY OUT

1 **BY THE COURT:** Right. If you can check
2 with people this weekend and see if they
3 could do that for you and then let me know
4 back Monday. And if, you know, that can --
5 and then if there are situations where you
6 can't find somebody that can --

7 **PROSPECTIVE JUROR:** It will be fine. It's
8 just that you threw me, and I wanted to but
9 you just startled me so bad I hollered out,
10 because I didn't have time to get used to the
11 idea.

12 **BY THE COURT:** Yes, ma'am. I understand,
13 and I appreciate that. As I say, if after
14 checking with some other people you find out
15 it's going to create a substantial hardship
16 for you, then bring that back up to my
17 attention Monday.

18 **PROSPECTIVE JUROR:** All right. What's
19 your name?

20 **BY THE COURT:** Judge Loper.

21 **PROSPECTIVE JUROR:** Okay.

22 **BY THE COURT:** Yes, ma'am, thank you.

23 (JUROR LOCKE LEAVES THE COURTROOM.
24 JUROR ARCHIE LEE CAMPBELL ENTERS THE
25 COURTROOM)

26 **BY THE COURT:** Yes, sir, if you'll come
27 down and stand inside the rail here and tell
28 us what your name is and your situation.
29 What is your name, sir?

INDIVIDUAL VOIR DIRE - JURY OUT

1 **PROSPECTIVE JUROR:** Archie Lee Campbell.

2 **BY THE COURT:** And tell us what your
3 situation is, Mr. Campbell.

4 **PROSPECTIVE JUROR:** Well, my brother just
5 got out of the nursing home like a few weeks
6 ago and I spend most of my time with him. He
7 had a stroke. I have to watch him.

8 **BY THE COURT:** And so you're the primary
9 caregiver for your brother?

10 **PROSPECTIVE JUROR:** Right.

11 **BY THE COURT:** And I believe you're kin to
12 Mr. Flowers, aren't you?

13 **PROSPECTIVE JUROR:** Yes, sir.

14 **BY THE COURT:** And how are you kin to him?

15 **PROSPECTIVE JUROR:** I think his mother and
16 I are about second cousins.

17 **BY THE COURT:** And weren't you called to
18 the jury like in the 19- -- one of the
19 previous trials?

20 **PROSPECTIVE JUROR:** Yes, sir.

21 **BY THE COURT:** And I believe at that time,
22 you said you could not be a fair and
23 impartial juror because of your kinship?

24 **PROSPECTIVE JUROR:** Yes, sir.

25 **BY THE COURT:** And is that still the case?
26 You just feel like you could not be an
27 impartial juror because of being related to
28 Mr. Flowers?

29 **PROSPECTIVE JUROR:** Right.

INDIVIDUAL VOIR DIRE - JURY OUT

1 **BY THE COURT:** And have you made up your
2 mind as to the guilt or innocence of
3 Mr. Flowers?

4 **PROSPECTIVE JUROR:** Well, I couldn't make
5 up my mind on it.

6 **BY THE COURT:** So, I mean, what I'm saying
7 is if you were sitting on a jury, you just do
8 not feel like, even if the proof was there,
9 you could vote to convict?

10 **PROSPECTIVE JUROR:** No.

11 **BY THE COURT:** So you could not do that
12 even if the proof showed it?

13 **PROSPECTIVE JUROR:** No.

14 **BY THE COURT:** Any questions from you?

15 **BY MR. EVANS:** No, sir.

16 **BY MR. CARTER:** None.

17 **BY THE COURT:** Mr. Campbell, I will excuse
18 you, and I appreciate it. And I hope your
19 brother gets better. I think it's very
20 admirable that you're taking care of him
21 right now. Thank you a lot.

22 (JUROR CAMPBELL LEAVES THE COURTROOM.

23 JUROR DAVID HOLIDAY ENTERS THE COURTROOM)

24 **BY THE COURT:** What's your name, please?

25 **PROSPECTIVE JUROR:** David Holiday.

26 **BY THE COURT:** And, Mr. Holiday, what's
27 your situation?

28 **PROSPECTIVE JUROR:** Other than I wrote the
29 date down wrong or read the letter wrong. I

INDIVIDUAL VOIR DIRE - JURY OUT

1 thought I was supposed to call this evening
2 and check it and be here Monday.

3 **CIRCUIT CLERK:** He's not been qualified.

4 **BY THE COURT:** Oh, okay. Well, that's --

5 **PROSPECTIVE JUROR:** I'm sorry, I was on
6 the -- like she said, day.

7 **BY THE COURT:** Okay. Well, let her
8 administer the oath, because what I need to
9 do then is go over jury qualifications with
10 you. And so if you'll take that oath.

11 (Oath Given)

12 **BY THE COURT:** Mr. Holiday, what we're
13 doing today -- and I understand your
14 confusion. There's no problem with that at
15 all. What we're doing today is going through
16 the legal qualifications with the jurors, and
17 then we'll actually start asking questions
18 Monday to potential jurors about particular
19 facts of the case. And so I'll go over those
20 qualifications with you. And then if you
21 should not meet one of them, you should let
22 me know.

23 You've got to be at least 21 years of
24 age. You've got to be a qualified elector of
25 Montgomery County or resident freeholder of
26 more than one year.

27 You could not serve if you were
28 convicted of a felony.

29 You could not serve if you are common

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1 gambler or a habitual drunkard.

2 You could not serve if you've been
3 convicted of the sale of intoxicating liquor
4 within the past five years, and you've got to
5 be able to read and write.

6 So you would meet all of these
7 qualifications?

8 **PROSPECTIVE JUROR:** Yes, sir.

9 **BY THE COURT:** And there are exemptions.
10 I know you're not over the age of 65. If you
11 were, you could be exempt but I know that
12 you're not. Also, if you had an illness
13 where you could not serve because of an
14 illness or if there was some undue or extreme
15 physical or financial hardship that was going
16 to be created by you -- that would be
17 personal to you or somebody under your care
18 or supervision, then that could result in an
19 exemption as well. Do you have any type
20 situation like that?

21 **PROSPECTIVE JUROR:** No.

22 **BY THE COURT:** Also, if you have served as
23 a grand juror within the past two years where
24 you actually served on the grand jury or if
25 you were a petit juror within the past two
26 years where you sat on a jury trial. Do any
27 of those exemptions apply to you?

28 **PROSPECTIVE JUROR:** No.

29 **BY THE COURT:** If you'll then raise your

INDIVIDUAL VOIR DIRE - JURY OUT

1 right hand and the clerk will give you
2 another oath at this time.

3 (Oath Given)

4 **BY THE COURT:** And, Mr. Holiday, we're
5 going to resume, you know, court on Monday.
6 If you were to be selected as a juror in this
7 case, the jury trial, once it is selected, is
8 going to be sequestered. That means you'll
9 be kept together as a group. You'll be put
10 up at a hotel somewhere.

11 So you might want to pack clothes or
12 personal belongings in case you were
13 sequestered so somebody would not have to
14 come and bring items to you at some later
15 point.

16 Also -- and I've told everybody else
17 here so I'm not just picking on or saying
18 this to you. But you cannot bring a cellular
19 phone or any other electronic communication
20 device with you.

21 And also, from now until the jury
22 service is concluded, I'll ask that you do
23 not discuss this case with anyone or among
24 yourselves. Don't listen to anybody else
25 talk about it or communicate in any manner
26 about the case and don't go reading any
27 newspaper articles or Internet articles or
28 any other written form of communication about
29 the case or listen to any radio, television,

INDIVIDUAL VOIR DIRE - JURY OUT

1 or Internet broadcast about the case.

2 And with that, if you'll be back
3 Monday morning and we'll resume at that time.
4 I appreciate you being here.

5 **PROSPECTIVE JUROR:** Yes, sir. Thank you.

6 (JUROR HOLIDAY LEAVES THE COURTROOM)

7 **BY THE COURT:** Okay. Before we recess, I
8 want to kind of -- not indicate but seek
9 input and tell you what my thought processes
10 on voir dire are. My thinking right now is
11 that I want to, you know, voir dire the
12 entire group on most issues with the
13 exception, you know, about knowledge of the
14 case because I think that I had -- I think I
15 would prefer not to get into the knowledge
16 about the case until we individually voir
17 dire and also the death issue qualification.

18 So my thinking is that I would voir
19 dire on all issues other than the actual
20 knowledge of the case and the death penalty
21 issue, and then I would let both of you ask
22 questions of the panel about all issues other
23 than those two.

24 And then after we ask questions about
25 all issues other than the death penalty and
26 knowledge of the case, then we would
27 individually voir dire on those issues. And
28 is that a procedure that's acceptable to both
29 of you?

INDIVIDUAL VOIR DIRE - JURY OUT

1 **BY MR. CARTER:** It is to me, Your Honor.

2 **BY MR. EVANS:** Yes, sir.

3 **BY THE COURT:** I think that that would --
4 you know, that would prevent someone from
5 blurting out something that does not need to
6 be said in front of everyone else. And, you
7 know, that's the purpose and the thinking
8 behind that so that's the procedure we'll
9 follow.

10 **BY MRS. STEINER:** If the Court please. I
11 found in today's people coming forward that
12 knowing either one of the victims or
13 Mr. Flowers or his family has been fairly
14 entwined with their discussion of having
15 knowledge of the case. Do you want to defer
16 inquiry about personal relationships, family
17 relationships also into the consuming
18 knowledge of the case or do you want to --

19 **BY THE COURT:** I think I will ask, you
20 know, everybody because I'm going to go
21 through the names, the victims' list. And
22 also, you know, Ms. Steiner, I'm going to ask
23 on both sides. And then, you know -- but
24 after I do that, if someone says that, you
25 know, that's not going to affect them, then
26 we can individually question them further
27 about that during the -- you know, I'm going
28 to ask them as a group. But also, you know,
29 it might -- because last time we tried the

INDIVIDUAL VOIR DIRE - JURY OUT

1 case, periodically, we would, you know,
2 excuse different ones for cause that it was
3 obvious that it was no point in continuing to
4 ask questions of somebody, you know, because
5 that just slows it down if somebody on every
6 question stands up and says, Well, that's
7 going to affect me in being a fair and
8 impartial juror. But if we've got, you know,
9 family members of either side and I -- you
10 know, if we don't have some family member of
11 the victims, I'll be surprised because we
12 certainly did last time.

13 But I'm going to ask group questions
14 about that. And then, you know, if it leads
15 to the necessity of individually questioning
16 about issues, then we'll do that. And on all
17 jurors that'll be done that way. I mean, if
18 somebody's spoken that we need to inquire
19 further on when we individually voir dire on
20 those two issues, we'll also take up any
21 other issues that might arise.

22 **BY MR. EVANS:** Just so I'll understand for
23 sure, Your Honor. The Court's going to go
24 into the possible witnesses and ones like
25 that. Are you saying that you don't want us
26 to follow up on that until individual voir
27 dire?

28 **BY THE COURT:** No, I'm saying that only --
29 you know, you can ask the questions you would

INDIVIDUAL VOIR DIRE - JURY OUT

1 ordinarily ask, so can the Defense except on
2 the issues of the death penalty and on if
3 they have --

4 **BY MR. EVANS:** Right. And what they've
5 heard.

6 **BY THE COURT:** -- knowledge of the case.

7 **BY MR. EVANS:** All right.

8 **BY THE COURT:** Because I don't think that
9 any -- you know, any other issues are not
10 going to be such, I think, that somebody
11 might blurt out something that would be
12 prejudicial to either side in the case
13 because that certainly would be the
14 overriding objective is to make sure that
15 someone during voir dire doesn't say anything
16 that would poison the well for anybody.

17 And if there are no other issues,
18 then we'll recess the proceeding until
19 9 o'clock Monday morning.

20 (THE COURT RECESSED PROCEEDINGS FOR THE
21 DAY)

22 (THE FOLLOWING PROCEEDINGS WERE HAD IN
23 OPEN COURT ON JUNE 7, 2010, WITH THE
24 COURT, THE COURT REPORTER, ALL COUNSEL,
25 THE DEFENDANT, THE CIRCUIT COURT CLERK AND
26 ALL PROSPECTIVE JURORS PRESENT, TO-WIT:)

27 (THE ROLE WAS CALLED BY THE CLERK)

28 **BY THE COURT:** The clerk advised me that
29 we've got a few jurors that did not show up

LATE JUROR QUALIFICATION

1 Friday that need to be qualified. So if
2 you'll all come forward inside the rail and
3 I'll go through the qualifications with you
4 at this time.

5 (PROSPECTIVE JURORS COME FORWARD)

6 **BY THE COURT:** Okay. I'm going to go over
7 some jury qualifications with you at this
8 time. You will be answering these questions
9 under oath. The clerk will administer that
10 oath to you at this time. So if you'll all
11 raise your right hands and answer that --
12 take that oath at this time.

13 **BY THE CLERK:** Do you and each of you
14 solemnly swear or affirm that you will true
15 answers make to all questions propounded to
16 you by the Court or under its direction
17 touching on your qualifications as a juror in
18 the case of State of Mississippi v. Curtis
19 Giovanni Flowers, so help you God?

20 **BY THE JURORS:** We do.

21 **BY THE COURT:** In order to be a juror in
22 the State of Mississippi, you've got to meet
23 a number of legal qualifications. There are
24 also some exemptions provided for by law that
25 you've got -- and one of these exemptions
26 might apply to you that could result in you
27 being excused from jury service.

28 If you do not meet one of these
29 qualifications that I go over with you, I

LATE JUROR QUALIFICATION

1 would want you to speak up and let me know
2 that. And also, if one of these exemptions
3 should apply to you, then you could speak up
4 and claim that, and it might result in you
5 being exempt or excused from jury service.

6 You've got to be at least 21 years of
7 age. So is there anyone that was called who
8 is not at least 21 years of age?

9 Also, you have to be a qualified
10 elector of Montgomery County or resident
11 freeholder of the county for more than one
12 year. Once again, either a qualified elector
13 or a resident freeholder of the county for
14 more than one year. So is there any one of
15 you that would not meet that qualification?

16 You could also not serve on a jury if
17 you've been convicted of a felony crime. A
18 felony is a crime that if you were convicted
19 of such, you could receive time in the state
20 penitentiary. Even if you were -- just
21 received a suspended sentence but did not
22 actually serve time in the penitentiary, that
23 would still be a disqualification from
24 serving on a jury. So do I have anybody that
25 would be disqualified because of a previous
26 felony conviction?

27 Also, you could not serve if you were
28 a common gambler or a habitual drunkard. So
29 do I have anybody that's a habitual drunkard

LATE JUROR QUALIFICATION

1 or common gambler here this morning?

2 Also, you must be able to read and
3 write. If you can read that jury
4 questionnaire that was included with your
5 summons and if you were able to fill it out,
6 then you're deemed for purposes of serving on
7 a jury to be able to read and write
8 satisfactorily. So did all of you complete
9 that jury questionnaire that was included
10 with your summons?

11 **BY JUROR:** (Shaking head).

12 **BY THE COURT:** Did you see that in the
13 mail?

14 **BY JUROR:** (Shaking head).

15 **BY THE COURT:** How did you even know to be
16 here then?

17 **BY JUROR:** Because someone heard my name
18 Friday.

19 **BY THE COURT:** Somebody heard your name
20 and called you?

21 **BY JUROR:** (Nodding head).

22 **BY THE COURT:** Well, can you read and
23 write?

24 **BY JUROR:** Yes.

25 **BY THE COURT:** Okay. Also, there's some
26 exemptions provided for by law. I can look
27 at each of you and tell none of you are over
28 age of 65. If you were, that would be an
29 exemption. One day, you might be able to

LATE JUROR QUALIFICATION

1 claim that, but most of you look like you're
2 a long way from that right now.

3 Also, if you had a situation where
4 you had an illness and because of that
5 illness you were not able to serve, then that
6 could result in you being exempt. Do any of
7 you have any situation where you've got some
8 illness that renders you incapable of serving
9 on a jury?

10 Also, if you had a -- yes?

11 **BY JUROR:** Me. Yes. Diabetes.

12 **BY THE COURT:** Diabetes. And do you take
13 insulin for that?

14 **BY JUROR:** I actually take a pill.

15 **BY THE COURT:** So you take a pill every
16 day for that? And does that affect you in
17 being employed anywhere? Are you employed or
18 are you drawing disability?

19 **BY JUROR:** Disability.

20 **BY THE COURT:** So you have been rendered
21 and diagnosed and rendered disabled by a
22 doctor?

23 **BY JUROR:** Right.

24 **BY THE COURT:** And are you concerned about
25 this diabetes affecting your ability to
26 function properly as a juror?

27 **BY JUROR:** I do so.

28 **BY THE COURT:** And what type of problems
29 do you usually have associated with that?

LATE JUROR QUALIFICATION

1 **BY JUROR:** Well, stress. And I can't
2 stand too much pressure.

3 **BY THE COURT:** Are you able to sit for
4 very long or stay still very long?

5 **BY JUROR:** At times, I do.

6 **BY THE COURT:** But are you telling me that
7 you feel like your health would be endangered
8 if you were to, you know, be up here because
9 of the diabetic situation?

10 **BY JUROR:** Well, some.

11 **BY THE COURT:** Well, I mean, you know, you
12 know more than anybody what your health
13 situation is because I -- you know, none of
14 us obviously do. And I certainly don't want
15 to do anything that's going to endanger your
16 health. So I really need to know how you
17 feel about that. Do you feel like you would
18 have -- run the risk of suffering some health
19 problems if you were to serve?

20 **BY JUROR:** Well, it's a possibility. I
21 mean, at this time, I don't feel, you know --
22 I don't feel up to it.

23 **BY THE COURT:** So you feel like you're not
24 feeling well this morning.

25 **BY JUROR:** Not really.

26 **BY THE COURT:** And feel like you're just
27 not able to be here?

28 **BY JUROR:** Well, I'm -- you know, I don't
29 feel well.

LATE JUROR QUALIFICATION

1 **BY THE COURT:** I'll let you go. What's
2 your name?

3 **BY JUROR:** Johnny Booker.

4 **BY THE COURT:** The clerk can excuse you,
5 Mr. Booker.

6 Also, the next situation is if jury
7 service would cause an undue or extreme
8 physical or financial hardship to you or
9 under someone you provide care or principle
10 means of support to, then that could result
11 in an exemption.

12 Again, if you were going to have to
13 abandon a person under your personal care or
14 supervision due to the inability of finding
15 appropriate substitute care or if you would
16 incur costs that would have a substantial
17 adverse impact on your ability to pay your
18 necessary daily living expenses or if there
19 would be a possibility of you suffering
20 physical hardship that could result in
21 illness or disease, any of those things -- if
22 any of those things are present, then that
23 could possibly result in you being exempt.
24 Do any of you have any of those issues or
25 situations?

26 Also, if you were a nursing mother or
27 breastfeeding mother, where you have,
28 obviously, a child small enough to be nursing
29 and you do that, then that could be an

LATE JUROR QUALIFICATION

1 exemption as well. Do I have anybody that
2 has that exemption?

3 Also, if you served as a petit juror
4 within the past two years where you actually
5 sat up here in the jury box and you tried a
6 case or if you served on a grand jury within
7 the past two years, that would be an
8 exemption as well. So do I have anybody that
9 would be exempt for that reason?

10 Okay. Then it seems that each of you
11 meet the qualifications and are not exempt
12 for any reason. So the clerk will come
13 forward now, and we'll administer the oath to
14 you.

15 **BY JUROR:** Excuse me. I'm relation to the
16 family.

17 **BY THE COURT:** We'll be getting into those
18 issues later on during the questions process.
19 If there's some conflict with that, then
20 you'll be able to tell us at some later time
21 during the morning.

22 **BY JUROR:** Okay.

23 **BY THE COURT:** Okay. If you'll raise your
24 right hand.

25 (JURORS SWORN BY THE CLERK)

26 **BY THE COURT:** And I want to get each of
27 your names, and I'll just add you on. And
28 what is your name?

29 **BY JUROR:** Najalah.

LATE JUROR QUALIFICATION

1 **BY THE COURT:** Najalah. And what's your
2 last name?

3 **BY JUROR:** Cage, c-a-g-e.

4 **BY THE COURT:** Okay. Ms. Cage, you will
5 be Juror No. 153. And if you'll grab that
6 number and go on and have a seat back there.

7 **BY MR. CARTER:** What's her name, Your
8 Honor?

9 **BY THE COURT:** Najalah Cage, c-a-g-e. And
10 then what is your name?

11 **BY JUROR:** Contrilla, c-o-n-t-r-i-l-l-a.

12 **BY THE COURT:** You talk faster than I can
13 write. C-o-n --

14 **BY JUROR:** T-r-i-l-l-a. Alexander.

15 **BY THE COURT:** And Ms. Alexander, you'll
16 be No. 154. And then what's your name?

17 **BY JUROR:** Toccara , t-o-c-c-a-r-a, Woods,
18 w-o-o-d-s.

19 **BY THE COURT:** With an s on the end?

20 **BY JUROR:** Uh-huh.

21 **BY THE COURT:** Ms. Woods, you'll be No.
22 155, and they'll give you a card
23 corresponding to that.

24 And what's your name?

25 **BY JUROR:** Lawrence McCloud.

26 **BY THE COURT:** What's the first name
27 again?

28 **BY JUROR:** Lawrence.

29 **BY THE COURT:** McCloud?

LATE JUROR QUALIFICATION

1 **BY JUROR:** (Nodding head).

2 **BY THE COURT:** Mr. McCloude, if you'll
3 have a seat back there, and you'll be No.
4 156.

5 **BY MS. STEINER:** Your Honor, what was
6 Ms. Woods first name?

7 **BY THE COURT:** Coccara or toc --

8 **BY MR. HOWIE:** Toccara.

9 **BY THE COURT:** Coccara.

10 **BY MR. HOWIE:** T-o-c-c-a-r-a.

11 **BY THE COURT:** Okay. I couldn't get it
12 all.

13 **BY MR. CARTER:** What was her number?

14 **BY MS. STEINER:** 155.

15 (OFF RECORD)

16 **BY THE COURT:** I'll call up now the case
17 of State of Mississippi v. Curtis Giovanni
18 Flowers, Cause Number 2003-0071-CR. What
19 says the State of Mississippi?

20 **BY MR. EVANS:** The State of Mississippi is
21 ready for trial, Your Honor.

22 **BY THE COURT:** And what says Defense?

23 **BY MR. CARTER:** Defense is ready, Your
24 Honor.

25 **BY THE COURT:** Ladies and gentlemen --

26 **BY THE BAILIFF:** Your Honor --

27 (BAILIFF APPROACHES THE BENCH FOR AN
28 OFF-THE-RECORD DISCUSSION)

29 **BY THE BAILIFF:** If all our jurors -- if

COURT CALLS UP CAUSE NO. 2003-0071-CR

1 you had a juror sitting beside you and
2 they're not there now, would you let me know?
3 You got one missing? Okay.

4 Okay. We had a couple that went to
5 the restroom.

6 (PAUSE)

7 **BY THE BAILIFF:** Is there anybody else
8 that had a juror sitting beside you and you
9 know they got up and went to the rest room?
10 Your Honor, they're all here.

11 **BY THE COURT:** Okay. Ladies and
12 gentlemen, at this time, I need you to raise
13 your right hands and take an oath. So if
14 you'll please stand and raise your right
15 hand. Do you and each of you solemnly swear
16 or affirm that you will give true answers to
17 all questions propounded to you by the Court
18 and the attorneys in the selection of the
19 jury in this case so help you God?

20 (PROSPECTIVE JURORS ANSWER

21 AFFIRMATIVELY)

22 **BY THE COURT:** Ladies and gentlemen, if
23 you'll be seated. Let me explain the
24 procedure that we'll be first taking up.
25 That's the procedure that's called voir dire.
26 That's where the Court and the attorneys for
27 both sides ask questions of you to make sure
28 that you can be a fair and impartial juror in
29 this case. There are going to be a number of

VOIR DIRE - COURT

1 questions asked. It's going to be a, you
2 know, rather lengthy process.

3 So first of all, I want to say if one
4 of you should need a recess or a break before
5 one happens to be called by the Court, please
6 signal the bailiff or the Court and let us
7 know that. Because certainly, we want
8 your -- you to be taken care of. And so, if
9 you've got any situation where, at any point
10 during this proceeding you need a brief
11 recess, I want to make sure that we take one
12 for you.

13 Also, I want to tell you what this
14 oath is. This is your oath that you will
15 truly answer questions that are asked of you
16 by the Court and by both attorneys -- both
17 sides in this case. There will be some
18 questions that will call for a verbal
19 response from you.

20 If you fail to answer a question that
21 requires a response from you, then that would
22 be considered an untruthful question -- I
23 mean, an untruthful response. So you are
24 answering these questions under penalty of
25 perjury, and I need to remind you of that.
26 And again, I want complete responses from all
27 of you on any question that might be asked of
28 you.

29 It might seem that a question is not

VOIR DIRE - COURT

1 important to you, and you think that it's,
2 you know, no point in answering it. But
3 these questions are important or they would
4 not be asked. So again, if a question calls
5 for a response from you, I want you to stand
6 and give us that response, and do not sit on
7 your hands when a response is required from
8 you.

9 I know that sometimes talking out in
10 front of people can be intimidating or a
11 little frightening for you. But just
12 consider yourself among friends up here.
13 There's no wrong answers to any questions
14 that are asked. The only wrong thing to do
15 would be to not respond to a question or to
16 give an untruthful answer to a response.

17 Also, you're going to hear the phrase
18 "fair and impartial jury" throughout these
19 questions, because what we're wanting is a
20 fair and impartial jury. What I mean by fair
21 and impartial jury -- juror is a juror that
22 will get up here in the jury box, will listen
23 to the evidence and will return a verdict
24 based on what the evidence shows to you.

25 A fair and impartial juror is one
26 that will not have any outside influences
27 that have come upon them to cause them to
28 have -- be swayed one way or another, and a
29 fair and impartial juror will not let some

VOIR DIRE - COURT

1 family ties or friendships or things that you
2 might have heard outside the courtroom
3 influence your verdict but will, in fact,
4 again, listen to the evidence and base your
5 verdict strictly on the evidence presented
6 here in court and on -- and on nothing else
7 but that. So when I will use the term "fair
8 and impartial juror", that's what I'm
9 referring to when I use that term.

10 I'm going to first begin now by
11 asking you a few questions about the
12 attorneys that are involved in the case. The
13 State of Mississippi is represented by
14 Honorable Doug Evans, Honorable Clyde Hill,
15 and Honorable Mike Howie. These are the
16 people that will be representing the State's
17 case to you today -- well, throughout the
18 course of the trial.

19 Honorable Alison Steiner and
20 Honorable Ray Charles Carter are representing
21 Mr. Flowers in this case, and they will be
22 defending him and presenting his case
23 throughout the course of the proceedings.

24 So I'll ask you first a few questions
25 about these attorneys whose names I have just
26 called. I want to know if any of you are
27 related by blood or by marriage to any of the
28 attorneys that are involved in this case that
29 is called up for trial. Are any of you

VOIR DIRE - COURT

1 related by blood or marriage to Mr. Evans,
2 Mr. Hill, Mr. Howie, Ms. Steiner or Mr.
3 Carter? And I take it by your silence that
4 none of you have a situation where you're
5 related by blood or by marriage to any of the
6 attorneys that are involved in this case.

7 I want to know if any of you have a
8 situation where any one of these attorneys
9 have represented you in some legal
10 proceeding. Has Mr. Evans, Mr. Hill,
11 Mr. Howie, Ms. Steiner or Mr. Carter ever
12 done any legal work for you or represented
13 you in any capacity? And I take it again by
14 your silence that that is not the situation
15 and you have not had.

16 I want to know kind of the reverse
17 thing now. Have any of you ever been on --
18 well, yeah. Have any of you ever been on the
19 opposite side of a case in which one of these
20 attorneys might have been involved; that is,
21 has Mr. Hill, Mr. Evans, Mr. Howie,
22 Mr. Carter or Ms. Steiner ever opposed you in
23 some legal proceeding where you were on one
24 side of the proceeding and they were on the
25 other side of a proceeding? And again, I
26 take it by your silence that none of you have
27 had that situation, either.

28 The last question -- I'm sorry. If
29 you'll please stand.

VOIR DIRE - COURT

1 **BY THE COURT:**

2 **Q** And you're Juror No. -- hold your
3 card where we can see that number -- No. 55.

4 And Ms. Bartlett, what is that situation?

5 **A** I was -- **(Juror No. 55, Christina**
6 **Bartlett)**

7 **Q** You're placed on nonadjudication for
8 something; is that correct?

9 **A** Right. **(Juror No. 55, Christina Bartlett)**

10 **Q** What county was that done in?

11 **A** Montgomery.

12 **Q** And were one of these lawyers or was the
13 district attorney's office prosecuting that?

14 **A** Yes.

15 **Q** And would that influence you in being a
16 fair and impartial juror?

17 **A** No.

18 **Q** And would you tend to either favor the
19 State's side or be opposed to the State's side in
20 this case because of that?

21 **A** Neither.

22 **Q** So you will be completely fair to both
23 sides and not have that be a factor at all in
24 your -- if you were to sit on the jury; is that
25 correct?

26 **A** Yes, sir.

27 **Q** Okay. Thank you.

28 Yes, ma'am. No. 153, Ms. Cage. And what
29 is that situation?

VOIR DIRE - COURT

1 **A** I currently have charges right now that
2 the State is -- **(Juror No. 153, Toccara Cage)**

3 **Q** So what county is that in?

4 **A** Montgomery County.

5 **Q** And has that case gone to trial?

6 **A** Not yet.

7 **Q** So -- but you are under indictment?

8 **A** Correct.

9 **Q** And what is that charge?

10 **A** It's four charges actually --

11 **Q** What type charge?

12 **A** Accessory after the fact, conspiracy to
13 commit perjury, burglary and -- well, three in
14 Montgomery County, one in Oktibbeha County.

15 **Q** And then where is the other one?

16 **A** The fourth one is in Oktibbeha County.

17 **Q** Okay. Now would these factors influence
18 you or affect you in being a fair and impartial
19 juror?

20 **A** Possibly.

21 **Q** So you're concerned that because of these
22 pending charges, that might influence you or affect
23 you, in fact, in being fair to both sides; is that
24 correct?

25 **A** Correct.

26 **Q** Okay. Thank you.

27 And No. 4. And you're Ms. Johnson?

28 **A** Yes. **(Juror No. 4, Patricia Johnson)**

29 **Q** And what is that situation?

VOIR DIRE - COURT

1 **A** My house was burglarized.

2 **Q** And was someone prosecuted for that?

3 **A** Yes.

4 **Q** And was that prosecution handled by the
5 current district attorney's office?

6 **A** Yes, sir.

7 **Q** And is there anything about that that
8 would influence you or affect you in any way in this
9 case?

10 **A** No, sir.

11 **Q** So you would not let the fact that they
12 prosecuted somebody that committed a crime against
13 you influence you at all; is that correct?

14 **A** No, sir.

15 **Q** Okay. Thank you.

16 Anyone else that would have any situations
17 like those that I have just gone over with these
18 individuals?

19 Ladies and gentlemen, I want to know if
20 any of you are related by blood or by marriage to
21 anyone that currently serves in law enforcement. I
22 also want to know if you are related by blood or by
23 marriage to any person that has at any point in the
24 past served in law enforcement. Also, if any of you
25 presently or in the past served in law enforcement.
26 Any of those factors occur, if you'll please stand,
27 and we'll get some information from you.

28 And if you'll kind of hold your fan
29 forward so I can kind of see those numbers.

VOIR DIRE - COURT

1 And No. 2, Ms. Harris, I believe you said
2 on your questionnaire that you had a brother-in-law
3 that was a police officer in Grenada?

4 A Yes, sir. (**Juror No. 2, Christy Anna**
5 **Harris**)

6 Q Do you have any other relatives in law
7 enforcement beside that?

8 A No, sir.

9 Q And who is this individual, the
10 brother-in-law?

11 A Ron Gregg. Ron Gregg.

12 Q Ron Gregg. And would the fact that
13 Mr. Gregg is related to you, would that influence
14 you or affect you in being a fair and impartial
15 juror in this case just strictly because you have a
16 relative in law enforcement?

17 A No, sir.

18 Q Thank you.

19 Then Ms. Johnson -- let's see. You are
20 kin to Bruce Patridge -- and Bruce Abel Patridge and
21 then another, Earl Wayne, who's deceased. And then
22 Clint Walker is your former son-in-law. Are
23 those -- or do you have any other relatives in law
24 enforcement?

25 A No. But I need to make a comment.

26 Q Yes, ma'am.

27 A My ex-brother-in-law -- I mean, my
28 ex-son-in-law was a police officer on the Winona
29 Police Department at the time of the crime. (**Juror**

VOIR DIRE - COURT

1 **No. 4, Patricia Johnson)**

2 Q Okay. And that was before he went with
3 MBN?

4 A Right.

5 Q And would that factor influence -- would
6 any of those factors or situations where you've got
7 relatives in law enforcement, would any of that
8 influence you or affect you in being a fair and
9 impartial juror in this case?

10 A No, sir.

11 Q And you'll just base your decision only on
12 the evidence presented in court; is that correct?

13 A Right.

14 Q Thank you. Okay. And then, No. 7. Who
15 is it that you've got that's a relative in law
16 enforcement?

17 A My daughter. **(Juror No. 7, Jack Sykes)**

18 Q And where does she work?

19 A She is the deputy director for the
20 National Forestry over at Sardis.

21 Q Say that again?

22 A She is the deputy director of Noxubee
23 Refuge --

24 Q Okay. Noxubee Refuge. And she serves in
25 law enforcement capacity with them?

26 A Right.

27 Q Would that -- that's over several counties
28 away from here. Would that influence you or affect
29 you in any way in being a fair and impartial juror

VOIR DIRE - COURT

1 in this case?

2 A No, it would not.

3 Q Okay. Thank you.

4 Then No. 10. And what is that situation?

5 A My cousin -- my husband's cousin, David
6 Johnson, used to be. He's retired. **(Juror No. 10,**
7 **Patricia Jefcoat)**

8 Q And I would assume probably that John
9 Johnson would --

10 A No.

11 Q -- opposite. So John's not, but David is;
12 is that correct?

13 A Right.

14 Q And would that influence you or affect you
15 in any way --

16 A No, sir.

17 Q -- in being a fair and impartial juror?

18 A No, sir.

19 Q Okay. Thank you.

20 Then No. 12, Ms. Johnson, and you said
21 your father serves as a law enforcement officer in
22 New Orleans and in Brookhaven?

23 A He's deceased now. **(Juror No. 12, Janelle**
24 **Johnson)**

25 Q Well, do you have any other relatives that
26 would have served in law enforcement in the past?

27 A No.

28 Q And would that -- the fact that you're the
29 daughter of someone that served in law enforcement,

VOIR DIRE - COURT

1 would that influence you or be a factor in you being
2 a fair and impartial juror in this case?

3 **A** No.

4 **Q** Okay. Thank you. And then No. 13,
5 Mr. Woods. And you worked at one time in the
6 Montgomery County Sheriff's Office?

7 **A** Yes, sir. (**Juror No. 13, Michael Woods**)

8 **Q** And for the record, what time frame was
9 that?

10 **A** 2000 -- late 2002 to December 07'.
11 December 31, 07.

12 **Q** And are you currently employed in law
13 enforcement capacity?

14 **A** No.

15 **Q** And would the fact that you were a deputy
16 here for a while, would that influence you or affect
17 you in being a fair and impartial juror in the case?

18 **A** I'm afraid I would go toward the State.

19 **Q** So have you learned some stuff, I guess,
20 through your capacity that would influence you and
21 cause you to question your ability to be fair and
22 impartial?

23 **A** Yes, sir.

24 **Q** Okay. Thank you. You may be seated.
25 And No. 14. And you've got a family
26 member, Mr. Carruth, that's a guard over at
27 Parchman. Is that correct?

28 **A** Yes, sir. (**Juror No. 14, Carolyn Wright**)

29 **Q** Do you have any other relatives in law

VOIR DIRE - COURT

1 enforcement?

2 **A** No.

3 **Q** And would the fact that Mr. Carruth is
4 related to you, would that influence you or affect
5 you in being a fair and impartial juror in this
6 case?

7 **A** No, sir.

8 **Q** And how is -- how is it you're related to
9 Mr. Carruth?

10 **A** That's my uncle.

11 **Q** Uncle?

12 **A** (Nodding head).

13 **Q** And then number -- you can be seated now.
14 Then No. 15, Ms. Forrest. And I believe
15 you said maybe Mr. Daniels with the Winona Police
16 Department?

17 **A** That's my nephew. (**Juror No. 15, Gloria**
18 **Forrest**)

19 **Q** Nephew? And how long has he been with
20 them? Do you know?

21 **A** I think about two years.

22 **Q** And would that influence you or affect you
23 in being a fair and impartial juror in this case?

24 **A** No.

25 **Q** Okay. Thank you. And then No. 18,
26 Ms. Laney.

27 **A** My father was a constable, and my cousin
28 is a constable -- Jerry Dale Bridges. (**Juror No. 18,**
29 **Lillie Laney**)

VOIR DIRE - COURT

1 Q Okay. When was your father a constable?

2 A Oh, when I was child.

3 Q A child?

4 A Uh-huh.

5 Q And then Mr. Bridges is currently a
6 constable.

7 A He is.

8 Q Would those factors influence you or
9 affect you at all in being a fair and impartial
10 juror in this case?

11 A No, sir.

12 Q Okay. Thank you. And then No. 19,
13 Ms. Eldridge. And who is it you would be related
14 to?

15 A My brother-in-law is chief of police in
16 Kilmichael -- David Eldridge. (**Juror No. 19, Merrian
17 Eldridge**)

18 Q And would the fact that David Eldridge is
19 your brother-in-law, would that influence you or
20 affect you in any way in being a fair and impartial
21 juror?

22 A No.

23 Q Okay. Thank you. Then No. 26,
24 Ms. Chatham, what is that situation?

25 A My fiance works over at the
26 Carroll/Montgomery jail. (**Juror No. 26, Jennifer
27 Chatham**)

28 Q And that's Mr. Gilliland?

29 A Yes, sir.

VOIR DIRE - COURT

1 Q And is he a guard over there?

2 A Yes, sir.

3 Q And how long has he worked there?

4 A For five years.

5 Q And would that be a factor or influence
6 you if you were sitting as a juror in this case?

7 A No, sir.

8 Q Okay. Thank you.

9 And then Ms. Briggs, I believe you said
10 your husband formerly worked for Memphis Police
11 Department; is that correct?

12 A Yes, sir, it is. **(Juror No. 27, Judy**
13 **Briggs)**

14 Q And what is his name?

15 A Spencer Briggs.

16 Q And would that influence you or affect you
17 in any way in being a fair and impartial juror in
18 this case?

19 A No, that would not.

20 Q And do you have any other relatives that
21 would be in law enforcement?

22 A Yes, I do.

23 Q And who are they?

24 A My stepson is current a police officer
25 with the Memphis Police Department.

26 Q And anyone else?

27 A No. But I would like to say that in the
28 late '80s, I worked for the Mississippi Attorney
29 General's Office, Department of Civil Litigation

VOIR DIRE - COURT

1 where the Mississippi Department of Corrections was
2 my client. And that might have some influence in my
3 decision making in this case.

4 Q So are you concerned that those -- your
5 previous employment would affect you in some
6 capacity in being a fair and impartial juror?

7 A Yes, I am.

8 Q Okay. Thank you.

9 And No. 28, Ms. Vance. And you've got a
10 brother that's a parole officer in Biloxi. Is
11 that --

12 A He was, about five or six years ago.

13 **(Juror No. 28, Terri Vance)**

14 Q Okay. Former parole officer. Have you
15 got any other relatives in law enforcement?

16 A No.

17 Q And would that influence you or affect you
18 at all in being a fair and impartial juror in this
19 case?

20 A No.

21 Q Okay. Thank you.

22 And then No. 29. Mr. Waller, you're kin
23 to -- who is it with the Winona Police Department?

24 A My wife's nephew. **(Juror No. 29, Harold**
25 **Waller)**

26 Q And who is it --

27 A Billy Nix.

28 Q Billy Nix. And would that influence you
29 or affect you in any way in being a fair and

VOIR DIRE - COURT

1 impartial juror in this case?

2 **A** No. Also, Bubba Nix is my wife's cousin,
3 too -- the sheriff.

4 **Q** Okay. So Bubba's -- so Billy's her
5 nephew?

6 **A** Right.

7 **Q** And Bubba is her cousin?

8 **A** Right.

9 **Q** And would any of those factors -- either
10 of those factors influence you at all --

11 **A** No, sir.

12 **Q** -- in being a fair and impartial juror?

13 **A** No, sir.

14 **Q** Okay. Thank you.

15 And then, Mr. Whitfield. And you've got
16 Dan Herod; is that correct?

17 **A** Yes, sir. **(Juror No. 30, Jeffrey**
18 **Whitfield)**

19 **Q** And works for DUI enforcement with the
20 county?

21 **A** Yes, sir.

22 **Q** How is it you're related to him?

23 **A** He's a brother-in-law.

24 **Q** And would that influence you or affect you
25 at all in being a fair and impartial juror in this
26 case?

27 **A** No, sir.

28 **Q** Okay. Thank you.

29 **BY THE COUR REPORTER:** Judge Loper, was it

VOIR DIRE - COURT

1 Dan Herod?

2 **BY THE COURT:** Yeah. Dan Herod; right?

3 **BY JUROR:** Yes, sir.

4 **BY THE COURT:** H-e-r-o-d.

5 **BY THE COURT:**

6 **Q** And then No. 31, Ms. Flowers. And you've
7 listed Earnest Manual as a state trooper that's your
8 uncle. Is that --

9 **A** Yes, sir. He's retired now. (**Juror No.**
10 **31, Votrice Huffin**)

11 **Q** Do you have any other -- ma'am?

12 **A** He's retired now.

13 **Q** Okay. Retired trooper?

14 **A** Uh-huh.

15 **Q** And do you have any other relatives that
16 are currently serving in law enforcement capacity?

17 **A** No.

18 **Q** And would the fact that your uncle is a
19 retired trooper, would that influence you or affect
20 you in any way in being a fair and impartial juror
21 in this case?

22 **A** No.

23 **Q** Okay. Thank you.

24 And then No. 36, I believe you said your
25 wife is currently employed by EOC. Is that correct?

26 **A** Yes, sir. (**Juror No. 36, Arthur Knight**)

27 **Q** And do you have any other relatives that
28 would be involved in law enforcement?

29 **A** Yes, sir.

VOIR DIRE - COURT

1 Q And who are they?

2 A Tommy Bibbs.

3 Q What's the name?

4 A Tommy Bibbs.

5 Q Okay. And how are you related to
6 Mr. Bibbs?

7 A Through my father. My father and his
8 father.

9 Q Okay. And you're -- Mr. Bibbs, for the
10 record, works for the Winona Police Department?

11 A Yes, sir.

12 Q And would that factor or the fact that
13 your wife works for EOC, would either of those
14 influence you or affect you at all in being a fair
15 and impartial juror in this case?

16 A It might.

17 Q So you've got some doubts because of their
18 employment about being fair and impartial?

19 A Well, because of my wife, it's family
20 connections.

21 Q Okay. Now, who is she family with?

22 A Well, Curtis. (**Juror No. 36, Arthur**
23 **Knight**)

24 Q Mr. Flowers. And how is she related to
25 him?

26 A She's his cousin.

27 Q Cousin to Mr. Flowers?

28 A Uh-huh.

29 Q And so are you saying that would influence

VOIR DIRE - COURT

1 you or be a factor in you being a fair and impartial
2 juror in this case?

3 **A** It possibly would. One of the victims was
4 my cousin.

5 **Q** And who was -- which one was that?

6 **A** Robert Golden.

7 **Q** Robert Golden was your cousin?

8 **A** Yes, sir.

9 **Q** So -- and you're saying these factors
10 because of your -- how close kin were you to
11 Mr. Golden?

12 **A** Well, pretty close. We was -- he finished
13 school with my brother. Then we went to church and
14 stuff together. We all grew up together.

15 **Q** Okay. And all these factors combined you
16 feel like would influence you where you couldn't be
17 fair and impartial?

18 **A** It -- it probably would.

19 **Q** Okay. Thank you.

20 (THE BAILIFF APPROACHES THE BENCH FOR
21 AN OFF-THE-RECORD DISCUSSION)

22 **BY THE COURT:** The bailiff just advised me
23 we've got about four people that maybe need
24 to step out to the restroom. If you're not
25 one that's presently standing up or if I've
26 already got your response, then if you need
27 to step out to the restroom for a second,
28 then you may do so while I'm getting
29 responses from these other individuals so....

VOIR DIRE - COURT
(PROSPECTIVE JURORS STAND UP)

1
2 **BY THE COURT:** Well, only those that I --
3 that are not holding the card and standing
4 up.

5 That's more than a couple. Why don't
6 we just go ahead -- you know, some of you --
7 the rest of you that are standing may have
8 the same situation, and so you might have to
9 go in a minute, you know, so let me just
10 recess until maybe 10:30.

11 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
12 CONTINUED IN OPEN COURT, TO-WIT:)

13 **BY THE COURT:** We were asking questions of
14 about any of you that were related by blood
15 or marriage to persons who serve in law
16 enforcement. And so those of you who we have
17 not gotten a response back from or hadn't
18 gotten to talk to you, if you'll please stand
19 back up, and we'll resume.

20 Okay. And what is your -- hold those
21 numbers up. It's amazing how -- and No. 5,
22 are you holding your number up?

23 **BY JUROR:** (Shaking head).

24 **BY THE COURT:**

25 **Q** Okay. That's fine. I just want to make
26 sure because, as I say I want to get complete
27 responses from everyone.

28 Okay. Mr. Fielder, what is the situation?
29 You work for Montgomery County as a reserve deputy;

VOIR DIRE - COURT

1 is that correct?

2 **A** Yes, sir. (**Juror No. 42, Marcus Fielder**)

3 **Q** And do you still do that that --

4 **A** No, sir.

5 **Q** -- or was that something that was done in
6 the past?

7 **A** Did it in the past.

8 **Q** And what years was that?

9 **A** 2004 to 2007.

10 **Q** Was that when Sheriff Thornburg was the
11 sheriff?

12 **A** Yes, sir.

13 **Q** And would that factor influence you or
14 affect you in any way in being a fair and impartial
15 juror in this case?

16 **A** No, sir.

17 **Q** And do you have any other relatives in law
18 enforcement?

19 **A** No, sir.

20 **Q** Okay. Or -- presently or in the past?

21 **A** No, sir.

22 **Q** Okay. Thank you. And then No. 47,
23 Ms. Davis. And what is that situation?

24 **A** In 2000, I was contracted by the federal
25 prison in Yazoo City to take x-rays as an
26 x-ray technologist for nine months. (**Juror No. 47,**
27 **Bobbi Davis**)

28 **Q** So you were in and out of the federal
29 prison over there during that timeframe?

VOIR DIRE - COURT

1 **A** (Nodding head).

2 **Q** And is that anything that would influence
3 you or affect you in being a fair and impartial
4 juror in this case?

5 **A** No.

6 **Q** Okay. Thank you.

7 Then No. 54, Ms. Box. Let's see. Tell us
8 who you're related to.

9 **A** My grandfather used to be chief of police.
10 **(Juror No. 54, Patricia Box)**

11 **Q** And that was Mr. Halloway?

12 **A** (Nodding head).

13 **Q** And that's been at some point in the past?

14 **A** Long time ago.

15 **Q** And then Mr. Joiner, chief of police in
16 Lexington, how is he kin to you?

17 **A** He's my brother-in-law.

18 **Q** Brother-in-law? And would those factors
19 influence you or affect you in any way in being a
20 fair and impartial juror in this case?

21 **A** No, sir.

22 **Q** And do you have anybody else besides those
23 that you're related to?

24 **A** No, sir.

25 **Q** Okay. Thank you.

26 And No. 55, Ms. Bartlett. And who is it
27 you're related to in law enforcement?

28 **A** My father-in-law was special agent for the
29 State Tax Commission but he retired in May. **(Juror**

VOIR DIRE - COURT

1 **No. 55, Christina Bartlett)**

2 Q And would that influence you or be a
3 factor in you being a fair and impartial juror in
4 this case?

5 A No.

6 Q Thank you. And No. 58, your father is
7 auxillary police officer in Grenada; is this
8 correct?

9 A Yes, sir. (**Juror No. 58, Emily Branch**)

10 Q And that's Chris Branch?

11 A Yes, sir.

12 Q Do you have any other relatives in law
13 enforcement?

14 A No, sir.

15 Q Would that influence you or affect you in
16 any way in being a fair and impartial juror in this
17 case?

18 A No, sir.

19 Q Thank you.

20 Then No. 61, how is it you're related to
21 Chuck McIntyre, former deputy here?

22 A That's my father. (**Juror No. 61, Chad**
23 **McIntyre**)

24 Q Okay. And would that influence you or
25 affect you in any way in being a fair and impartial
26 juror in this case?

27 A Yes, sir.

28 Q And I know he was a deputy during the time
29 frame when this would have occurred. And so have

VOIR DIRE - COURT

1 you heard things that have caused you to form an
2 opinion as to guilt or innocence?

3 A Yes, sir.

4 Q And could you lay that aside or do you
5 have a fixed opinion that could not be set aside?

6 A (Shaking head).

7 Q You could not set it aside?

8 A (Shaking head).

9 Q Okay. Thank you, Mr. McIntyre.

10 No. 67, Mr. Amason. And it's says Glen
11 Amason was your --

12 A Cousin. (**Juror No. 67, Timothy Amason**)

13 Q How -- cousin? And he worked for several
14 years here. I'm trying to remember the years.

15 A When Mr. Thornburg --

16 Q Okay. Under Sheriff Thornburg. And would
17 that influence you or affect you in being a fair and
18 impartial juror in this case?

19 A No, sir.

20 Q And any other relationships in law
21 enforcement?

22 A My wife has a couple of cousins. One was
23 John Johnson. The other was David Johnson.

24 Q And would that influence you or affect you
25 in -- any of these to be fair and impartial?

26 A It wouldn't affect me.

27 Q Okay. Thank you.

28 And then Ms. Ray, who is that --

29 A Before he retired, my husband was a 911

VOIR DIRE - COURT

1 dispatcher for Montgomery County. (**Juror No. 68,**
2 **Julia Ray**)

3 Q And how long ago was that?

4 A He's been retired about two years now.

5 Q And would that influence you or be a
6 factor in you being a fair and impartial juror in
7 this case?

8 A No, sir.

9 Q Okay. Thank you, Ms. Ray.

10 And then No. 73, Mr. Varnes?

11 A Yes, sir. (**Juror No. 73, Richard Varnes**)

12 Q And did you work for Winona police?

13 A Montgomery County.

14 Q Montgomery County?

15 A Yes, sir.

16 Q And how long ago was that?

17 A I believe it was like '06, '07, somewhere
18 along in there. It was two -- two trials ago.

19 Q And then, you've got a nephew that works
20 part time now?

21 A Used to.

22 Q And who was your nephew?

23 A Jamie. Jamie Varnes.

24 Q Would any of those factors influence you
25 or affect you in being a fair and impartial juror in
26 this case?

27 A Well, I escorted Mr. Flowers two trials
28 ago.

29 Q So you're familiar with him. Has that

VOIR DIRE - COURT

1 caused you to form any opinions about the case?

2 A Hearing some of the case --

3 Q Okay. I don't want to know what you
4 heard, but I'll just --

5 A I was just say, you know, hearing some of
6 --

7 Q So you feel like you could not set that
8 aside and base your verdict only on the evidence?

9 A No, sir.

10 Q Okay. Thank you.

11 And No. 80, Ms. Simmons. Billy Brister.
12 And how is he related?

13 A First cousins. (**Juror No. 80, Brenda**
14 **Simmons**)

15 Q And then he was also a state trooper; is
16 that -- I mean, former state trooper?

17 A Yes, sir.

18 Q And then Mr. Earl Patridge?

19 A Yes, sir.

20 Q How was he related to you?

21 A He's like my fourth or fifth cousin, but
22 he's deceased.

23 Q Okay. And is he the --

24 A He was sheriff of Montgomery County in the
25 '60s.

26 Q Okay. And would these family ties
27 influence you or affect you in being a fair and
28 impartial juror?

29 A No, sir. No, sir.

VOIR DIRE - COURT

1 Q Okay. Thank you.

2 And then No. 81, Ms. Hodges. And who is
3 it you would be related to?

4 A My husband is the county attorney in
5 Montgomery County, Lane Greenlee. (**Juror No. 81,**
6 **Rebecca Hodges**)

7 Q And would that influence you or affect you
8 in being a fair and impartial juror in this case?

9 A I think it probably would.

10 Q So you gathered things -- and could you
11 lay those aside or have you pretty much got --

12 A I don't know that I could.

13 Q So you've got doubts about whether you
14 could be fair, then?

15 A Yes, sir.

16 Q Okay. Thank you.

17 And then No. 82, Mr. Tompkins. Former
18 Sheriff Tompkins was a cousin; is that correct?

19 A Yes, sir. (**Juror No. 82, Kenneth Tompkins**)

20 Q And do you got any -- have you got anybody
21 else that you could be -- would be related to that
22 was in law enforcement?

23 A I got a cousin that's a conservation
24 officer.

25 Q And where does he work?

26 A Montgomery County.

27 Q And would those factors influence you or
28 affect you in being a fair and impartial juror in
29 this case?

VOIR DIRE - COURT

1 **A** Those factors probably wouldn't. There
2 are other factors.

3 **Q** Okay. We'll get into other things later.

4 And then Mr. Cross, you used to work for
5 the sheriff's department in several places. Is that
6 correct?

7 **A** Yes, sir. **(Juror No. 84, Phillip Cross)**

8 **Q** And are you involved in law enforcement in
9 any capacity now?

10 **A** No.

11 **Q** Would those previous employments influence
12 you or affect you in way in being a fair and
13 impartial juror?

14 **A** The only part of that is me and Benji
15 Rigby started off at the same time.

16 **Q** Okay. And we'll get into those issues a
17 little bit later.

18 And No. 87, Ms. Locke, and who is it that
19 you -- who is it that you would be related to?

20 **A** I hope I'm not speaking out of turn. For
21 two months in 2005, I worked for Delta Correctional
22 Facility as a registered nurse. I really didn't
23 think about -- I didn't feel I worked for law
24 enforcement. **(Juror No. 87, Beverly Locke)**

25 **Q** Right. But you worked at a prison --

26 **A** Yes, I did.

27 **Q** Is there anything about that that would
28 influence you or affect you in being a fair and
29 impartial juror?

VOIR DIRE - COURT

1 **A** No, sir.

2 **Q** Okay. Thank you. And I appreciate you
3 bringing that up.

4 And then Mr. Hayes, what relationship do
5 you have with somebody in law enforcement?

6 **A** Myself. **(Juror No. 88, Alphonso Hayes)**

7 **Q** Okay. And you're in the Army National
8 Guard?

9 **A** Yes, sir.

10 **Q** And are you an MP?

11 **A** Oh, no, sir. But I did MP work. But I
12 work for Grenada County on -- as a security guard in
13 '07 and '08.

14 **Q** And was that -- were you working for a
15 private company or was that for the county or the
16 city?

17 **A** It was -- yes. It was a privately-owned
18 jail. Grenada County.

19 **Q** Okay. At the correctional facility up
20 there?

21 **A** Yes, sir.

22 **Q** And would those factors influence you or
23 affect you in being a fair and impartial juror in
24 this case?

25 **A** Yes, sir.

26 **Q** So you feel like because you've been in
27 law enforcement, worked at the jail, that you just
28 couldn't sit in judgment and be fair; is that
29 correct?

VOIR DIRE - COURT

1 **A** Yes, sir.

2 **Q** Thank you.

3 No. 93, Ms. Pearson. Who is that that you
4 would be related to?

5 **A** My third cousin works for the Kilmichael
6 Police Department. (**Juror No. 93, Majorie Pearson**)

7 **Q** And who is that?

8 **A** Jeremy McDaniel.

9 **Q** And any others?

10 **A** No.

11 **Q** And would those factors influence you or
12 affect you in any way in being a fair and impartial
13 juror in this case?

14 **A** No.

15 **Q** They would not?

16 **A** No.

17 **Q** Okay. Thank you.

18 And then -- then I see, Ms. Acy, you're
19 related to the same individual; is that correct?

20 **A** Yes, sir. (**Juror No. 94, Melissa Acy**)

21 **Q** Jeremy McDaniel with Kilmichael Police?

22 **A** Yes, sir.

23 **Q** And that's your nephew? Would that
24 influence you or affect you in any way in being a
25 fair and impartial juror in this case?

26 **A** No.

27 **Q** Okay. Thank you. Then No. 95. And
28 Ms. Crawford, I don't see that we got any
29 questionnaire back from you at all so I'm going to

VOIR DIRE - COURT

1 ask a couple of questions of you that probably
2 others answered. Do you mind telling us your age?

3 **A** 28. (**Juror No. 95, Leslie Crawford**)

4 **Q** 28? And who is it you are related to?

5 **A** Johnny Hargrove and Anthony Austin.

6 **Q** Okay. Chief Hargrove. And then who else?

7 **A** Anthony Austin.

8 **BY THE COURT REPORTER:** Did she say
9 Austin?

10 **BY THE COURT:** Anthony Austin; right?

11 **A** Uh-huh.

12 **BY THE COURT:**

13 **Q** And any others in law enforcement?

14 **A** No, sir.

15 **Q** And how are you related to Mr. Hargrove?

16 **A** He is my second cousin.

17 **Q** And how about Mr. Austin?

18 **A** Second cousin.

19 **Q** And anybody else?

20 **A** No, sir.

21 **Q** And would those factors influence you or
22 affect you in being a fair and impartial juror in
23 this case?

24 **A** No, sir.

25 **Q** Okay. Thank you.

26 And then No. 106, Ms. Swindoll. And
27 you're related to Avlis that works for the Oxford
28 Police Department; is that correct?

29 **A** Yes, sir. (**Juror No. 106, Jennifer**

VOIR DIRE - COURT

1 Swindoll)

2 Q Do you have any other relatives in law
3 enforcement?

4 A I don't believe so.

5 Q As far as you know you don't?

6 A As far as I know.

7 Q Would the fact that you are related -- how
8 are you related to Mr. Swindoll that works in
9 Oxford?

10 A He's my second cousin.

11 Q And would that influence you or affect you
12 in being a fair and impartial juror?

13 A No, sir.

14 Q Okay. Thank you. And then --

15 BY THE COURT REPORTER: Wait, Judge Loper,
16 what was his name that she was related to?

17 BY THE COURT: Alvis. Was that a-v-l-i-s?

18 BY JUROR: Yes, sir.

19 BY THE COURT: Swindoll?

20 BY JUROR: Yes, sir.

21 BY THE COURT: Okay.

22 BY MR. EVANS: Arvis. I believe he works
23 with MBN.

24 BY THE COURT: Arvis. Okay.

25 BY THE COURT:

26 Q And then Mr. Golding, who is it you are
27 related to?

28 A Erwin Patridge, Bruce Patridge. They're
29 all distant cousins. (Juror No. 107, William

VOIR DIRE - COURT

1 **Golding)**

2 **BY THE COURT REPORTER:** I didn't get the
3 names. Can you say them again, please? What
4 were the names?

5 **BY JUROR:** Erwin Patridge, Bruce Patridge.

6 **BY THE COURT:**

7 **Q** And they were retired troopers, is that --
8 and then I think Bruce also worked for the deputy
9 sheriff of Montgomery -- I mean, in Grenada for a
10 while?

11 **A** And then also an uncle -- cousin, parole
12 officer for the state, T.D. Golding and Talmadge
13 Golding. **(Juror No. 107, William Golding)**

14 **Q** Would those factors influence you or
15 affect you in being a fair and impartial juror in
16 this case?

17 **A** No.

18 **Q** Thank you. Is it Surrell or Surrell --

19 **A** Surrell. **(Juror No. 108, Matthew Surrell)**

20 **Q** And your grandfather worked for Winona
21 Police Department at one time?

22 **A** Years ago.

23 **Q** And is there anybody else in your family
24 that you're --

25 **A** No, sir.

26 **Q** -- related to as far as you know? Would
27 that influence you or affect you be in being a fair
28 and impartial juror in this case?

29 **A** No, sir.

VOIR DIRE - COURT

1 Q Okay. Thank you.

2 And then No. 111, Mr. Jones. And who is
3 it you are related to?

4 A Myself. **(Juror No. 111, Brooks Jones)**

5 Q Okay. I see up there now you work for the
6 Department of Wildlife, Fisheries and Parks; is that
7 correct?

8 A Yes, sir.

9 Q And are you what we used to call a game
10 warden?

11 A That's correct.

12 Q I think it's conservation officer now
13 but --

14 A Among other things.

15 Q Yeah. I imagine you've been called a lot.
16 And how long have you been in that capacity,
17 Mr. Jones?

18 A 25 years.

19 Q And would that influence you or affect you
20 in any way in being a fair and impartial juror in
21 this case?

22 A No, sir.

23 Q Okay. Thank you. Then Mr. Daniels, and
24 you said you got a nephew that works for the Winona
25 police?

26 A Yes, sir. **(Juror No. 112, L.D. Daniels)**

27 Q And who is that nephew?

28 A Rashawn Daniels, Rashawn Daniels.

29 Q Okay. Rashawn Daniels? And how is it

VOIR DIRE - COURT

1 you're --

2 **A** It's my nephew.

3 **Q** Nephew? And would -- and how long has he
4 been employed -- do you know -- with them?

5 **A** Approximately two years.

6 **Q** Two years. And would that influence you
7 or be a factor in you being a fair and impartial
8 juror?

9 **A** No, sir.

10 **Q** Okay. Thank you.

11 Then No. 115, you're Ms. Smith. And James
12 Williams is your nephew. Is that correct?

13 **A** Yes, sir. **(Juror No. 115, Polly Smith)**

14 **Q** And then Ellis Bevis, the probation
15 officer.

16 **A** Yes, sir.

17 **Q** And anybody else?

18 **A** No, sir.

19 **Q** And would those factors influence you or
20 affect you in being a fair and impartial juror in
21 this case?

22 **A** No, sir.

23 **Q** Okay. Thank you.

24 And then, Mr. Bennett, let's see,
25 you're -- you were a part-time police officer for --
26 was that the city or county?

27 **A** City and the county two years ago. **(Juror**
28 **No. 120, Steven Bennett)**

29 **Q** Okay. And do you still work -- do you now

VOIR DIRE - COURT

1 work for Kilmichael?

2 A Yes, sir.

3 Q And is that part time or full-time?

4 A Yes, sir.

5 Q Part time?

6 A (Nodding head).

7 Q And then have you -- and you've got a
8 brother, Matthew, that works for the sheriff's
9 department currently?

10 A He works at Vaiden --

11 Q Okay. Vaiden? Did he work here at one
12 time?

13 A Yes, sir.

14 Q And how long ago was that that he worked
15 here? Do you know?

16 A Probably '04, '06, somewhere in there.

17 Q Okay. And would the fact that you served
18 in law enforcement part time and also you've had a
19 brother that -- well, brother that currently does,
20 would that influence you or affect you in being a
21 fair and impartial juror in this case?

22 A No, sir. I want also add that I
23 transported Mr. Flowers one time in a previous trial
24 in '07.

25 Q And has that caused you to form an
26 opinion --

27 A No, sir.

28 Q -- of any kind? And would that factor
29 influence you at all in being a fair juror in this

VOIR DIRE - COURT

1 case?

2 **A** No, sir.

3 **Q** Okay. Thank you.

4 No. 123, Ms. Sledge, and who is that?

5 **A** My brother. **(Juror No. 123, Sheila**
6 **Sledge)**

7 **Q** And who is that?

8 **A** Gage Wayne Vance.

9 **Q** What's the name?

10 **A** Gage Wayne Vance. He's with the Ole Miss
11 Police Department.

12 **BY THE COURT REPORTER:** With which
13 department?

14 **BY JUROR:** Ole Miss.

15 **BY THE COURT:**

16 **Q** And is he still working in that capacity?

17 **A** Yes, sir.

18 **Q** And how is it you said you're related to
19 Mr. Vance?

20 **A** He's my brother.

21 **Q** Brother. Okay. And would that be a
22 factor or influence you at all in being a fair and
23 impartial juror in this case?

24 **A** No, sir.

25 **Q** Okay. Thank you.

26 Then Ms. Britt. And say Bennie Chamblee
27 is an auxillary deputy at different times in the
28 past few years?

29 **A** Yes, sir. **(Juror No. 124, Martha Britt)**

VOIR DIRE - COURT

1 Q And how are you related to Mr. Chamblee?

2 A He's my brother-in-law.

3 Q And would that -- have you got anybody
4 else related?

5 A My niece is married to a highway patrolman
6 in Grenada County, Cole Adams.

7 Q And would those factors influence you or
8 affect you at all in being a fair and impartial
9 juror in the case?

10 A No, sir.

11 Q Okay. Thank you.

12 Mr. Britt. And you've got two cousins
13 that are deputies in Grenada. Is that correct?

14 A Right. **(Juror No. 126, Curtis Britt)**

15 Q And who are they?

16 A They were Albert and Robert Britt. That's
17 been 20 years ago. They're not --

18 Q Okay. So they worked in the past?

19 A They did in the past. I just thought I
20 would tell you, too: I was a security guard for
21 state security, but it wasn't law enforcement.

22 Q And would any of these factors influence
23 you or affect you in being a fair and impartial
24 juror in this case?

25 A No, sir.

26 Q Okay. Thank you, Mr. Britt.

27 Mr. Campbell. And you're related to
28 Mr. Young, who's worked for the Montgomery Sheriff's
29 department. And how are you related to Mr. Young?

VOIR DIRE - COURT

1 **A** Second cousin. **(Juror No. 127, Don**
2 **Campbell)**

3 **Q** And do you have any other relatives in law
4 enforcement?

5 **A** Governor Young.

6 **Q** Who?

7 **A** Governor Young. Governor Young.

8 **Q** Okay. And where does he work?

9 **A** Winona Police Department.

10 **Q** Okay. For the Winona Police Department?
11 And would those factors influence you or affect you
12 in any way in being a fair and impartial juror?

13 **A** No, sir.

14 **Q** Okay. Thank you.

15 And then Mr. Moore, who is it you would be
16 related to?

17 **A** My son. **(Juror No. 128, Herman Moore)**

18 **Q** And where does he work?

19 **A** He's one of those correctional officers at
20 Grenada -- I mean, Leflore County schools.

21 **Q** So he works over at Greenwood?

22 **A** Yes, sir.

23 **Q** Greenwood/Leflore?

24 **A** Yes, sir.

25 **Q** And what is his name?

26 **A** Herman Moore, Jr.

27 **Q** Okay. And would that influence you or
28 affect you in being a fair and impartial juror in
29 this case?

VOIR DIRE - COURT

1 **A** No, sir.

2 **Q** Okay. Thank you.

3 Ms. Eldridge, and who is it you're related
4 to?

5 **A** My father was an auxillary policeman but
6 that's back in the 60's. And David Eldridge is my
7 brother-in-law. **(Juror No. 129, Elizabeth Eldridge)**

8 **Q** And he's over at Kilmichael?

9 **A** Yes.

10 **Q** And chief over there, I believe. Right?

11 **A** Yes.

12 **Q** Would that influence you or affect you in
13 any way in being a fair and impartial juror?

14 **A** That wouldn't. But I currently work for
15 county prosecuting attorney, Lane Greenlee, and that
16 would.

17 **Q** So you've had things come through your
18 office that would -- you're concerned would affect
19 you in being a fair and impartial juror --

20 **A** Yes, sir.

21 **Q** -- because of your capacity of working for
22 the county prosecutor. Is that correct?

23 **A** Yes.

24 **Q** Okay. Thank you.

25 And then No. 132, Mr. Bridges. And how
26 are you -- how are you related to Jerry Dale
27 bridges?

28 **A** Yes, sir. **(Juror No. 132, Marvin**
29 **Bridges)**

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

VOIR DIRE - COURT

1 Q How are you related to him?

2 A Cousin. Also related to conservation
3 officer, Brooks Jones.

4 Q And who is that now?

5 A Conservation officer Brooks.

6 Q Oh, okay. And how are you y'all related?

7 A Cousin.

8 Q Would either of those factors influence
9 you or affect you in being a fair and impartial
10 juror in this case?

11 A No, sir.

12 Q Okay. Thank you. And then 139,
13 Mr. Briggs. And you're a retired police officer.
14 Is that correct?

15 A Yes, sir. **(Juror No. 139, Spencer**
16 **Briggs)**

17 Q And how long -- and that was in Memphis?

18 A Yes.

19 Q How long ago was that?

20 A 2004.

21 Q Oh, you retired in 2004? And you've got a
22 son that -- that works up there now as a police
23 officer?

24 A (Nodding head).

25 Q And would those factors influence you or
26 affect you in any way in being a fair and impartial
27 juror in this case?

28 A Yes, sir.

29 Q So you're concerned about being a former

VOIR DIRE - COURT

1 police officer that would -- you think it would just
2 influence you?

3 **A** Yeah. I've been involved in homicide and,
4 you know, I testified and apprehended people that
5 were wanted for homicide. It would affect me.

6 **Q** Okay. Thank you.

7 And then No. 144, Mr. Forrest. And now,
8 you got relatives working for the Winona Police
9 Department.

10 **A** I do. **(Juror No. 144, Theo Ware Forrest)**

11 **Q** Who are they?

12 **A** Hickory Bennett and Melvin Knight. And I
13 also have a nephew-in-law that works down at the
14 Carroll/Montgomery County Correctional facility,
15 Mr. Jeffrey Carver.

16 **Q** Jeff -- what's his name?

17 **A** Jeffrey Carver.

18 **Q** And how are you related to these
19 individuals?

20 **A** Hickory is my second cousin. Melvin is my
21 second cousin, and Jeff is married to my niece.

22 **Q** Okay. And would those factors influence
23 you or affect you in being a fair and impartial
24 juror in this case?

25 **A** Those as well as others that you're not --
26 those and other factors that you're not dealing with
27 --

28 **Q** Okay. We'll get to these other factors
29 later. But just right now, just by having relatives

VOIR DIRE - COURT

1 in law enforcement alone, would that influence you
2 where you couldn't be fair and impartial?

3 A No, not that.

4 Q Okay. As I say, we're gonna -- we're just
5 starting. There are going to be a lot of questions
6 that are going to be asked, and you'll have a -- and
7 all of you will have issues to be addressed later.
8 But right now, we're just strictly on this
9 particular issue.

10 And then Ms. Ingram, you're related to --
11 now, who are you related to?

12 A The sheriff, Bubba Nix, is my uncle.

13 **(Juror No. 145, Jennifer Ingram)**

14 Q Okay. And how are you related -- you're
15 his niece?

16 A (Nodding head).

17 Q And would that influence you or affect you
18 in being a fair and impartial juror in this case?

19 A No, sir.

20 Q And then the Nix that works at Winona
21 police department, are you related to him, too?

22 A No, sir.

23 Q Anybody else you're related to in law
24 enforcement?

25 A No.

26 Q And then, ma'am, I cannot see. No. 147,
27 Ms. Ringold. Who are you related to in law
28 enforcement?

29 A Chief. Chief. **(Juror No. 147, Maxine**

VOIR DIRE - COURT

1 **Ringold)**

2 **Q** Chief Hargrove?

3 **A** Uh-huh.

4 **Q** And how are you related to him?

5 **A** My cousin.

6 **Q** And anybody else?

7 **A** That's all.

8 **Q** And would that influence you or affect you
9 at all in being a fair and impartial juror in this
10 case?

11 **A** No, sir.

12 **Q** Okay. Thank you. And then Mr. Holiday,
13 you work for Wildlife, Fisheries and Parks?

14 **A** Yes, sir. **(Juror No. 149, David Holiday)**

15 **Q** Is that correct? And any other relatives
16 or relations in law enforcement?

17 **A** No.

18 **Q** And would the fact that you work as a
19 conservation officer, would that influence you or
20 affect you in being a fair and impartial juror in
21 this case?

22 **A** No, sir.

23 **Q** Okay. Thank you.

24 Then No. 153, Ms. Cage. And who is it
25 that you're related to?

26 **A** I worked for the Winona Police Department
27 in 2008. **(Juror No. 153, Najala Cage)**

28 **Q** Would there be anything about that that
29 would influence you or affect you in being a fair

VOIR DIRE - COURT

1 and impartial juror?

2 A No.

3 Q Okay. Thank you. Then Ms. Alexander,
4 what is --

5 A I have an uncle that's a retired state
6 trooper. **(Juror No. 154, Contrilla Alexander)**

7 Q And what was his name?

8 A Earnest Manual. Earnest Manual.

9 Q Okay. Earnest Manual? And would those
10 factors influence you or affect you in being a fair
11 and impartial juror?

12 A No, sir.

13 Q And then No. 156, Mr. McCloudé?

14 A I got a cousin, Michael Parnell, highway
15 patrolman. **(Juror No. 156, Lawrence McCloudé)**

16 Q And who is that again?

17 A Michael Parnell.

18 Q Michael, okay. And would that influence
19 you or affect you in being a fair and impartial
20 jury?

21 A No.

22 Q And no -- I'm sorry. Ms. Jones, No. 53.

23 A I don't think Mr. Young was in the
24 courtroom when you asked that question about do you
25 have anybody in law enforcement, but I think I'm
26 related to him.

27 Q Related to who?

28 A Mr. Young. **(Juror No. 53, Flancie Jones)**

29 Q Oh, okay. Y'all might be some distant

VOIR DIRE - COURT

1	kin?
---	------

2 **A** Well, I can't explain it.

3 Q Well, let me just ask you this:

4 || Ms. Jones, would that influence you or at all --

5 **A** No .

6 Q -- in being a fair juror in this case?

7	A	No.
---	----------	-----

8 Q Okay. Thank you.

9 And then No. 11 is Ms. Rodgers?

10 **A** Yes. I have a brother that is a park
11 ranger at Parker Butler Lake. **(Juror No. 11, Melba**
12 **Rodgers)**

13 Q And where is that now?

14 **A** Parker Butler Lake.

15 Q Okay. And where is that located?

16 **A** He lives in Senatobia --

17 Q Okay. Up that way. Up north of us. And
18 would that influence you or be a factor in being a
19 fair and impartial juror in this case?

20 **A** No.

21 Q Okay. Thank you.

22 Do I have anybody else -- and I -- you
23 know, I know some of you listed on the questionnaire
24 that you had relatives in law enforcement. But even
25 if you listed that and you have not stood up or
26 spoken up now, I want you to do that. So do I have
27 anybody that has got some relative in law
28 enforcement who has not spoken up at this point?

29 And that would be No. 65, Ms. Woods. And

VOIR DIRE - COURT

1 who would that be?

2 **A** Anthony Austin. Married to my niece.

3 **(Juror No. 65, Juanita Woods)**

4 **Q** Anthony Austin?

5 **A** Uh-huh.

6 **Q** And married to your niece?

7 **A** Uh-huh.

8 **Q** And how is it you're related to Mr. -- to
9 Mr. Austin -- I mean, you said that. I'm sorry. It
10 was your neice married to him?

11 **A** Uh-huh.

12 **Q** Would that influence you or affect you in
13 any way in being a fair and impartial juror in this
14 case?

15 **A** (Shaking head).

16 **Q** Okay. Thank you. Anyone else, that
17 again, we have not got a -- okay.

18 Then Ms. Griffin, I believe -- did you
19 speak up -- you've got somebody that -- Tommy Wolf,
20 was he a --

21 **A** He's deceased. **(Juror NO. 5, Carol**
22 **Griffin)**

23 **Q** Okay. But he was in law enforcement?

24 **A** He was a constable probably in the early
25 70s.

26 **Q** Okay. And was that -- were you married to
27 him at one time?

28 **A** I was.

29 **Q** And would that influence you or affect you

VOIR DIRE - COURT

1 in any way in being a fair and impartial juror?

2 **A** Not at all.

3 **Q** Okay. And then Mr. Eskridge, No. 34,
4 Calvin Eskridge is -- where's No. 34, if you'll
5 stand. And is Calvin Eskridge your son?

6 **A** Yes, sir. **(Juror No. 34, John Eskridge)**

7 **Q** And he works for Duck Hill?

8 **A** Well, used to.

9 **Q** Used to? Would the fact that he's
10 formerly employed as police in Duck Hill influence
11 you or affect you in being a fair and impartial
12 juror?

13 **A** No, sir.

14 **Q** Okay. Thank you.

15 And then Jessie Lee Crawford, where -- if
16 you'll -- now, you're -- do you have anybody that's
17 been in law enforcement in your --

18 **A** Not in Mississippi. I had the son in
19 Tennessee. **(Juror No. 33, Jessie Lee Crawford)**

20 **Q** Son in Tennessee? And what capacity --
21 was he a law officer over there?

22 **A** Policeman.

23 **Q** Police in Tennessee? And would that
24 influence you or affect you in being a fair and
25 impartial juror?

26 **A** No, sir.

27 **Q** Okay. Thank you.

28 And then Ms. Tompkins, who -- you've got
29 somebody that was in -- husband retired. Where is

VOIR DIRE - COURT

1 Ms. Regina Tompkins, No. 89?

2 **BY THE CLERK:** She is not here.

3 **BY THE COURT:** Oh, okay. She's in the
4 hospital. She's the one that's not here
5 today. I can see why she didn't speak up.

6 Now, ladies and gentlemen, an
7 indictment -- and we're here today because an
8 indictment was handed down by the grand jury
9 of this county. An indictment is the means
10 by which a case is brought to you for trial.
11 You determine the guilt or innocence of
12 Mr. Flowers. You do that based on the
13 evidence presented in court.

14 The fact that there was an indictment
15 in this case is not an indication of his
16 guilt or innocence. It's just strictly a
17 formal charge that gets to court for you to
18 decide guilt or innocence. And you're not to
19 consider the fact that there was an
20 indictment, but you're to base your decision
21 only on the evidence as presented here in
22 court.

23 So is there anyone of you that could
24 not disregard the fact that there was an
25 indictment and base your decision only on the
26 evidence presented here in court? Is there
27 anyone of you that could not disregard the
28 fact that there was an indictment and base
29 your decision only on the evidence presented

VOIR DIRE - COURT

1 here in court?

2 And I take it by your silence you're
3 assuring me that you will base your decision
4 strictly on the evidence presented here in
5 court.

6 Now the burden of proof is on the
7 State of Mississippi. They must prove
8 Mr. Flowers guilty beyond a reasonable doubt.
9 He's not required to prove his innocence.
10 He's not required to offer any proof at all,
11 if he chose not to. So is there any one of
12 you that disagrees with the burden of proof,
13 thinks it should be different from that in
14 which it is or thinks it should be less of
15 the standard than that of beyond a reasonable
16 doubt?

17 So I take it by your silence each of
18 you are assuring me you do understand the
19 burden of proof, understand that it's on the
20 State of Mississippi and that that burden is
21 beyond a reasonable doubt.

22 Now, ladies and gentlemen, I'm going
23 to give you now a brief overview of the type
24 case that is before you. Mr. Flowers is
25 charged with the crime of capital murder.
26 It's charged that on or about the 16th day of
27 July, 1996, in this county and within the
28 jurisdiction of this Court, that he did
29 willfully, unlawfully, feloniously and either

VOIR DIRE - COURT

1 with or without the deliberate design to
2 effect death, kill and murder Bertha Tardy,
3 Robert L. Golden, Carmen Rigby, and Derrick
4 Stewart. And that he did so while engaged in
5 the commission of the felony crime of armed
6 robbery. So again, he's charged with capital
7 murder related or arising from a charge that
8 he was committing a robbery at that time.

9 **BY MS. STEINER:** Your Honor, may we
10 approach?

11 (ALL COUNSEL APPROACH THE BENCH FOR A
12 CONFERENCE HELD OUT OF THE HEARING OF THE
13 PROSPECTIVE JURORS, TO-WIT:)

14 **BY MS. STEINER:** I really can't remember
15 if we've done this by prior motion, but I
16 don't know how extensive you're going to go
17 into specific facts in the voir dire, but I
18 would move to invoke the rule with respect to
19 any fact witnesses who might be in the
20 courtroom at this time during voir dire on
21 the specific facts.

22 **BY MR. EVANS:** On what basis?

23 **BY MS. STEINER:** I'm just invoking the
24 rule.

25 **BY THE COURT:** Well, I'd say it's fine to
26 get any fact witnesses on out of here. I
27 don't see any reason for any fact witnesses
28 to be in here at this point. Because you
29 know, there's no useful purpose served by any

VOIR DIRE - COURT

1 fact witness being in here so that will be
2 fine.

3 **BY MR. EVANS:** I would ask that any
4 defense fact witnesses --

5 **BY THE COURT:** Well, any defense fact
6 witnesses -- it's going to apply --

7 **BY MR. EVANS:** I don't know if there's
8 any.

9 **BY MS. STEINER:** And I think -- I think
10 we've also agreed in the past that people who
11 are (inaudible) --

12 **BY THE COURT REPORTER:** Ms. Steiner, I
13 can't hear you.

14 **BY MS. STEINER:** Oh. I think we've also
15 agreed in the past that people who are going
16 to be penalty phase/victim impact or defense
17 witnesses, they can't remain in the
18 courtroom.

19 **BY MR. EVANS:** I don't think it's any
20 difference in one or the other. But if the
21 judge wants us to get the fact witnesses out,
22 I have no problem with it.

23 **BY MS. STEINER:** Okay. Thank you.

24 **BY THE COURT:** Well, let's just get any
25 fact witnesses out at this point.

26 **BY MR. EVANS:** I don't know what the best
27 way to do that.

28 **BY THE COURT:** I'll just announce that --

29 **BY MR. EVANS:** Any witnesses --

VOIR DIRE - COURT
(BENCH CONFERENCE CONCLUDED)

1
2 **BY THE COURT:** If there is anybody that's
3 called as a witness that's under subpoena, if
4 you'll kind of make your way forward and let
5 us know. If I've got anybody that's actually
6 subpoenaed as a witness in this case that's
7 in the courtroom? And if you'll come
8 forward. If you're actually subpoenaed as a
9 witness, if you'll come forward and they'll
10 just show you out to this witness room.

11 **BY MS. STEINER:** For the record, who are
12 these witnesses?

13 **BY THE COURT:** Ma'am, what is your name?

14 **BY WITNESS:** Patricia Sullivan Odom.

15 **BY THE COURT:** Okay. Patricia Sullivan
16 Odom. And I know Mr. Jennings just --

17 (WITNESSES LEAVE THE COURTROOM)

18 **BY THE COURT:** Now, ladies and gentlemen,
19 I'm now going to start asking a few questions
20 concerning the parties involved in the
21 proceedings.

22 Are any of you related by blood or by
23 marriage to Curtis Flowers? Any of you
24 related by blood or by marriage to Mr.
25 Flowers? If you are, if you'll please stand
26 at this time. If you'll kind of hold those
27 cards up where I can see your numbers.

28 Mr. Sims, how you related to Mr.
29 Flowers? That would be Juror 21.

VOIR DIRE - COURT

1 **A** My wife is his cousin. **(Juror No. 21,**
2 **Larry Sims)**

3 **Q** And do you know how close of kin that
4 would be?

5 **A** Second or third.

6 **Q** Second or third? Do you have an ongoing
7 family relationship with Mr. Flowers' family
8 members?

9 **A** No. But you know. No.

10 **Q** And would the fact that your wife is his
11 cousin, would that influence you or be a factor in
12 you being a fair and impartial juror in this case?

13 **A** Yes, sir, it would.

14 **Q** So you've got some -- so you just feel
15 like you could not be fair and impartial because of
16 that family tie?

17 **A** No, I couldn't.

18 **Q** Okay. Thank you.

19 And Mr. Blaylock. I'm sorry. I was
20 looking at 23 and calling 22.

21 Mr. Russell, how are you related to Mr.
22 Flowers?

23 **A** Cousins. **(Juror No. 23, Anthony Russell)**

24 **Q** And do you know how close of cousin that
25 is?

26 **A** Not sure. I just found out recently.

27 **Q** And do you have an ongoing family
28 relationship with his family members or see them --

29 **A** Yes, sir.

VOIR DIRE - COURT

1 Q -- or anything? And you see them at
2 reunions or family gatherings or things like that?

3 A Yeah.

4 Q And would that influence you or affect you
5 in being a fair and impartial juror?

6 A Yes, it would.

7 Q And you just feel like because of that,
8 you couldn't sit in judgment of your cousin?

9 A No, I couldn't.

10 Q Okay. Thank you.

11 No. 31, this is -- your last name is
12 Ms. Flowers; correct?

13 A Yes, sir. **(Juror No. 31, Votrice Roshell**
14 **Huffin Flowers)**

15 Q And how are you related to Mr. Curtis
16 Flowers?

17 A He's my brother-in-law.

18 Q And would that influence you or affect you
19 in being a fair and impartial juror?

20 A No, it wouldn't. But I do have ongoing
21 relationships with his brother.

22 Q And you're married to which one of his
23 brothers?

24 A Archie Flowers.

25 Q Archie?

26 A Jr.

27 Q Archie, Jr.?

28 A (Nodding head).

29 Q And so you're swearing under oath that the

VOIR DIRE - COURT

1 fact that you're his sister-in-law would not
2 influence you and would not come about or cause you
3 any difficulty in being a fair and impartial juror.
4 Is that correct?

5 **A** No, that wouldn't. But being that I'm
6 married to his brother, it may -- it may influence
7 me, yes.

8 **Q** So then that would be an influence?

9 **A** Yes.

10 **Q** And that could be a factor and influence
11 you; is that correct?

12 **A** It could be.

13 **Q** And then No. 33, Mr. Crawford. How are
14 you related?

15 **A** My son had a child by his sister.

16 **(Juror No. 33 Jessie Crawford)**

17 **Q** Okay. So your son and his sister have a
18 baby together?

19 **A** Yeah.

20 **Q** And what is Mr. Flower's sister's name?

21 **A** Huh?

22 **Q** What is his sister's name that your son's
23 got a child with?

24 **A** All I know is Rat. I don't know.

25 **Q** But you know that is Mr. Flower's sister,
26 though?

27 **A** Yes.

28 **Q** Would that influence you or affect you in
29 any way in being a fair and impartial juror in this

VOIR DIRE - COURT

1 case?

2 **A** Probably would.

3 **Q** And so you've got -- so is there -- so
4 there's doubts in your mind about whether you could
5 be fair because of that?

6 **A** Yes, sir.

7 **Q** Okay. Thank you.

8 And then No. 36, Mr. Knight. And I
9 believe you had said a few minutes ago you were
10 married to Mr. Flowers' cousin?

11 **A** Yes, sir. **(Juror No. 36, Arthur Knight)**

12 **Q** And then you also were close cousin of
13 Mr. Golden?

14 **A** Yes, sir.

15 **Q** Or I mean, cousin and close to him. And
16 because of those factors, I believe you already said
17 you just feel like you could not be fair and
18 impartial; is that correct?

19 **A** Yes, sir.

20 **Q** Okay. Thank you. Then No. 37, Ms. Julia
21 Campbell?

22 **A** Yes. **(Juror No. 37, Julia Campbell)**

23 **Q** How are you related to --

24 **A** We're related by my mother, on her side of
25 the people.

26 **Q** And would -- would you be a cousin or do
27 you know --

28 **A** Cousin.

29 **Q** A cousin to Mr. Flowers?

VOIR DIRE - COURT

1 **A** Uh-huh.

2 **Q** And would that influence you or affect you
3 in being a fair and impartial juror in this case?

4 **A** Yes, it would.

5 **Q** And so you just feel like you could not
6 serve in judgment because of that?

7 **A** Right.

8 **Q** Okay. Thank you.

9 And then No. 46, Mr. Daniels?

10 **A** Yes. **(Juror No. 46, James Daniels)**

11 **Q** And how -- are you related to Mr. Flowers?

12 **A** Third cousin on his father's side.

13 **Q** And would that influence you or affect you
14 in being a fair and impartial juror?

15 **A** Yes. Me and his family are real close.

16 **Q** And you -- I believe you said you worked
17 with his brother and sister at Anel?

18 **A** Right.

19 **Q** Is that correct?

20 **A** True.

21 **Q** And you also knew Mr. Golden maybe?

22 **A** Well, his brother. Yes.

23 **Q** Oh, you knew Mr. Golden's brother?

24 **A** Me and Mr. Golden worked together.

25 **Q** Okay. Robert Golden?

26 **A** Right.

27 **Q** And would -- would -- and so you're saying
28 all those factors combined would influence you and
29 you just feel like you couldn't be fair and

VOIR DIRE - COURT

1 impartial; is that correct?

2 **A** Correct.

3 **Q** Okay. Thank you.

4 No. 52, Mr. Henry Campbell, how are you
5 related?

6 **A** My cousin on my mother's side. **(Juror No.**
7 **52, Henry Campbell)**

8 **Q** Your cousin on your mother's side?

9 **A** Right.

10 **Q** Would that influence you or be a factor in
11 you being a fair and impartial juror in this case?

12 **A** Yes. Because I work every day with his
13 sister.

14 **Q** Okay. And what is his sister's name?

15 **A** Priscilla. Priscilla.

16 **Q** Okay. And you feel like with you being a
17 cousin and also working with his sister, you just
18 couldn't be fair and impartial; is that correct?

19 **A** Right.

20 **Q** Okay. Thank you.

21 And then Ms. -- is this Ms. -- yeah -- Ms.
22 Jones, how are you related to Mr. Flowers?

23 **A** Last time I was here the courts made me
24 aware that he is my sister-in-law's sister's son.

25 **(Juror No. 53, Flancie Jones)**

26 **Q** Sister-in-law's sister's son. And would
27 that influence you at all in being a fair and
28 impartial juror in this case?

29 **A** (Shaking head).

VOIR DIRE - COURT

1 Q So you could base your decision on the
2 evidence and that type connection wouldn't influence
3 you; is that correct?

4 A It wouldn't influence me.

5 Q Okay. Thank you. No. 86? Ms. Green, how
6 are you related to Mr. Flowers?

7 A Cousin. **(Juror No. 86, Carlean Green)**

8 Q And do you know how close cousin?

9 A Distant.

10 Q Distant?

11 A Uh-huh.

12 Q And would that influence you or affect you
13 in being a fair and impartial juror in this case?

14 A Yes.

15 Q And so you feel like because of your
16 family connection there, you just could not be fair
17 and impartial; is that correct?

18 A Correct.

19 Q Okay. Thank you.

20 And then Mr. Hayes, what is that family
21 connection?

22 A Cousin. Cousin. Also, my neighbor.

23 **(Juror No. 88, Alphonso Hayes)**

24 Q Does Archie, his daddy, live close to you
25 or --

26 A Right by my grandmother's.

27 Q Next to your grandmother? And are you
28 saying that those family ties and connections and
29 close proximity to his parents would influence you

VOIR DIRE - COURT

1 where you could not be fair and impartial?

2 **A** Yes, sir.

3 **Q** Okay. Thank you.

4 Then No. 97, Mr. Brandon Flowers. And is
5 Curtis your uncle?

6 **A** Yes, sir. **(Juror No. 97, Brandon**
7 **Flowers)**

8 **Q** And whose son are you?

9 **A** Archie.

10 **Q** Archie, Jr.'s?

11 **A** Yes, sir.

12 **Q** And would that influence you or affect you
13 in being a fair and impartial juror?

14 **A** Yes, sir.

15 **Q** Okay. Thank you.

16 And then, let's see, No. 109, Eddie
17 Flowers. And Mr. Flowers, how are you related to
18 Curtis Flowers?

19 **A** Cousin. **(Juror No. 109, Eddie Flowers)**

20 **Q** And would that influence you or affect you
21 in being a fair and impartial juror in this case?

22 **A** Yes, sir.

23 **Q** Thank you.

24 No. 113, Ms. Magee, how is it you're
25 related to Mr. Flowers?

26 **A** Actually, my brother was -- used to date
27 his sister Priscilla. **(Juror No. 113, Sylrhonda**
28 **Magee)**

29 **Q** Okay. Your brother dated Curtis's sister?

VOIR DIRE - COURT

1 **A** Uh-huh. Priscilla.

2 **Q** And did you on occasion have a chance to
3 know Mr. Flowers because of that --

4 **A** Yeah. Really, it's mostly his sister,
5 Priscilla, that I really knew.

6 **Q** So you got --

7 **A** I knew of him, but I didn't know much
8 about him.

9 **Q** But you knew Priscilla more?

10 **A** Right. Right.

11 **Q** And would the fact that you knew Priscilla
12 through that capacity where she was dating your
13 brother, would that influence you or affect you
14 where you could not be fair and impartial to both
15 sides in this case?

16 **A** Yes, sir, I could and it would.

17 **Q** Okay. Thank you.

18 And then No. 140, Ms. Sutton, and how do
19 you -- how is it you're related to Mr. Flowers?

20 **A** Cousins. **(Juror No. 140, Shanta Sutton)**

21 **Q** Do you know how -- what degree of kinship
22 that would be?

23 **A** (Shaking head).

24 **Q** Just a cousin, though? And would that
25 influence you or affect you in being a fair and
26 impartial juror in this case?

27 **A** Yes, sir.

28 **Q** So you feel like because of him being your
29 cousin, you just could not be fair; is that correct?

VOIR DIRE - COURT

1 **A** Yes, sir.

2 **Q** Okay. Thank you.

3 And then, Ms. Stacy Forrest Black, No.

4 150. And how is it that you're related to

5 Mr. Flowers?

6 **A** He's my third or fourth cousin. **(Juror**
7 **No. 150, Stacy Black)**

8 **Q** And would that influence you or affect you
9 in being a fair and impartial juror in this case?

10 **A** Yes, it would.

11 **Q** And so you just feel like you could not
12 sit in judgment or be fair because of that?

13 **A** I could not.

14 **Q** Okay. Thank you.

15 And then Ms. Alexander, how are you
16 related?

17 **A** My cousin is married to his brother.
18 **(Juror No. 154, Contrilla Alexander)**

19 **Q** And which brother?

20 **A** Archie.

21 **Q** Okay. And this lady up here would be your
22 cousin, then; is that correct?

23 **A** Yes, sir.

24 **Q** And would that influence you or affect you
25 in being a fair and impartial juror in this case?

26 **A** No, sir.

27 **Q** So you could be fair and impartial even
28 though that connection exists; is that correct?

29 **A** Yes, sir.

VOIR DIRE - COURT

1 **Q** Okay. Thank you. And then No. 155,
2 Ms. Woods?

3 **A** He's my cousin. **(Juror No. 155, Toccara**
4 **Woods)**

5 **Q** Curtis is your cousin?

6 **A** Uh-huh.

7 **Q** And do you know how close?

8 **A** He's about my third or fourth.

9 **Q** Third or fourth? And would that influence
10 you or affect you in being a fair juror in this
11 case?

12 **A** Uh-huh.

13 **Q** It --

14 **BY MR. CARTER:** What was the answer?

15 **BY JUROR:** It would.

16 **BY THE COURT:** It would. So you're just
17 saying you couldn't be fair and impartial
18 because of being related to him?

19 **A** (Shaking head).

20 **Q** Okay. Thank you.

21 And then No. 156, Mr. McCloud, and
22 you're --

23 **A** I married his first cousin. **(Juror No.**
24 **156, Lawrence McCloud)**

25 **Q** Married to Curtis' first cousin?

26 **A** Yes, sir.

27 **Q** And would that influence you or affect you
28 in being a fair and impartial juror in this case?

29 **A** Yes, sir.

VOIR DIRE - COURT

1 Q And are you saying you just couldn't sit
2 in judgment of him because of that?

3 A No, sir.

4 Q Okay. Thank you.

5 Now, other than those that are related to
6 Mr. Flowers, because you've already answered about
7 knowing him because of being related to him. But I
8 want to know now if any of you that have not spoken
9 up just know Mr. Flowers. You know when you walked
10 in, you knew him or you have known him in the past
11 at all. So any of you that have not spoken up as to
12 being somehow related to him, if you just know
13 Mr. Flowers, if you'll please stand now.

14 And Ms. Johnson, how do you know Mr.
15 Flowers? **(Juror No. 4, Patricia Johnson)**

16 A Well, of course, I recognized his picture,
17 but I have heard my deceased father talk about the
18 fact that he lived on our farm when he was a small
19 child.

20 Q Okay. So Mr. Flowers worked -- or maybe
21 his family rented --

22 A His family --

23 Q -- some property there --

24 A Yes. I have heard my father talk about
25 that before he died.

26 Q And is there anything about that factor
27 that would influence you or affect you in being a
28 fair and impartial juror in this case?

29 A No, sir.

VOIR DIRE - COURT

1 Q Thank you. And then Ms. Griffin?

2 A Curtis is a former student of mine. I was
3 his junior high english teacher. **(Juror No. 5,**
4 **Carol Griffin)**

5 Q And would that influence you or affect you
6 in being a fair and impartial juror in this case?

7 A Not at all.

8 Q Okay. Thank you. And then Mr. Trotter?

9 A Yes. I knew him from back in the day.
10 **(Juror No. 6, Glenn Trotter)**

11 Q Well, were y'all like -- go to school or
12 friends or anything -- I mean, just -- you just knew
13 who he was?

14 A Just who he was.

15 Q And were you friends with him or anything?

16 A Some -- yeah. I just see him, you know --
17 I'd just speak and see him.

18 Q Excuse me?

19 A I would just speak when I see him.

20 Q Y'all spoke when you saw each other?

21 A Yes, sir.

22 Q And do you see his family, any of his
23 family now or anything?

24 A No, sir.

25 Q Would the fact that you've kind of known
26 him in the past and, you know, knew him back in the
27 day, would that influence you or affect you in
28 anyway at all in being a fair and impartial juror?

29 A No, sir.

VOIR DIRE - COURT

1 **Q** Okay. And then No. 7, Mr. Sykes. And how
2 was it you knew Mr. Flowers?

3 **A** I just know him -- know him. I know his
4 brother. I know his daddy. And his sister worked
5 for me, Priscilla. **(Juror No. 7, Jack Sykes)**

6 **Q** And his sister worked for you where?

7 **A** At Anel. I was her supervisor.

8 **Q** And on -- did you just know Mr. Flowers --

9 **A** I just know -- knew him.

10 **Q** -- you know, when you just saw him or --

11 **A** I just knew him when I saw him.

12 **Q** But you know some of his relatives maybe
13 --

14 **A** I knew his daddy and his brother. Knew
15 his daddy well.

16 **Q** Knew his father well?

17 **A** Yeah.

18 **Q** Would those factors influence you or
19 affect you in any way in being a fair and impartial
20 juror in this case?

21 **A** No.

22 **Q** Okay. Thank you. And then, Ms. Rodgers,
23 how is it you would know him?

24 **A** I -- Mr. Flowers worked at what was called
25 at the time Morris Recycling or Morris Brothers
26 Metals in Elliot, and I also worked there. He was
27 employed maybe two weeks. **(Juror No. 11, Melba**
28 **Rodgers)**

29 **Q** And is there anything about knowing him in

VOIR DIRE - COURT

1 that capacity that would influence you or affect you
2 in any way in being a fair and impartial juror in
3 this case?

4 **A** No, sir. We did not work together, but he
5 did work there.

6 **Q** Worked for the same company that you were
7 employed by.

8 **A** And one of his attorneys came by a couple
9 of years ago and got his personnel -- got a copy of
10 his personnel file.

11 **Q** And would that factor influence you at all
12 in being a fair and impartial juror?

13 **A** No.

14 **Q** Is that one of the lawyers here or was
15 that somebody else?

16 **A** I think it's this lady over here --

17 **Q** Okay. But somebody -- but that wouldn't
18 influence you in any way?

19 **A** No.

20 **Q** Okay. Thank you. And then, Mr. Woods,
21 you knew Mr. Flowers?

22 **A** I transported him several times during --

23 **Q** When you were working --

24 **A** -- '04, yes, sir. I did mention that
25 earlier. **(Juror No. 13, Michael Woods)**

26 **Q** And I believe you already said because of
27 you being employed as deputy sheriff in the past,
28 you could not be fair and impartial; is that
29 correct?

VOIR DIRE - COURT

1 **A** Yes, sir.

2 **Q** Okay. Thank you.

3 And then Ms. Gloria Forrest, No. 15, how
4 is it that you know him?

5 **A** I been knowing Curtis and his family all
6 my life. We was like down the street from each
7 other. **(Juror No. 15, Gloria Forrest)**

8 **Q** Live close to each other?

9 **A** (Nodding head).

10 **Q** And do you still see Mr. Flowers's family
11 members, any of them?

12 **A** Yes.

13 **Q** And like his daddy Archie. And do you see

14 --

15 **A** His brother.

16 **Q** Brother?

17 **A** Mother.

18 **Q** Mother? I'm sorry.

19 **A** Yes.

20 **Q** And do you still live in the same
21 neighborhood that they live in --

22 **A** No.

23 **Q** Y'all no longer live close to each other?

24 **A** No.

25 **Q** And would that factor influence you or
26 affect you in being a fair and impartial juror in
27 this case?

28 **A** I guess, because of the fact that I been
29 knowing him for so long and somewhat, but I think I

VOIR DIRE - COURT

1 can be fair.

2 Q So you would lay those aside and just base
3 your decision only on the evidence and not let these
4 family --

5 A Only on the evidence.

6 Q Ma'am?

7 A Only on the evidence.

8 Q Okay. Thank you.

9 And No. 16, Mr. Curry. And how do you
10 know Mr. Flowers?

11 A Well, I went to school with him. He was a
12 little younger, but I went to school with him. I
13 remember him in high school, and we used to kind of
14 play in the neighborhood and the community. And
15 also, I work with his sister Priscilla now. **(Juror**
16 **No. 16, Charles Curry)**

17 Q And you and her work at Luvata. Is
18 that --

19 A Luvata.

20 Q Luvata? Is that the same as Anel?

21 A No. No, Your Honor.

22 Q Oh, okay.

23 **BY MR. EVANS:** ADP, I think is --

24 **BY THE COURT:**

25 Q I get confused. Some of these factory
26 names and employed places. But would these factors
27 influence you or affect you in any way in being a
28 fair and impartial juror in this case?

29 A No, it would not.

VOIR DIRE - COURT

1 Q And if you were to find Mr. Flowers
2 guilty, would you feel ill at ease going back around
3 and working with his sister?

4 A Possibly, yes.

5 Q So you'd feel kind of like you might owe
6 her some reason for how you had ruled? Or feel like
7 y'all might have a discussion about it?

8 A It's a possibility.

9 Q Okay. Thank you.

10 And -- okay. No. 24, Ms. Melinda
11 Kirkwood. And now what is that situation with
12 Mr. Flowers?

13 A I worked with -- and his family at
14 Richardson Brothers. **(Juror No. 24, Malinda**
15 **Kirkwood)**

16 Q At where?

17 A Richardson Brothers. And I also know him
18 from singing, mostly following my uncle with Melody
19 Kings from Greenwood.

20 Q You followed your uncle where?

21 A I used to follow my uncle. He was the
22 lead singer for Melody Kings in Greenwood. I used
23 to be around him all the time.

24 Q So you work at Richardson Brothers. And
25 do you work -- did you work with him and his
26 parents?

27 A Him and his brothers -- his brother and
28 his sister and his cousin.

29 **BY THE COURT REPORTER:** What was the name

VOIR DIRE - COURT

1 of the singing group you said you followed?

2 **BY JUROR:** The Melody Kings of Greenwood.

3 **BY THE COURT:**

4 **Q** And would those factors influence you or
5 affect you in being a fair and impartial juror in
6 this case?

7 **A** Yes, they would.

8 **Q** So you just feel like you could not be
9 fair and impartial because of all those factors?

10 **A** Right.

11 **Q** Okay. Thank you. Okay. No. 43. And
12 Ms. Young, how do you know Mr. Flowers?

13 **A** I don't know Mr. Flowers personally, but I
14 do know his father and sister. I work with his
15 sister at Angelica. (**Juror No. 43, Rita Young**)

16 **Q** And which sister was that?

17 **A** I can't think of her name right now. She
18 might be the second sister. I -- I can't remember
19 her name.

20 **Q** And then you worked with or you know
21 Mr. Archie Flowers, Sr.?

22 **A** Yes, I do.

23 **Q** How do you know him?

24 **A** I know him from singing. From singing.

25 **Q** Okay. Have you heard him sing s or sang
26 with him or --

27 **A** Yes, I heard him sing.

28 **Q** You've heard him sing?

29 **A** Uh-huh.

VOIR DIRE - COURT

1 Q And would the fact that you worked with
2 his sister in the past and that you know Mr. Archie
3 Flowers, would those factors influence you or affect
4 you in any way in being a fair and impartial juror
5 in this case?

6 A Yes, it would.

7 Q So those would influence you to the extent
8 you just couldn't be fair and impartial; is that
9 correct?

10 A Yes, sir.

11 Q Okay. Thank you. Then Ms. Burnside. And
12 how do you know Mr. Flowers?

13 A When he was younger, he was friends with
14 my boys, and they used to play ball and stuff
15 together so he visited my house. **(Juror No. 45,**
16 **Edith Burnside)**

17 Q So he's visited in your home before and
18 was friends with your boys?

19 A Yes, sir.

20 Q And do you have any -- you know, ever see
21 any of his family members now or anything?

22 A Every now and then. I don't.

23 Q And would the fact that he played with
24 your children growing up and he would visit in your
25 home in the past, would that influence you or affect
26 you in being a fair and impartial juror in this
27 case?

28 A No, sir, it wouldn't.

29 Q So you would lay that aside and your

VOIR DIRE - COURT

1 opinion would be based only on the evidence; is that
2 correct?

3 A Yes, sir.

4 Q Okay. Thank you. And then -- I'm sorry.
5 Ms. Givens, No. 41. And how do you know Mr.
6 Flowers?

7 A I'm related to the Golden man. (**Juror No.**
8 **41, Margaret Givens**)

9 Q Related --

10 A To the Golden man.

11 Q Okay. You were related to Robert Golden?

12 A Uh-huh.

13 Q And how were you related to Mr. Golden?

14 A First cousins.

15 Q First cousins? And do you have any
16 knowledge of Mr. Flowers other than the fact that he
17 was charged with murdering Mr. Golden? Is that how
18 you knew of Mr. Flowers?

19 A No, Your Honor.

20 Q Okay. Well, did you know Mr. Flowers
21 before this incident occurred or allegedly occurred?

22 A I been knowing him for a long time, but I
23 don't fool with him.

24 Q Okay. But you knew who he was, though.

25 A Uh-huh. I know him, but I don't associate
26 with him.

27 Q Okay. And would the fact that you know
28 who Mr. Flowers is and the fact that you are first
29 cousin of Mr. Golden, would that influence you or

VOIR DIRE - COURT

1 affect you in being a fair and impartial juror in
2 this case?

3 A No.

4 Q It would not influence you at all. So you
5 could be fair to both sides and the fact that you're
6 first cousins with Mr. Golden would not come into
7 play in you being a fair juror; is that correct?

8 A Yes, sir.

9 Q Okay. Thank you.

10 And then No. 62, Ms. Hargrove. And how do
11 you know Mr. Flowers?

12 A My name is Diane Copper. (Juror No. 62,
13 Diane Copper)

14 Q I'm sorry. I looked at the wrong one.
15 What is your number? It's amazing that looked like
16 a three for a second, and I apologize to you,
17 Ms. Copper. You knew Mr. Flowers?

18 A Yes. I just, you know -- I don't know
19 him, you know, personally, but I worked with his
20 sister, and I used to work at the shoe store here in
21 Winona. And I also work with -- work with his
22 father at Wal-Mart.

23 Q So you work with his father at Wal-Mart,
24 and then -- and where was that other place?

25 A I used to work at a store called Shoe
26 World.

27 Q Okay.

28 A It was at the end of Wal-Mart.

29 Q Right.

VOIR DIRE - COURT

1 **A** His sister Cora worked with me.

2 **Q** So Cora worked with you at Shoe World?

3 **A** Yes, sir.

4 **Q** And would those factors influence you or
5 affect you in any way in being a fair and impartial
6 juror in this case?

7 **A** No, sir.

8 **Q** And so if you found Mr. Flowers guilty,
9 you wouldn't feel you had to discuss that or explain
10 that to Cora or anybody else; is that correct?

11 **A** That's correct.

12 **Q** Okay. Thank you.

13 Ms. Carodine, you know Mr. Flowers?

14 **A** Yes. I know him; his father, Archie; his
15 mother, Lois. I work with his sister, Priscilla.

16 **(Juror No. 70, Annie Carodine)**

17 **Q** And do you currently work with Priscilla
18 or --

19 **A** Yes.

20 **Q** And that's at Luvata or Heat Craft?

21 **A** Luvata.

22 **Q** Luvata?

23 **A** Luvata.

24 **Q** Okay. And you work with her now?

25 **A** Yes.

26 **Q** And do y'all work on the same line
27 together or --

28 **A** Sometimes.

29 **Q** And would that influence you or affect

VOIR DIRE - COURT

1 fact you in being a fair and impartial juror in this
2 case?

3 **A** I believe it would.

4 **Q** Okay. Thank you.

5 Ms. Stewart, how do you know Mr. Flowers?

6 **A** I been knowing him and his family for many
7 years. It's been a long time. We used to live
8 right around the corner from where he live. He live
9 on Tipton Street when he was growing up. And his
10 uncle Johnny and my brother is very best -- they
11 best friends. **(Juror No. 71, Barbara Stewart)**

12 **Q** And would those factors influence you or
13 affect you in being a fair and impartial juror in
14 this case?

15 **A** Yes, it would.

16 **Q** Thank you.

17 And then No. 73. And I believe you said
18 maybe you knew Mr. Flowers because of your former
19 employment. Is that correct?

20 **A** That's correct. **(Juror No. 73, Richard**
21 **Varnes)**

22 **Q** And you've already said because of that
23 you couldn't be a fair and impartial juror; is that
24 correct?

25 **A** Yes, sir.

26 **Q** Okay. Thank you.

27 Then Mr. Doyle, how did you know
28 Mr. Flowers?

29 **A** My mother and his auntie was best friends

VOIR DIRE - COURT

1 for years. I work with his brother, and I'm friends
2 with his sister, Sherita Flowers. (**Juror No. 74,**
3 **Ellis Doyle**)

4 Q Okay. Your mother and his aunt are real
5 good friends -- Mr. Flowers' aunt?

6 A Correct.

7 Q And then who were these other people?

8 A I work with Archie, his brother now. I
9 work with him, and I'm friends with his sister,
10 Sherita.

11 Q What's that sister's name again?

12 A Sherita.

13 Q Okay. And would those factors influence
14 you or affect you in being a fair and impartial
15 juror in this case?

16 A Yes, sir.

17 Q Okay. Thank you.

18 No. 84, Mr. Cross. And what is that
19 situation?

20 A Me and his sister, Priscilla, were
21 classmates. (**Juror No. 84, Phillip Cross**)

22 Q And how long ago was that?

23 A All through high school.

24 Q No. I mean, y'all -- I mean, how many
25 years has it been since y'all were classmates?

26 A Since we graduated in '91.

27 Q Okay. And have you had any situation
28 where you would have run into her since or anything?

29 A Just seeing her locally at basketball

VOIR DIRE - COURT

1 games and football games.

2 Q Okay. And would that influence you or
3 affect you in being a fair and impartial juror in
4 this case?

5 A No, sir.

6 Q If you were to find her brother guilty,
7 would you feel you owed her any reasoning or
8 explanation for how you had ruled?

9 A No, sir.

10 Q Okay. Thank you. And then No. 90, Ms.
11 Forrest, and what is that situation?

12 A I been knowing him for a while, and I went
13 to school with his brother. (**Juror No. 90, Lynell**
14 **Forrest**)

15 Q You went to school with Mr. Flowers'
16 brother.

17 A Yes.

18 Q And which brother?

19 A Archie.

20 Q Archie, Jr?

21 A Yes.

22 Q And have you had a situation where you
23 would have seen or known Mr. Archie, Jr. since then,
24 since high school?

25 A Yes.

26 Q And then you've known Mr. Flowers, also,
27 for a while?

28 A Yes.

29 Q Now, would those factors influence you or

VOIR DIRE - COURT

1 affect you in any way in being a fair and impartial
2 juror in this case?

3 A Yes.

4 Q And so you just feel like because of that,
5 you just cannot be fair to both sides?

6 A Yes.

7 Q Okay. Thank you.

8 And then No. 95, Ms. Crawford. And how
9 did you know Mr. Flowers?

10 A I know his family. And a couple of times
11 I was visiting an inmate in Vaiden, I spoke with
12 him. (Juror No. 95, Leslie Crawford)

13 Q So you would see -- you visited or
14 actually seen him at jail?

15 A (Nodding head).

16 Q And how do you know his family? Which
17 family do you know?

18 A His sisters, his mom and dad.

19 Q And would those factors influence you or
20 affect in you being a fair and impartial juror in
21 this case?

22 A No.

23 Q So you could lay those factors aside and
24 just base your decision only on the evidence here in
25 court; is that correct?

26 A Uh-huh. Yes, sir.

27 Q Okay. Thank you.

28 Then No. 99, Ms. Suggs.

29 A Yes. (Juror No. 99, Revell Suggs)

VOIR DIRE - COURT

1 Q What is that situation?

2 A I have a niece that it's his first cousin.
3 Because of that, I'm very close to the family --

4 Q Wait. Tell me about that niece again.
5 Now what did you say about --

6 A My niece, Patricia Flowers, is his first
7 cousin.

8 Q Okay. And then what about the family
9 situation?

10 A I said because of her, I'm very close to
11 the family.

12 Q And that would be Mr. Archie and Ms. Lola
13 and those family members.

14 A Yes.

15 Q And would those factors influence you or
16 affect you in being a fair and impartial juror?

17 A I believe it would.

18 Q So you feel like because of that, you just
19 couldn't be fair to both sides?

20 A Yes.

21 Q Okay. Thank you.

22 And then, Mr. Bays, who do you know? I
23 mean, how do you know Mr. Flowers?

24 A Through my sister. My sister and his mom
25 are best friends. **(Juror No. 102, Paul Bays)**

26 Q And that would be Ms. Lola Flowers?

27 A Yes, sir.

28 Q And have you had an opportunity to,
29 because of your mother, to get to know Mr. Flowers'

VOIR DIRE - COURT

1 mother?

2 **A** My sister. Not my mother.

3 **Q** Oh, I'm sorry. Your sister. I'm sorry.

4 It was your sister and Mr. Flowers' mother.

5 **A** Correct.

6 **Q** I'm sorry. I got that straight now. Have
7 you had an opportunity through your sister to know
8 who Mr. Flowers' mother is?

9 **A** Yes.

10 **Q** And had -- would the fact that you know
11 Mr. Flowers or know him because of his mother, would
12 that fact influence you or affect you in being a
13 fair and impartial juror in this case?

14 **A** Yes.

15 **Q** So you just could not lay that aside --

16 **A** No.

17 **Q** -- is that correct?

18 **A** Correct.

19 **Q** Okay. Thank you. And then No. 112, and
20 Mr. Daniels, how do you know Mr. Flowers?

21 **A** I know Curtis and his family for many
22 years. **(Juror No. 112, L.D. Daniels)**

23 **Q** And was that just because of being in the
24 same community or did y'all live in the same
25 neighborhood or tell me a little bit more.

26 **A** Same community, neighborhood.

27 **Q** And do you consider yourself friends with
28 Mr. Flowers' family?

29 **A** Yes, sir.

VOIR DIRE - COURT

1 Q And would that influence you or affect you
2 in any way in being a fair and impartial juror in
3 this case?

4 A I think it would.

5 Q Your -- so you just feel like because of
6 that you couldn't be fair and impartial?

7 A Yes, sir.

8 Q Okay. Thank you. And then you're
9 Ms. Kilpatrick?

10 A Uh-huh. **(Juror No. 114, Diann Kilpatrick)**

11 Q And how do you know Mr. Flowers?

12 A Well, I work with his sister.

13 Q I'm sorry?

14 A I work with his sister, Sherita Brown.

15 Q And are you working with her now?

16 A Yes.

17 Q And where is that y'all work?

18 A ADP.

19 Q And do you have an occasion to regularly
20 see her at work?

21 A Yes.

22 Q And would that influence you or be a
23 factor in you being a fair and impartial juror?

24 A I believe so.

25 Q So you feel like you couldn't be fair
26 because of that?

27 A Yes.

28 **BY MR. CARTER:** Did she say something
29 else?

VOIR DIRE - COURT

1 **BY THE COURT:** No. She --

2 **A** Yeah, I did. (**Juror No. 114, Diann**
3 **Kilpatrick**)

4 **BY THE COURT:**

5 **Q** You can repeat what you said.

6 **A** And I have a baby by his cousin.

7 **Q** Okay. A baby by Mr. Flowers' cousin?

8 **A** Uh-huh.

9 **Q** And who is that?

10 **A** Nakita Campbell.

11 **Q** And again, you're saying those factors
12 would influence you where you just feel like you
13 couldn't be fair and impartial?

14 **A** Yes.

15 **Q** Okay. Thank you.

16 And then, ma'am, No. 116, Ms. Powell. And
17 how do you know Mr. Flowers?

18 **A** Me and his sister Sherita work together,
19 and we carpool. (**Juror No. 116 Cynthia Powell**)

20 **Q** And are you saying Sherita?

21 **A** Sherita.

22 **Q** Sherita? And y'all carpool together?

23 **A** (Nodding head).

24 **Q** And would that influence you or affect you
25 in being a fair and impartial juror in this case?

26 **A** Yes, sir.

27 **Q** Okay. Thank you.

28 And then No. 131, Ms. Latonya Campbell,
29 you know Mr. Flowers?

VOIR DIRE - COURT

1 **A** Yes, sir. (**Juror No. 131, Latonya**
2 **Campbell**)

3 **Q** And how do you know him?

4 **A** He used to date my sister.

5 **Q** Used to date your sister?

6 **A** Uh-huh.

7 **Q** And did you get to know him from his
8 courtship with your sister?

9 **A** Yes.

10 **Q** And would that influence you or be a
11 factor in you being a fair and impartial juror?

12 **A** Yes.

13 **Q** Okay. Thank you.

14 And then Ms. Hattie Sanders, No. 133. You
15 knew Mr. Flowers?

16 **A** I knew him through his mother and his
17 sister, Sherita. (**Juror No. 133, Hattie Sanders**)

18 **Q** And would those factors influence you or
19 affect you in being a fair and impartial juror?

20 **A** Yes. Because Sherita come over to my
21 house every -- all the time.

22 **Q** So Sherita visits you at your home often?

23 **A** Yeah.

24 **Q** Okay. Thank you, Ms. Sanders.

25 Any -- I'm sorry. No. 144, Mr. Forrest.
26 And you know Mr. Flowers?

27 **A** I know his family. I didn't stand up when
28 you said relatives, because I am not sure about
29 that. But I sing with a gospel group, and I be

VOIR DIRE - COURT

1 around his father -- **(Juror No. 144, Theo Forrest)**

2 Q So you sing with -- in a group with his
3 father?

4 A I sing with another group. I be on the
5 program with his father a lot. And also, we did
6 some prison ministries down in Montgomery/Carroll.
7 We been down there singing as well.

8 Q And then you say prison ministries, too?

9 A Yeah. My group went -- been down to the
10 facility there in Carrollton as well.

11 Q Okay. And would those factors influence
12 you or affect you in being a fair and impartial
13 juror in this case?

14 A I feel like it would be a conflict of
15 interest.

16 Q So would that affect you in being fair and
17 impartial?

18 A I believe it would.

19 Q Okay. Thank you.

20 Anyone else that -- because -- okay. No.
21 14, Ms. Wright?

22 A Uh-huh. **(Juror No. 14, Carolyn Wright)**

23 Q And how do you know Mr. Flowers?

24 A Well, I don't know him personally, but I
25 do know his father, because I worked with him at
26 Wal-Mart.

27 Q And you work with Mr. Archie at Wal-Mart?

28 A Yes, sir.

29 Q And is he retired now?

VOIR DIRE - COURT

1 **A** I don't know.

2 **Q** Or do you still work there?

3 **A** No.

4 **Q** Okay. And would that influence you or be
5 a factor in you being a fair and impartial juror in
6 this case?

7 **A** No, sir.

8 **Q** So you know Mr. Archie, but that would not
9 influence you in being a fair juror; is that
10 correct?

11 **A** That's correct.

12 **Q** Okay. And then No. 85 back here. This is
13 Ms. Seals. And Ms. Seals, what is that situation?

14 **A** I don't really know him, but I dated his
15 cousin for like four years. (**Juror No. 85, Mary**
16 **Seals**)

17 **Q** Dated Mr. Flowers' cousin?

18 **A** Uh-huh. And me and his sister and them is
19 real close, and I still go visit the family.

20 **Q** Which sister are you close to?

21 **A** Sherita.

22 **Q** And you dated -- who was the cousin you
23 dated?

24 **A** Nakita Campbell.

25 **Q** And you say you visit in the -- his
26 family's homes?

27 **A** Uh-huh.

28 **Q** And would those factors influence you or
29 affect you in being a fair and impartial juror in

VOIR DIRE - COURT

1 this case?

2 A Yes, sir.

3 Q Okay. Thank you, Ms. Seals.

4 Anyone -- and let me back up and say this:

5 At any time -- I know that sometimes somebody else
6 will say something and that will make you think,
7 Wow, I didn't think of that, but I should have
8 spoken up. And so even if we've passed a question,
9 at any time, speak up at any time, to any question
10 that's been asked. Because again, I do want
11 complete and total answers from everybody. But at
12 this point, has everybody that knows Mr. Flowers --
13 okay. No. 80?

14 A Sir, I do not know Mr. Curtis Flowers, but
15 I know his mother, Ms. Lola. And I work with his
16 aunt. **(Juror No. 80, Brenda Simmons)**

17 Q Okay. So you knew Ms. -- you know
18 Ms. Lola?

19 A Yes, sir.

20 Q And works with his aunt?

21 A Yes, sir.

22 Q And which aunt?

23 A Ms. Hazel Jones.

24 Q Hazel Jones?

25 A Yes, sir. That's Ms. Lola's sister.

26 Q Okay. And would those factors influence
27 you or affect you in being a fair and impartial
28 juror in this case?

29 A No, sir.

VOIR DIRE - COURT

1 Q And where -- how did you know Ms. Lola
2 Flowers?

3 A She worked with home health, and she took
4 care of my grandmother.

5 Q And has that now concluded? Is that --

6 A Yes, sir.

7 Q And then you currently work with
8 Ms. Jones?

9 A Yes, sir.

10 Q And would that influence you in any way in
11 being a fair and impartial juror?

12 A No, sir.

13 Q Okay. Thank you. And you're number --
14 you were No. 80; is that correct?

15 A Yes, sir.

16 Q And then No. 115. And Ms. Smith, what is
17 that situation?

18 A I don't know Mr. Flowers. I know his
19 mother's aunt, Essie Campbell. And I work with her
20 at Winona Manor Nursing Home. **(Juror No. 115,**
21 **Polly Smith)**

22 Q Okay. So you would know Ms. Lola Flowers.

23 A Yes, sir.

24 Q And who was the other one?

25 A His aunt, Ms. Essie Campbell.

26 Q And would those factors influence you or
27 affect you in being a fair and impartial juror?

28 A No, sir.

29 **BY THE COURT:** Okay. Thank you.

VOIR DIRE - COURT

1 Nod your head if you want another
2 recess. I mean, we can keep going. I don't
3 know -- well, actually, I see it's close to
4 lunch now. So I -- I looked and at first I
5 thought it was five till 11:00. And then I
6 realized again that it's right close to
7 lunch.

8 So ladies and gentlemen, I think at
9 this time, we will recess for lunch. I'll
10 ask you during this recess, please do not
11 discuss this case with anyone. Please do not
12 discuss it among yourselves. If you see one
13 of the lawyers out in the hall, they're going
14 to ignore you. They're not going to speak to
15 you. They're not doing that to offend you.
16 They're just complying with the court rules
17 that require that they not have any contact
18 with you or speak to you.

19 Also, you cannot talk to any of the
20 family members of any of the parties that
21 might be involved in the case or the family
22 members of any of these victims who I've gone
23 over with you -- their names.

24 So if you'll be back at one o'clock
25 and we'll resume at that time. And if
26 you'll -- as I say, we'll be in recess until
27 then.

28 (THE COURT RECESSED FOR THE NOON LUNCH

29 HOUR)

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THE COURT: We will resume now with more questions.

The next question I'll ask is if any of you were related by blood or by marriage to Bertha Tardy during her lifetime. If you were related by blood or by marriage to Bertha Tardy, if any of you were, if you will, please stand at this time.

And okay. Miss Johnson, how were you related to Miss Tardy?

JUROR PATRICIA JOHNSON: She was my deceased brother-in-law's cousin.

THE COURT: Say, say that again. It takes my mind --

JUROR PATRICIA JOHNSON: My deceased brother-in-law --

THE COURT: Okay.

JUROR PATRICIA JOHNSON: -- was her first cousin.

THE COURT: So he -- okay. He was first cousins with your brother-in-law.

JUROR PATRICIA JOHNSON: Right.

THE COURT: No --

JUROR PATRICIA JOHNSON: Who is deceased now.

THE COURT: No blood kin though.

JUROR PATRICIA JOHNSON: No. Well, second, you know. Miss Bertha and his mother were sisters.

THE COURT: Right. Okay. And would that factor influence you or affect you in any way in being a

1 fair and impartial juror in this case?

2 JUROR PATRICIA JOHNSON: I cannot say for sure.

3 THE COURT: So you have got some doubts in your
4 own mind --

5 JUROR PATRICIA JOHNSON: I do.

6 THE COURT: -- about being fair and impartial
7 --

8 JUROR PATRICIA JOHNSON: I do.

9 THE COURT: -- because of that. Well, I
10 appreciate that, and I appreciate you speaking up.

11 And what is your number? Number 50. And Mr.
12 Lester, what was that situation?

13 JUROR BOBBY LESTER: She was my father-in-law's
14 niece.

15 MR. CARTER: What is your number?

16 THE COURT: And did you know her, you know,
17 during the -- when she was alive and --

18 JUROR BOBBY LESTER: Yes, sir, I did.

19 THE COURT: And would that factor influence you
20 or the fact that she had this family tie there? Would
21 that influence you or affect you in being a fair and
22 impartial juror?

23 JUROR BOBBY LESTER: I can't say that in
24 fairness, Your Honor, it wouldn't.

25 THE COURT: Well, is there anything about
26 knowing her or anything that would influence you or
27 affect you?

28 JUROR BOBBY LESTER: I have just known the
29 family all my life. I grew up with her daughter. Her

1 son graduated with my daughter. I mean her grandson
2 graduated with my daughter just in May.

3 My wife's a first grade teacher. She taught the
4 Stewart boy. So I have a lot of connections to the
5 families.

6 THE COURT: And would those factors cause you
7 to be where you could not be fair and impartial to both
8 sides in this case?

9 JUROR BOBBY LESTER: No.

10 THE COURT: So you think you could not be fair
11 and impartial or you could be?

12 JUROR BOBBY LESTER: I think I could be.

13 THE COURT: So you can lay all these ties aside
14 and base your evidence -- decision only on the evidence;
15 is that correct?

16 JUROR BOBBY LESTER: Yes, sir.

17 THE COURT: Okay. Thank you.

18 And then Number, Number 117. Miss Vail, and what is
19 that situation?

20 JUROR CHRISTY VAIL: Miss Bertha Tardy was my
21 second cousin.

22 THE COURT: And would that influence you or
23 affect you in any way in being a fair and impartial juror
24 in this case?

25 JUROR CHRISTY VAIL: Yes, sir.

26 THE COURT: So that would be a situation where
27 you just couldn't lay that aside and be fair to both
28 sides; is that correct?

29 JUROR CHRISTY VAIL: Yes, sir.

1 THE COURT: Okay. Thank you.

2 And Number 146. Mr. Carpenter, and what is that
3 situation?

4 JUROR HAROLD CARPENTER: Miss Bertha was my
5 wife's aunt.

6 MR. CARTER: I can't hear him. I couldn't hear
7 him. What did he say?

8 THE COURT: Miss Bertha Tardy was his wife's
9 aunt.

10 MRS. STEINER: What, what is your juror number?

11 THE COURT: 146.

12 And were you married to your wife at the time of --
13 when Miss Tardy was murdered?

14 JUROR HAROLD CARPENTER: Yes sir.

15 THE COURT: Would these factors influence you
16 or affect you in being a fair and impartial juror in this
17 case?

18 JUROR HAROLD CARPENTER: Everything I have
19 heard, yes, sir.

20 THE COURT: So you just could not lay that
21 aside and base your decision on the evidence.

22 JUROR HAROLD CARPENTER: No.

23 THE COURT: Okay. Thank you.

24 Now, I'll ask you -- I've asked you the ones that
25 were related. Now, if you just knew Miss Bertha Tardy,
26 not -- you know, if you just knew her when you saw her or
27 I know she owned a business here in town for a number of
28 years. And I suspect there would be probably a number of
29 you that may have done business at some point in that

1 business. But if you just knew Miss Tardy like when you
2 saw her somewhere out in town or what have you, if you
3 knew her in any capacity, like on sight, if you would,
4 please stand up now.

5 And Miss Griffin, tell me about that.

6 JUROR CAROL GRIFFIN: I attended church with
7 Bertha Tardy, Moore Memorial United Methodist Church.
8 And we served a time on the Administrative Counsel
9 together.

10 THE COURT: That was at church.

11 JUROR CAROL GRIFFIN: Right.

12 THE COURT: Would the fact that you know her --
13 knew her from this situation at church and all, would
14 that influence you or be a factor in you being a fair and
15 impartial juror?

16 JUROR CAROL GRIFFIN: No, sir.

17 THE COURT: So can you lay anything about that
18 association aside and base your decision only on the
19 evidence here?

20 JUROR CAROL GRIFFIN: Yes, sir.

21 THE COURT: Okay. Thank you.

22 And then Mr. Sykes, you knew Miss Bertha Tardy.

23 JUROR JACK SYKES: I just knew her when I saw
24 her, went in the store and saw her.

25 THE COURT: And did you buy things there on
26 occasion or --

27 JUROR JACK SYKES: Occasion.

28 THE COURT: And would that influence you or be
29 a factor in you being a fair and impartial juror in this

1 case?

2 JUROR JACK SYKES: No, sir. I don't think so.

3 THE COURT: Any doubt in your mind?

4 JUROR JACK SYKES: A little bit.

5 THE COURT: Because what I want is somebody
6 that can tell me absolutely that this will not be a
7 factor, because I want the decision to be made only on
8 the evidence presented here at trial and not on any
9 information or anything, knowledge from outside the
10 courtroom. So...

11 JUROR JACK SYKES: Yes, sir. It may. It may
12 do that then.

13 THE COURT: So you have got some doubts because
14 of that.

15 JUROR JACK SYKES: I have some doubts in the
16 back of my mind.

17 THE COURT: Okay. Thank you, Mr. Sykes.

18 And Miss Mills, you knew Miss Tardy or knew who she
19 was.

20 JUROR DIANA MILLS: Knew who she was. And we
21 bought furniture from her on occasion when we first got
22 married. I work at Bank of Winona, and I saw her quite
23 often.

24 THE COURT: And would that influence you or
25 affect you in being a fair and impartial juror?

26 JUROR DIANA MILLS: Definitely.

27 THE COURT: So you just feel like that because
28 of that you cannot sit in judgment on this case.

29 JUROR DIANA MILLS: (Nodded.)

1 THE COURT: Okay. Thank you.
2 Miss Jefcoat, and you knew Miss Tardy.

3 JUROR PATRICIA JEFLOAT: Yes, sir. Just -- I
4 just knew her on occasion, but I know her daughter. And
5 my son just graduated.

6 THE COURT: Is that Miss Rigby? No, I mean
7 Miss -- I'm trying to think of her name.

8 JUROR PATRICIA JEFLOAT: Ballard.

9 THE COURT: Yes, Miss Ballard. I'm sorry.

10 JUROR PATRICIA JEFLOAT: Yes, sir. And my son
11 just graduated with hers.

12 THE COURT: And would those factors influence
13 you?

14 JUROR PATRICIA JEFLOAT: Yes, sir.

15 THE COURT: So you just feel like because of
16 knowing Miss Ballard, knowing who Miss Tardy was, you
17 could not be a fair juror in this case.

18 JUROR PATRICIA JEFLOAT: Yes, sir.

19 THE COURT: Okay. Thank you.

20 And Number 17. Miss Chesteen.

21 JUROR PAMELA CHESTEEN: Yes, sir. Roxanne and
22 I were friends in high school. I spent some time at
23 their home.

24 And also, I knew Archie and Lola. And I know Archie
25 and Lola and the girls and Archie, Jr., from the bank.
26 And Shirley Golden.

27 THE COURT: And is Shirley Mr. Golden's widow?

28 JUROR PAMELA CHESTEEN: (Nodded.)

29 THE COURT: Would these factors influence you

1 or affect you in being a fair and impartial juror in this
2 case?

3 JUROR PAMELA CHESTEEN: I will do my best.

4 THE COURT: Is there any doubt in your mind,
5 but what you could lay anything -- because, you know, it
6 seems like you know family on both sides of the
7 situation. And can you lay any of those factors aside
8 and base your decision only on the evidence presented
9 here in court?

10 JUROR PAMELA CHESTEEN: If it can be proven
11 then I, I could go along whatever --

12 THE COURT: I mean you are going to follow the
13 proof. And if it shows Mr. Flowers guilty, you would
14 vote that way. If it shows that he is not guilty, you
15 will --

16 JUROR PAMELA CHESTEEN: (Nodded.)

17 THE COURT: Or if the State does not prove
18 their case, you would vote him not guilty.

19 JUROR PAMELA CHESTEEN: (Nodded.)

20 MR. CARTER: I didn't hear that, ma'am. What
21 was your answer?

22 JUROR PAMELA CHESTEEN: I will do my best to --
23 I will go with whatever the evidence is, the proof.

24 THE COURT: What I'm saying, you would vote not
25 guilty if the State didn't prove their case; is that
26 correct?

27 JUROR PAMELA CHESTEEN: Yes.

28 THE COURT: And then if the State proved beyond
29 a reasonable doubt, you would vote that way.

Voir Dire Examination by the Court

1 JUROR PAMELA CHESTEEN: (Nodded.)

2 THE COURT: So -- okay. Thank you.

3 Miss Laney.

4 JUROR LILLIE LANEY: I purchased furniture, I
5 think, around 1980 from Tardy Furniture company.

6 THE COURT: Did you -- did you remember meeting
7 Miss Bertha Tardy or anything?

8 JUROR LILLIE LANEY: I do.

9 THE COURT: And would that factor influence
10 you or affect you --

11 JUROR LILLIE LANEY: No, sir.

12 THE COURT: -- in any way?

13 JUROR LILLIE LANEY: No, sir, it would not
14 affect me.

15 THE COURT: So that will not come into play in
16 your deliberations.

17 JUROR LILLIE LANEY: No.

18 THE COURT: Okay. Thank you.

19 And then Number 20. Miss Davis.

20 JUROR RANA DAVIS: Correct.

21 THE COURT: And how did you know Miss Tardy?

22 JUROR RANA DAVIS: Just shopping in her store
23 with my mother, but I have --

24 THE COURT: And --

25 JUROR RANA DAVIS: I have ties with the Rigby
26 family and the Stewart family.

27 THE COURT: Okay. I was going to get to them a
28 little bit later. But if you want to go ahead and just
29 tell me about those situations with the Stewarts and

1 Rigby's, then you can do so.

2 JUROR RANA DAVIS: Well, Benji and I were
3 really good friends during the time that this had
4 happened. And then my sister was the nurse for Bobo at
5 U.M.C. in Jackson. So I was hearing daily updates from
6 all of that.

7 THE COURT: And have these factors caused you
8 to form an opinion as to the guilt or innocence of Mr.
9 Flowers?

10 JUROR RANA DAVIS: It has.

11 THE COURT: And could you lay that aside --

12 JUROR RANA DAVIS: (Shook head.)

13 THE COURT: -- and base your decision on the
14 evidence?

15 JUROR RANA DAVIS: (Shook head.)

16 THE COURT: So you feel like you could not be
17 fair and impartial then; is that correct?

18 JUROR RANA DAVIS: I don't.

19 THE COURT: Number 22. Mr. Blaylock, you knew
20 Miss Tardy.

21 JUROR LARRY BLAYLOCK: I knew Miss Tardy. Yes,
22 sir.

23 THE COURT: And how did you know her?

24 JUROR LARRY BLAYLOCK: I graduated with her
25 daughter, and I saw her at school.

26 THE COURT: Is that Roxanne Ballard?

27 JUROR LARRY BLAYLOCK: Yes.

28 THE COURT: And would those -- would that
29 influence you or affect you in being a fair and impartial

1 juror in this case?

2 JUROR LARRY BLAYLOCK: No, sir.

3 THE COURT: So you can lay any of that
4 knowledge of the daughter or anything aside and base your
5 decision only on the evidence; is that correct?

6 JUROR LARRY BLAYLOCK: Yes, sir.

7 THE COURT: Okay. Thank you.

8 Then Number 28. Miss Vance, you knew Miss Tardy.

9 JUROR TERRI VANCE: I bought furniture from her
10 in 1990. And her daughter, Roxanne Ballard, and I are
11 very close friends.

12 THE COURT: Would that influence you or affect
13 you in being a fair and impartial juror in this case?

14 JUROR TERRI VANCE: (Nodded.)

15 THE COURT: So you feel like knowing Miss
16 Roxanne Ballard and knowing Miss Tardy you just could not
17 sit in judgment on this case; is that correct?

18 JUROR TERRI VANCE: Yes, sir.

19 THE COURT: Okay. Thank you.

20 Number 32. Miss Biggers, and you knew Miss Tardy.

21 JUROR TERECA BIGGERS: Yes, sir. We bought
22 furniture from her several times. And I also knew
23 Bertha's mother.

24 MR. CARTER: I'm sorry, Your Honor.

25 THE COURT: You knew Miss Bertha's mother.

26 JUROR TERECA BIGGERS: Bertha's mother, yes,
27 sir.

28 THE COURT: So you have known a couple of
29 generations of family.

1 JUROR TERECA BIGGERS: Through family ties,
2 yes, sir.

3 THE COURT: Would that influence you or affect
4 you in being a fair and impartial juror in this case?

5 JUROR TERECA BIGGERS: I really don't think
6 so.

7 THE COURT: Any doubt in your mind but what you
8 could be fair and impartial?

9 JUROR TERECA BIGGERS: No doubt in my mind.

10 THE COURT: So what I am saying is if the proof
11 was beyond a reasonable doubt Mr. Flowers was guilty, you
12 could find him guilty. If the State did not prove that
13 beyond a reasonable doubt, you could find him innocent.

14 JUROR TERECA BIGGERS: I, I don't think so.

15 THE COURT: You do not think you --

16 JUROR TERECA BIGGERS: Well, no, no doubt in
17 my mind I would go with the facts.

18 THE COURT: Okay. So anyway, it would not
19 influence you at all then.

20 JUROR TERECA BIGGERS: No.

21 THE COURT: Either way.

22 JUROR TERECA BIGGERS: (Shook head.)

23 THE COURT: Okay. Thank you.

24 Forty-five, I believe, is the next one.

25 Miss Burnside, you knew Miss Tardy.

26 JUROR EDITH BURNSIDE: Yes, sir, I used to work
27 for Miss Bertha.

28 THE COURT: You used to work for her.

29 JUROR EDITH BURNSIDE: (Nodded.)

1 THE COURT: And how long was that before her
2 death?

3 JUROR EDITH BURNSIDE: About three years before
4 then.

5 THE COURT: And would that influence you or
6 affect you in being a fair and impartial juror in this
7 case?

8 JUROR EDITH BURNSIDE: I don't think it would
9 influence me, but I do think it would have an affect on
10 me.

11 THE COURT: Well, would it affect you to the
12 extent you could not be fair in this case and impartial
13 to both sides in this case?

14 JUROR EDITH BURNSIDE: No, sir.

15 THE COURT: So it would affect you but you
16 could -- would you lay anything about knowing her aside
17 and just base your evidence only -- decision only on the
18 evidence presented here?

19 JUROR EDITH BURNSIDE: Yes, sir, I would.

20 THE COURT: And would you follow the evidence
21 and rule however the evidence -- whatever the evidence
22 proved to be?

23 JUROR EDITH BURNSIDE: Yes, sir, I could.

24 THE COURT: Okay. Thank you, Miss Burnside.

25 And Number 50. Mr. Lester, and you -- I believe you
26 said you were like -- knew -- looks like your
27 father-in-law, Bertha's father-in-law.

28 JUROR BOBBY LESTER: Right. Right.

29 THE COURT: And did you know her in any other

1 capacity?

2 JUROR BOBBY LESTER: Yes. I work for Bank of
3 Winona. Small business community in town. So we all
4 know each other. We served on town committees and things
5 like that together.

6 THE COURT: And would those factors come into
7 play or influence or affect you in any way in being a
8 fair and impartial juror?

9 JUROR BOBBY LESTER: I'll, I'll say I have
10 formed an opinion.

11 THE COURT: Could that opinion --

12 JUROR BOBBY LESTER: I could be open-minded.

13 THE COURT: Could you lay your opinion aside
14 and base your decision only on the evidence here in
15 court?

16 JUROR BOBBY LESTER: If it can be proven, yes.

17 THE COURT: So --

18 JUROR BOBBY LESTER: If there is a reasonable
19 doubt, yes, sir, I could.

20 THE COURT: Well, do you understand that the
21 defense does not have to prove a reasonable doubt?

22 JUROR BOBBY LESTER: I understand.

23 THE COURT: They don't have to put on proof at
24 all. So what I'm asking is if the State failed to prove
25 their case, could you find Mr. Flowers not guilty?

26 JUROR BOBBY LESTER: If they proved the case to
27 me, yes.

28 THE COURT: No. There -- what I'm saying is
29 Mr. Flowers does not have to prove anything.

1 JUROR BOBBY LESTER: I mean if the State proved

2 --

3 THE COURT: If the State proved their case you
4 could find Mr. Flowers guilty.

5 JUROR BOBBY LESTER: If the State did not prove

6 --

7 THE COURT: If they did not prove their case,
8 you would find him not guilty; is that correct?

9 JUROR BOBBY LESTER: (Nodded.)

10 THE COURT: Okay. Thank you.

11 And Miss Box, you knew Miss Tardy.

12 JUROR PATRICIA BOX: I used to live across the
13 street from her, and I know her daughter and her husband
14 and the kids. I work at the school.

15 THE COURT: And would that influence you or
16 affect you in any way in being a fair and impartial juror
17 in this case?

18 JUROR PATRICIA BOX: No.

19 THE COURT: And will you base your decision, if
20 you are selected, only on the evidence presented here in
21 court and on nothing else?

22 JUROR PATRICIA BOX: Yes, sir.

23 THE COURT: Okay. Thank you.

24 And then, ma'am, the pink shirt there. What is your
25 number?

26 JUROR LINDA MARTIN: (Held up card.)

27 THE COURT: Seventy-five. Okay. Fifty-nine is
28 ahead of you. When I start looking back -- you know, I
29 thought you and 59 were on the same row actually. I need

1 to get some glasses.

2 Miss Nail, how did you know Miss Tardy?

3 JUROR JULIA NAIL: Through my mother.

4 THE COURT: And was she friends with Mrs.
5 Tardy?

6 JUROR JULIA NAIL: Yes, sir.

7 THE COURT: Would that influence you or affect
8 you in any way in being a fair and impartial juror in
9 this case?

10 JUROR JULIA NAIL: No, sir.

11 THE COURT: And would you, if you are selected,
12 base your decision only on the evidence presented here in
13 court --

14 JUROR JULIA NAIL: Absolutely.

15 THE COURT: -- and on nothing else? Okay.
16 Thank you.

17 And then Number 67. Mr. Amason, you knew Miss
18 Tardy.

19 JUROR TIMOTHY AMASON: Well, I attend church
20 with her daughter and son-in-law.

21 THE COURT: Is that currently you go --

22 JUROR TIMOTHY AMASON: Yes.

23 THE COURT: -- with Miss Ballard and her
24 husband?

25 JUROR TIMOTHY AMASON: Yeah. And they have two
26 sons that are friends of my two sons.

27 THE COURT: And would it be fair to say you see
28 the Ballards occasionally then?

29 JUROR TIMOTHY AMASON: Yeah. I see them at

1 church every week.

2 THE COURT: And would that influence you or
3 affect you in being a fair and impartial juror in this
4 case?

5 JUROR TIMOTHY AMASON: No, sir.

6 THE COURT: It will not. And will you, if you
7 are selected, base your decision only on the evidence
8 presented here and on nothing else?

9 JUROR TIMOTHY AMASON: Most definitely.

10 THE COURT: Okay. Thank you.

11 Miss Ray, you knew Miss Tardy?

12 JUROR JULIA RAY: Well, we weren't friends or
13 anything. I just bought furniture from her back in the
14 '70's. I just knew her when I saw her.

15 THE COURT: And would that influence you or be
16 a factor in you being a fair and impartial juror in this
17 case?

18 JUROR JULIA RAY: No.

19 THE COURT: And if you are selected as a juror
20 in this case, would you base your verdict on the evidence
21 presented in court and on no other factors?

22 JUROR JULIA RAY: That's right.

23 THE COURT: Okay. Thank you.

24 And Miss Colbert, and you knew Miss Tardy.

25 JUROR JULIAN COLBERT: I knew Miss Tardy
26 through her daughter, Roxanne Ballard. We were in
27 school, high school at the same time. And my son played
28 soccer with her son, Jeremy.

29 THE COURT: Your son -- say that again now.

1 JUROR JULIAN COLBERT: My son played soccer
2 with her son, Jeremy. My husband coached and taught
3 Jeremy.

4 THE COURT: And would those factors come into
5 play or influence you in any way in being a fair and
6 impartial juror in this case?

7 JUROR JULIAN COLBERT: They would not influence
8 me at all.

9 THE COURT: And would you base your decision on
10 the evidence presented here in open court and on nothing
11 else?

12 JUROR JULIAN COLBERT: Yes, sir.

13 THE COURT: Thank you.

14 And now I'm getting to you, Miss Martin. Number 75.
15 And how did you know Miss Tardy?

16 JUROR LINDA MARTIN: I knew Miss Bertha when I
17 was at the Methodist church, and I bought furniture. And
18 I know Roxanne.

19 THE COURT: Okay. So you went to church with
20 her and bought stuff at the store.

21 JUROR LINDA MARTIN: Yes, sir.

22 THE COURT: And then you know her daughter,
23 Roxanne.

24 JUROR LINDA MARTIN: Yes, sir.

25 THE COURT: And would those factors influence
26 you or, or affect you in any way in being a fair and
27 impartial juror in this case?

28 JUROR LINDA MARTIN: No.

29 THE COURT: And if you are selected as a juror

1 in this case, will you base your decision only on the
2 evidence presented here and on nothing else?

3 JUROR LINDA MARTIN: That's right.

4 THE COURT: Okay. Thank you.

5 And Mr. Hammond, did you know Miss Tardy?

6 JUROR RONALD HAMMOND: I did. I went to the
7 same church she did, Moore Memorial United Methodist
8 Church. I was in her home several times during my high
9 school years. I knew her daughter, Roxanne Ballard.

10 In fact, her daughter, Roxanne, is probably the
11 matchmaker for me and my wife. I am still good friends
12 with them to this day. My wife and Roxanne communicate
13 probably on a daily basis.

14 We kept their children for the whole time during one
15 of the trials. I forget, I think the one in Lee County
16 or the coast. And I have sat in on testimony on previous
17 trials.

18 THE COURT: And would those factors influence
19 you and affect you in being a fair and impartial juror in
20 this case?

21 JUROR RONALD HAMMOND: Absolutely. They would
22 influence me.

23 THE COURT: Okay. Mr. Hammond, thank you.

24 Then Number 79. Miss McCaulla.

25 JUROR PAULA MCCAULLA: I have known Miss Tardy
26 all my life. I grew up in Winona and attended the same
27 church that, that she did. I have known her daughter
28 Roxanne. Her stepson, Tom Tardy, and I graduated from
29 high school together in 1964. Bought furniture from

1 them.

2 THE COURT: And would those factors influence
3 you or affect you in being a fair and impartial juror in
4 this case?

5 JUROR PAULA MCCAULLA: Yes, sir, they would.

6 THE COURT: Okay. Thank you.

7 And then Number 80. Miss Simmons.

8 JUROR BRENDA SIMMONS: Yes, sir. I lived here
9 all but 12 years of my life. And I don't know Miss
10 Bertha personally. But when I saw her out on the
11 streets, I would know Miss Bertha. And that is going to
12 be the same case with everybody.

13 THE COURT: So you knew her and Mr. Stewart and
14 Mr. Golden and Miss Rigby.

15 JUROR BRENDA SIMMONS: Not Miss Rigby, but her
16 husband.

17 THE COURT: Okay. Mr. Rigby. Would those
18 factors influence you or affect you in being a fair and
19 impartial juror in this case?

20 JUROR BRENDA SIMMONS: No, sir.

21 THE COURT: And if you were selected on a -- as
22 a juror in this case, will you base your decision on the
23 evidence presented here in court and on nothing else?

24 JUROR BRENDA SIMMONS: Absolutely.

25 THE COURT: Okay. Thank you.

26 And then Miss Hodges, you knew Miss Tardy.

27 JUROR REBECCA HODGES: Yes, sir. I met Miss
28 Tardy on a number of occasions. She worked with my
29 husband in the economic development group. I also attend

1 church with Roxanne Ballard and her family.

2 THE COURT: And I believe you already said too
3 that your husband being the county prosecutor, you just
4 feel like you could not be a fair and impartial juror; is
5 that correct?

6 JUROR REBECCA HODGES: (Nodded.)

7 THE COURT: Okay. Thank you.

8 And okay. What is your -- 94. Miss Acy, and how
9 did you know Miss Tardy?

10 JUROR MELISSA ACY: My family and I knew her
11 through doing business with her at the store.

12 THE COURT: And would the fact that you knew
13 her from the store and done business there, would that
14 influence you or affect you in being a fair and impartial
15 juror?

16 JUROR MELISSA ACY: No.

17 THE COURT: And if you were selected as a juror
18 in this case, would you base your decision on the
19 evidence presented here in court and on no other factors?

20 JUROR MELISSA ACY: Yes.

21 THE COURT: Okay. Thank you.

22 And then Mr. Parker. Number 51. (sic) And you
23 knew Miss Tardy.

24 JUROR MICHAEL PARKER: I knew Miss Tardy from
25 her business, plus I went to school with her daughter. I
26 umpired many games with her children, Roxanne's two
27 children.

28 And during the last trial my wife was deputy clerk
29 in the justice department here and we sat on several --

1 in on several of the times the trial was going on.

2 THE COURT: Would those factors influence you
3 or affect you in being a fair and impartial juror in this
4 case?

5 JUROR MICHAEL PARKER: Yes, sir. I have
6 already formed an opinion.

7 THE COURT: Okay. Thank you, Mr. Parker.

8 And Number 121. Mr. Austin, you knew Miss Tardy.

9 JUROR MICHAEL AUSTIN: Yes, sir. I have a
10 retail business here in town, and she did business at my
11 business. And I did business with her business. And I'm
12 considered to be friends with Frank and Roxanne.

13 THE COURT: Would these factors influence you
14 or affect you in being a fair and impartial juror in this
15 case?

16 JUROR MICHAEL AUSTIN: No, sir.

17 THE COURT: And can you lay aside any outside
18 influences and base your decision only on the evidence
19 presented here in open court and nothing else?

20 JUROR MICHAEL AUSTIN: Yes, sir.

21 THE COURT: Okay. Thank you.

22 Then Number 124. Miss Britt, you knew Miss Tardy.

23 JUROR MARTHA BRITT: I knew her from the store,
24 and I also went to school with her daughter, Roxanne.

25 THE COURT: And would those factors influence
26 you or affect you in any way in you being a fair and
27 impartial juror?

28 JUROR MARTHA BRITT: No, they would not.

29 THE COURT: And if you are selected as a juror,

1 would you base your decision on the evidence presented
2 here in court and on no other factors?

3 JUROR MARTHA BRITT: Yes, I would.

4 THE COURT: Thank you.

5 Then Number 129. Miss Eldridge, and you knew Miss
6 Tardy.

7 JUROR ELIZABETH ELDRIDGE: Yes. I have known
8 her all my life, went to school with her daughter. And I
9 know Roxanne's children.

10 THE COURT: And would these factors influence
11 you or affect you in being a fair and impartial juror in
12 this case?

13 JUROR ELIZABETH ELDRIDGE: Well, those
14 wouldn't, but the others I mentioned before would.

15 THE COURT: And you -- because of your
16 brother-in-law working in law enforcement thing; is that
17 correct?

18 JUROR ELIZABETH ELDRIDGE: No. My employer.

19 THE COURT: Okay. You work for the -- who?
20 The prosecutor?

21 JUROR ELIZABETH ELDRIDGE: Yes.

22 THE COURT: Okay. Thank you, Miss Eldridge.

23 And then Miss Bruce, you knew Miss Tardy.

24 JUROR TAMMY BRUCE: I did. Also Carmen. I
25 have also sat in on and listened on one of the trials. I
26 too have already formed an opinion.

27 THE COURT: Is that opinion one that you could
28 set aside and base your decision on --

29 JUROR TAMMY BRUCE: No, it is not.

1 THE COURT: -- or is it strictly one of those
2 that is fixed that cannot be changed?

3 JUROR TAMMY BRUCE: No, it cannot change.

4 THE COURT: Okay. Thank you.

5 Then Number 143. Miss Vollbracht.

6 JUROR SHERRIE VOLLBRACHT: Vollbracht. I knew
7 Miss Tardy at the store doing business with her.

8 THE COURT: And would that influence you or
9 affect you in being a fair and impartial juror in this
10 case?

11 JUROR SHERRIE VOLLBRACHT: No.

12 THE COURT: And if you sat as a juror in this
13 case, would you base your decision only on the evidence
14 presented here in court and on nothing else?

15 JUROR SHERRIE VOLLBRACHT: Yes. Yes.

16 THE COURT: Okay. Thank you.

17 I want to know now if any of you are related by
18 blood or by marriage to Robert Golden or if you just knew
19 Robert Golden during his life. Any of you related by
20 blood or by marriage to Mr. Golden or that knew Mr.
21 Golden, if you will, please stand.

22 And Mr. Sykes, you knew Mr. Robert Golden.

23 JUROR JACK SYKES: He was a forklift driver
24 under my supervision.

25 THE COURT: And where was that?

26 JUROR JACK SYKES: Nell.

27 THE COURT: And I think you have already said
28 you have got some real doubts about whether you could be
29 fair because of knowing Miss Tardy. And would that same

1 situation apply for knowing Mr. Golden?

2 JUROR JACK SYKES: Right.

3 THE COURT: So you are -- pretty much feel like
4 you have just got a real serious doubt about whether you
5 can be fair?

6 JUROR JACK SYKES: I have a got an opinion,
7 because I sat in on some of it, maybe last year.

8 THE COURT: Could those opinions be set aside,
9 or have you got a fixed opinion that would not change?

10 JUROR JACK SYKES: That opinion is going to be
11 hard to change.

12 THE COURT: Okay. Thank you.

13 And then, Miss Biggers, and you knew Miss Tardy.

14 JUROR TAREECA BIGGERS: Well, I knew Miss Tardy
15 but I --

16 THE COURT: I'm sorry. Mr. Golden.

17 JUROR TAREECA BIGGERS: Mr. Golden, I did not
18 know, but I used to be his son's work guardian.

19 THE COURT: Worked with his son.

20 JUROR TAREECA BIGGERS: Uh-huh. With his son,
21 Randy.

22 THE COURT: Okay. And would that influence you
23 or be a factor in you being a fair and impartial juror?

24 JUROR TAREECA BIGGERS: I -- on the human
25 aspect, yes. But then on the facts, I would go with,
26 with what the facts proved.

27 THE COURT: So --

28 JUROR TAREECA BIGGERS: But me knowing the
29 little boy that was raised without a daddy, that, that is

1 what hurts me.

2 THE COURT: But would that be a factor where
3 you would be thinking about that as a juror, or would you
4 be just listening to the facts?

5 JUROR TAREECA BIGGERS: I would just basically
6 be listening to the facts.

7 THE COURT: Well, is there any question in your
8 mind that you would be influenced in any way by anything
9 other than the facts as presented here in court?

10 JUROR TAREECA BIGGERS: I don't think so.

11 THE COURT: Any doubt?

12 JUROR TAREECA BIGGERS: I do have doubts, but I
13 don't think so.

14 THE COURT: Okay. Well, and I appreciate, you
15 know, being -- that is what I want from everybody,
16 totally honest.

17 JUROR TAREECA BIGGERS: I have to be honest.

18 THE COURT: Then Number 36. And I believe you
19 already said earlier you were, like, cousins of Mr.
20 Golden; is that correct?

21 JUROR ARTHUR KNIGHT: Yes, sir.

22 THE COURT: And I think you said because of
23 that you felt like you couldn't be a juror in this case
24 and judge the case fairly; is that correct?

25 JUROR ARTHUR KNIGHT: Yes, sir.

26 THE COURT: Thank you.

27 And then 46. And how -- you said you knew Mr.
28 Golden.

29 JUROR JAMES DANIELS: Right. We worked at the

1 same company for a number of years.

2 THE COURT: And I believe you had said that
3 would influence you and --

4 JUROR JAMES DANIELS: (Nodded.)

5 THE COURT: -- and you also knew some of Mr.
6 Flowers' brothers and sisters.

7 JUROR JAMES DANIELS: That's right.

8 THE COURT: And I believe you already said all
9 of these combined, you just could not be fair and
10 impartial; is that correct?

11 JUROR JAMES DANIELS: Right.

12 THE COURT: Okay. Thank you.

13 And then 41. Miss Givens, did you say you were
14 first cousins to Mr. Golden?

15 JUROR MARGARET GIVENS: By marriage.

16 THE COURT: By marriage. And have you had an
17 occasion to hear family members talk about the case or
18 anything like that?

19 JUROR MARGARET GIVENS: No.

20 THE COURT: And would you -- would that family
21 relationship come into play in you being a fair juror in
22 this case? Or can you base your decision only on the
23 evidence presented and on nothing else?

24 JUROR MARGARET GIVENS: Yeah.

25 THE COURT: So you can lay aside the family tie
26 and base your decision only on the evidence.

27 JUROR MARGARET GIVENS: Something like that.
28 Yeah.

29 THE COURT: Ma'am.

Voir Dire Examination by the Court

1 JUROR MARGARET GIVENS: Something like that.
2 Yeah.

3 THE COURT: You are going to have to say yes.
4 Is that what you said?

5 JUROR MARGARET GIVENS: Well, I guess. In
6 between.

7 THE COURT: I'm having trouble hearing, because
8 there is so many people in here, and you talk softly. So
9 would you say that again?

10 JUROR MARGARET GIVENS: Yeah, I guess it will
11 be. Yes, sir.

12 THE COURT: So you think you could serve.

13 JUROR MARGARET GIVENS: Yes, sir.

14 THE COURT: And would this family connection
15 influence you in any way in being a fair juror?

16 JUROR MARGARET GIVENS: No, sir.

17 THE COURT: Okay. Thank you.

18 Number 72. And how did you know Mr. Golden?

19 JUROR JULIAN COLBERT: I taught Mr. Golden's
20 two sons, Christopher and Randy.

21 THE COURT: And would that influence you or
22 affect you in being a fair and impartial juror in this
23 case?

24 JUROR JULIAN COLBERT: It would not affect me.

25 THE COURT: Okay.

26 JUROR JULIAN COLBERT: Would not influence me.

27 THE COURT: Okay. Thank you.

28 And then Number, I believe, 91. Mr. Hamilton, and
29 you -- I believe you say, maybe, on your questionnaire

1 that you were close friends of Robert Golden; is that
2 correct?

3 JUROR JIMMY HAMILTON: Yes. I worked with
4 Robert. And time to time I worked with his brother. But
5 my youngest went to school with the Stewart boy. I can
6 be fair and impartial.

7 THE COURT: And so will you lay aside any of
8 these ties you might have had with some of the victims
9 and base your decision only on the evidence presented
10 here?

11 JUROR JIMMY HAMILTON: Yes.

12 THE COURT: And on nothing else.

13 JUROR JIMMY HAMILTON: (Nodded.)

14 THE COURT: Is that a yes?

15 JUROR JIMMY HAMILTON: Yes, sir.

16 THE COURT: Okay. Thank you.

17 Number 86. Miss Carlean Green.

18 JUROR CARLEAN GREEN: Yes.

19 THE COURT: And you knew Mr. Golden.

20 JUROR CARLEAN GREEN: Yeah. He is my first
21 cousin by marriage.

22 THE COURT: And, and I think you were -- also
23 had a kinship with Mr. Flowers, too; is that --

24 JUROR CARLEAN GREEN: Yes.

25 THE COURT: And would the same thing apply
26 here? Would you -- could you be a fair and impartial
27 juror because of your family ties with Mr. Golden?

28 JUROR CARLEAN GREEN: Sure.

29 THE COURT: Okay. Thank you.

1 And then Number 90. Miss, Miss Forrest, and you
2 knew Mr. Golden.

3 JUROR LYNELL FORREST: Yes.

4 THE COURT: And how did you know him?

5 JUROR LYNELL FORREST: I worked with him at
6 Corrulite.

7 THE COURT: Excuse me.

8 JUROR LYNELL FORREST: Worked with him at
9 Corrulite.

10 THE COURT: And how long ago -- I mean how, how
11 long before his death was that y'all worked together?

12 JUROR LYNELL FORREST: I can't remember.

13 THE COURT: I believe his death was in 1996.
14 Was it, you know, some years before that?

15 JUROR LYNELL FORREST: That's a long time.

16 THE COURT: Okay. About as long in time.

17 JUROR LYNELL FORREST: Yes.

18 THE COURT: Would the fact that you worked with
19 Mr. Golden, would that influence you or affect you in
20 being a fair and impartial juror in this case?

21 JUROR LYNELL FORREST: Yes.

22 THE COURT: It, it would.

23 JUROR LYNELL FORREST: Yes.

24 THE COURT: So you just feel like you could not
25 be fair because of that.

26 JUROR LYNELL FORREST: No.

27 THE COURT: Okay. Thank you.

28 Number 134. Miss Henson, and how did you know Mr.
29 Golden?

1 JUROR KATHERINE HENSON: We all went to school
2 together, and I was really good friends of his wife's
3 family.

4 THE COURT: You were friends with his wife's
5 family.

6 JUROR KATHERINE HENSON: Yes. We all grew up
7 together in Winona.

8 THE COURT: Now, who was it you worked with?

9 JUROR KATHERINE HENSON: I didn't say work.

10 THE COURT: Oh, I'm sorry. Okay.

11 JUROR KATHERINE HENSON: I said family.

12 THE COURT: Okay. You knew -- friends --

13 JUROR KATHERINE HENSON: His wife's family.

14 THE COURT: -- with Mr. Golden's wife's family.
15 And then you knew Mr. Golden from school.

16 JUROR KATHERINE HENSON: Right.

17 THE COURT: And would those factors influence
18 you or affect you in being a fair and impartial juror in
19 this case?

20 JUROR KATHERINE HENSON: Yes.

21 THE COURT: So you feel like because of that,
22 you just couldn't sit in judgment in this case.

23 JUROR KATHERINE HENSON: No.

24 THE COURT: Okay. Thank you.

25 Mr. Robertson, you knew Mr. Golden.

26 JUROR JOEL ROBERTSON: He worked with my father
27 when I was young.

28 THE COURT: And would that influence you or be
29 a factor in you being a fair and impartial juror?

1 JUROR JOEL ROBERTSON: No, sir.

2 THE COURT: And if you were selected as a juror
3 in this case, could you base your decision on the
4 evidence presented here in court and on nothing else?

5 JUROR JOEL ROBERTSON: Yes, sir.

6 THE COURT: Okay. Thank you.

7 I'll now ask if any of you were related by blood or
8 by marriage to Carmen Rigby. And also, any of you that
9 knew Carmen Rigby during her life. If you knew Miss
10 Rigby or are related by blood or by marriage to Miss
11 Rigby, if you will please stand.

12 Okay. Miss Quinn, and you -- I'm sorry. Miss
13 Johnson, and you knew Miss Rigby.

14 JUROR PATRICIA JOHNSON: Well, I knew Miss
15 Rigby and her -- and her husband and her son, but there
16 were close family ties. Should I elaborate on that?

17 THE COURT: As long as you don't get in any
18 facts peculiar to this case.

19 JUROR PATRICIA JOHNSON: Okay. Well, my
20 brother-in-law and sister were very close to the Rigbys
21 and their sons. My brother-in-law was a baseball coach,
22 and the Rigby boys were involved in baseball.

23 And my brother-in-law at the time was a pall bearer
24 at Mrs. Rigby's funeral. And two of my cousin's sons
25 were also very close to the Rigby boys through their ball
26 playing.

27 Mr. Rigby was my deceased father's insurance agent.
28 My father lived in my home for about a year. And during
29 that time Mr. Rigby came to my home for the purpose of my

1 father's insurance.

2 THE COURT: And would these factors influence
3 you where you could not be a fair and impartial juror in
4 this case?

5 JUROR PATRICIA JOHNSON: It would be very
6 difficult.

7 THE COURT: Okay. And I believe you also said
8 you are related to Miss Tardy too.

9 JUROR PATRICIA JOHNSON: My deceased --

10 THE COURT: Right.

11 JUROR PATRICIA JOHNSON: -- brother-in-law was
12 her cousin.

13 THE COURT: Okay. Thank you.

14 And then Mr. Sykes, and you knew Miss Rigby.

15 JUROR JACK SYKES: I knew Mrs. Rigby. I just
16 knew them, played ball and all.

17 THE COURT: And I believe you already said
18 today because of knowing some of the others that that
19 would, you know, working with Mr. - I'm trying to think -
20 Golden that that would influence you in being fair and
21 impartial; is that correct?

22 JUROR JACK SYKES: Yes.

23 THE COURT: Thank you.

24 And then Miss Woods. I'm -- yeah, Miss Woods. You
25 are Mr. Woods though, and I'm looking at the wrong
26 list -- I mean place again. I've got a whole bunch of
27 things I'm trying to keep straight at one time.

28 Forgive me, Mr. Woods. I was looking off for a
29 second, and I looked at your number and looked down at

1 the wrong name.

2 You knew Miss Rigby.

3 JUROR MICHAEL WOODS: Yes, sir. I went to
4 school with Brian and Benji.

5 THE COURT: Those, for the record, are her
6 sons.

7 JUROR MICHAEL WOODS: Yes. I mean I saw her at
8 all the football and baseball games for years. I just
9 knew her my whole life or since I was about five, six
10 years old.

11 THE COURT: I believe you already said maybe
12 knowing Mr. Flowers and knowing -- I would assume these
13 would influence you in being fair and impartial as well;
14 is that correct?

15 JUROR MICHAEL WOODS: Yes, sir.

16 THE COURT: Okay. Thank you.

17 Then Miss Griffin, you knew -- you knew her.

18 JUROR CAROL GRIFFIN: I knew her through
19 school. I had her son in journalism class the year his
20 mother was killed.

21 THE COURT: And would that influence you or
22 affect you in being a fair and impartial juror in this
23 case?

24 JUROR CAROL GRIFFIN: No, sir.

25 THE COURT: Okay. Thank you.

26 And then Number 19. Miss Eldridge, you knew Miss
27 Rigby.

28 JUROR MERRIAN ELDRIDGE: I did. Carmen and
29 Bennie lived in Kilmichael where I lived for a while. We

1 went to church together. And I taught both the children.
2 Also attended Carmen and Bennie Rigby's wedding. I knew
3 them back before they were married.

4 Not only did we go to church together, but we
5 socialized those years that they lived in Kilmichael and
6 lived close to them.

7 And I have two sons that both of them work closely
8 with Brian and Benji right now. In fact, my youngest son
9 works for Brian Rigby.

10 THE COURT: And would those factors influence
11 you or affect you in being a fair and impartial juror in
12 this case?

13 JUROR MERRIAN ELDRIDGE: Absolutely.

14 THE COURT: Thank you.

15 Then Number 20. And you knew Mrs. Rigby. And how
16 did you --

17 JUROR RANA DAVIS: I knew of her, and I, I know
18 Benji real well.

19 THE COURT: Benji.

20 JUROR RANA DAVIS: Um-hum.

21 THE COURT: And I believe you have already said
22 because of knowing him --

23 JUROR RANA DAVIS: I've already formed an
24 opinion.

25 THE COURT: -- that you could not be fair and
26 impartial; is that correct?

27 JUROR RANA DAVIS: (Shook head.)

28 THE COURT: And Miss Briggs, how, how did you
29 know Mrs. Rigby?

Voir Dire Examination by the Court

1 JUROR JUDY BRIGGS: Bennie Rigby is -- there is
2 strong family ties there. I know him, grew up with him
3 in church all my life. His sister was married to my
4 first cousin. Consequently, his nieces are my first
5 cousins. I have known him throughout this multiple trial
6 process, and I have formed an opinion.

7 THE COURT: And could you lay that aside, or is
8 that a fixed opinion that could not --

9 JUROR JUDY BRIGGS: It is a fixed opinion.

10 THE COURT: Okay. Thank you.

11 And then Mr. Vance. I'm sorry. Miss Vance. You
12 knew Miss Rigby.

13 JUROR TERRI VANCE: Yes, sir. I knew her and
14 her two sons.

15 THE COURT: And I think you also said you knew
16 Miss Roxanne and Miss Bertha and could not be fair
17 because of that; is that correct?

18 JUROR TERRI VANCE: Correct.

19 THE COURT: And then Mr. Waller, you knew Miss
20 Rigby.

21 JUROR HAROLD WALLER: I knew both of them,
22 Bennie and Carmen. Their kids went to school with my
23 daughter. They were involved in school activities
24 together.

25 THE COURT: Would those factors influence you
26 or affect you in being a fair and impartial juror?

27 JUROR HAROLD WALLER: No, sir.

28 THE COURT: And if you are sitting as a juror
29 in this case would you base your decision on the evidence

1 presented here in court and on no other factors?

2 JUROR HAROLD WALLER: Yes, sir.

3 THE COURT: Thank you.

4 Mr. Lester, you knew Miss Rigby.

5 JUROR BOBBY LESTER: I did. I knew her
6 casually, speak, you know, when I saw her in the street.
7 I did know her husband. Bennie and I have been friends
8 for years. I knew her family.

9 THE COURT: And would that influence you or
10 affect you in being a fair and impartial juror in this
11 case?

12 JUROR BOBBY LESTER: No, sir.

13 THE COURT: And if you're selected, again,
14 would you base your decision only on the evidence and
15 nothing else?

16 JUROR BOBBY LESTER: Yes, sir.

17 THE COURT: Okay. Thank you.

18 Miss Bartlett.

19 JUROR CHRISTINA BARTLETT: I did not know any
20 of the victims. But I just from moving to the community
21 after it happened, I know of the families.

22 THE COURT: And would anything like that have
23 caused you to form an opinion as to the guilt or
24 innocence of Mr. Flowers?

25 JUROR CHRISTINA BARTLETT: No.

26 THE COURT: And if you are sitting as a juror
27 would you base your decision only on the evidence
28 presented here and on nothing else?

29 JUROR CHRISTINA BARTLETT: Yes.

1 THE COURT: Thank you.

2 And then Mr. McIntyre, you knew Mrs. Rigby.

3 JUROR CHAD MCINTYRE: I didn't know Mrs. Rigby,
4 but I knew Benji and Mr. Rigby.

5 THE COURT: Benji and Bennie.

6 JUROR CHAD MCINTYRE: Yes, sir.

7 THE COURT: And would those factors influence
8 you or affect you in being a fair and impartial juror?

9 JUROR CHAD MCINTYRE: Yes, sir.

10 THE COURT: Okay. Thank you.

11 Then Number 66. Miss Windham, and how did you know
12 Mrs. Rigby?

13 JUROR PATSY WINDHAM: I knew her through
14 school. My daughters went to school with the boys, and
15 we had functions at school together.

16 THE COURT: And would those factors influence
17 you or affect you --

18 JUROR PATSY WINDHAM: Yes.

19 THE COURT: -- in being a fair and impartial
20 juror?

21 JUROR PATSY WINDHAM: Yes.

22 THE COURT: Thank you.

23 Number 72. Miss Colbert, and --

24 JUROR JULIAN COLBERT: I only knew Miss Rigby
25 on sight, because my husband coached her son Brian.

26 THE COURT: And would that be a factor or
27 influence you in being a fair and impartial juror?

28 JUROR JULIAN COLBERT: No, sir.

29 THE COURT: Okay. Thank you.

1 Then Number 81. Miss Hodges, you knew Mrs. Rigby.

2 JUROR REBECCA HODGES: I knew Carmen and Bennie
3 Rigby just to speak to casually.

4 THE COURT: Okay. Thank you.

5 And then Number 82. Mr. Tompkins.

6 JUROR KENNETH TOMPKINS: I knew Mrs. Carmen,
7 Mr. Bennie. I went to school with both the boys.

8 THE COURT: And would those factors influence
9 you?

10 JUROR KENNETH TOMPKINS: Yes.

11 THE COURT: So you feel like you could not be
12 fair and impartial because of that.

13 JUROR KENNETH TOMPKINS: Right.

14 THE COURT: Okay. Thank you.

15 Mr. Cross, what is that situation?

16 JUROR PHILLIP CROSS, JR.: I know Mr. Bennie,
17 Benji and Brian. I did not know Miss Carmen at the time.
18 But the rest of them I do know, her two sons and her
19 husband.

20 THE COURT: And would that -- would those
21 factors influence you or be a factor in you being a fair
22 and impartial juror?

23 JUROR PHILLIP CROSS, JR.: Probably so.

24 THE COURT: And so you could not lay that aside
25 and base your decision on the evidence; is that correct?

26 JUROR PHILLIP CROSS, JR.: I don't believe I
27 could.

28 THE COURT: Okay. Thank you.

29 Number 94. Miss Acy, and how did you know Miss

1 Rigby?

2 JUROR MELISSA ACY: My father and Carmen's
3 father worked together. And both her parents and my
4 parents were lifelong friends, and they lived less than a
5 mile away from my home. And I knew her husband. I know
6 her husband and her two children and have all my life.

7 THE COURT: Would those factors influence you
8 or affect you in being a fair and impartial juror in this
9 case?

10 JUROR MELISSA ACY: No.

11 THE COURT: And would you, if you are selected,
12 just base your decision on the evidence presented here in
13 court and on no other factors?

14 JUROR MELISSA ACY: Yes, sir.

15 THE COURT: Okay. Thank you.

16 Mr. Rodgers, tell me how you knew Mrs. Rigby.

17 JUROR STANLEY RODGERS: I didn't know Mrs.
18 Rigby. I did know Benji. Benji and I fished together a
19 little bit in high school.

20 THE COURT: Benji is her son.

21 JUROR STANLEY RODGERS: Yes, sir.

22 THE COURT: Would that influence you or affect
23 you in being a fair and impartial juror in this case?

24 JUROR STANLEY RODGERS: Yes, I have already
25 made an opinion.

26 THE COURT: And could that be set aside --

27 JUROR STANLEY RODGERS: (Shook head.)

28 THE COURT: -- or is that fixed where you could
29 not listen to the case?

1 JUROR STANLEY RODGERS: No.

2 THE COURT: And 107. Mr. Golding, tell us
3 about that.

4 JUROR WILLIAM GOLDING: I didn't know her. I
5 knew Bennie was her husband, through the church.

6 THE COURT: And would that influence you or
7 affect you in being a fair and impartial juror in this
8 case?

9 JUROR WILLIAM GOLDING: No.

10 THE COURT: And if you are selected as a juror,
11 would you base your verdict on the evidence and on
12 nothing else but the evidence presented here in court?

13 JUROR WILLIAM GOLDING: Yes.

14 THE COURT: Thank you.

15 Then Mr. Surrell, tell us about that.

16 JUROR MATTHEW SURRELL: I did not know Miss
17 Rigby directly. I knew her through her son, Brian, who
18 was a couple of years ahead of me in school.

19 THE COURT: And would that influence you or be
20 a factor in you being a fair and impartial juror in this
21 case?

22 JUROR MATTHEW SURRELL: No, sir.

23 THE COURT: Okay. Thank you.

24 Number 80.

25 JUROR BRENDA SIMMONS: I did not know Miss
26 Carmen, but Bennie did lead the music at our church.

27 THE COURT: Would that be a factor or influence
28 you in being a fair juror in this case?

29 JUROR BRENDA SIMMONS: No, sir. No, sir.

1 THE COURT: And Miss McCaulla, tell me about
2 that.

3 JUROR PAULA MCCAULLA: I did not know Mrs.
4 Rigby. But since I have moved back to Winona, Bennie and
5 I have gotten to be real good friends. And I definitely
6 think that would influence my opinion.

7 THE COURT: Okay. Thank you.

8 Number 111. Mr. Jones.

9 JUROR S. BROOKS JONES: Yes, sir.

10 THE COURT: And you knew Mrs. Rigby.

11 JUROR S. BROOKS JONES: Yes, sir.

12 THE COURT: How was that?

13 JUROR S. BROOKS JONES: I just -- I know the
14 whole family.

15 THE COURT: And would knowing them influence
16 you or affect you in being a fair and impartial juror?

17 JUROR S. BROOKS JONES: No, sir.

18 THE COURT: And if you are selected, would you
19 base your decision only on the evidence presented here
20 and on no other factors?

21 JUROR S. BROOKS JONES: Absolutely.

22 THE COURT: Thank you.

23 And then 119. Miss King.

24 JUROR ALISHA KING: Yes, sir.

25 THE COURT: How did you know Miss Rigby?

26 JUROR ALISHA KING: Through my parents. I also
27 went to school with her two sons.

28 THE COURT: And would those factors influence
29 you or affect you in being a fair and impartial juror?

1 JUROR ALISHA KING: No, sir.

2 THE COURT: And if you were sitting as a juror
3 in this case, would you base your decision only on the
4 evidence presented and on no other factors?

5 JUROR ALISHA KING: Yes, sir.

6 THE COURT: Okay. Thank you.

7 And then Mr. Austin, you knew Mrs. Rigby.

8 JUROR MICHAEL AUSTIN: I knew the whole family
9 or know the whole family. And my son played high school
10 baseball with Brian.

11 THE COURT: And would that influence you or
12 affect you as a fair juror, being a fair juror in this
13 case?

14 JUROR MICHAEL AUSTIN: No, sir.

15 THE COURT: And would you base your decision
16 only on the evidence presented here in court if you are
17 selected?

18 JUROR MICHAEL AUSTIN: Yes, sir.

19 THE COURT: Thank you.

20 Then Number 122. Miss Woods, how did you know Mrs.
21 Rigby?

22 JUROR MADONNA WOODS: I knew Miss Carmen
23 through school. My daughter attended school with her
24 sons, and she was a classmate of Bobo. And I do have an
25 opinion.

26 THE COURT: Okay. You had a child that was a
27 schoolmate --

28 JUROR MADONNA WOODS: Bobo.

29 THE COURT: -- of Mr. Stewart.

1 JUROR MADONNA WOODS: Bobo.

2 THE COURT: And those factors have caused you
3 to form an opinion; is that --

4 JUROR MADONNA WOODS: Yes, sir.

5 THE COURT: -- the case? And could that be set
6 aside, or is that a fixed opinion?

7 JUROR MADONNA WOODS: That is fixed.

8 THE COURT: Okay. Thank you.

9 Then Number 124. Miss Britt, and you knew Miss
10 Rigby.

11 JUROR MARTHA BRITT: I met her once at the
12 store. I know her family - Benji, Bennie and Brian.
13 Bennie and I sing together.

14 THE COURT: And would those factors influence
15 you or affect you in being a fair and impartial juror in
16 this case?

17 JUROR MARTHA BRITT: No, they would not.

18 THE COURT: And would you, if you are selected,
19 base your decision only on the evidence presented here in
20 court and on no other factors?

21 JUROR MARTHA BRITT: Yes, I would.

22 THE COURT: Okay. Thank you.

23 Then 129. Miss Eldridge.

24 JUROR ELIZABETH ELDRIDGE: Yes, sir.

25 THE COURT: And you knew Mrs. Rigby.

26 JUROR ELIZABETH ELDRIDGE: I didn't really know
27 her, but I do know Bennie. Bennie has performed at
28 several arts council shows. I have worked with him in
29 that capacity, plus he works in the same office building

1 I do.

2 THE COURT: Works in the same building you do.

3 JUROR ELIZABETH ELDRIDGE: Yes.

4 THE COURT: Thank you.

5 And then --

6 MR. CARTER: Did you ask her if it would affect
7 her opinion?

8 THE COURT: She has already said on two
9 different --

10 MR. CARTER: Okay. Sorry.

11 THE COURT: -- occasions that she worked for
12 the prosecutor and could not.

13 Number 137. Mr. Robertson.

14 JUROR JOEL ROBERTSON: I played ball with
15 Brian, known Benji and the rest of the Rigby family all
16 my life.

17 THE COURT: Would that influence you or affect
18 you in any way in being a fair and impartial juror?

19 JUROR JOEL ROBERTSON: No, sir.

20 THE COURT: And if you are selected, would you
21 base your decision only on the evidence presented and on
22 no other factors?

23 JUROR JOEL ROBERTSON: Yes, sir.

24 THE COURT: And then Number 139. Mr. Briggs,
25 you knew Miss --

26 JUROR SPENCER BRIGGS: No, sir. I didn't know
27 any of the victims, the families or the defendant, but
28 I'm married to Number 27.

29 THE COURT: Okay. Number 27. So your wife

1 knew some of these individuals though. And I believe
2 you've already said because of your capacity with law
3 enforcement, you just couldn't be fair and impartial
4 anyway; is that correct.

5 JUROR SPENCER BRIGGS: (Nodded.)

6 THE COURT: Thank you.

7 And then Number 141. And how did you know --

8 JUROR TAMMY BRUCE: Carmen I knew more
9 casually. Bennie was our music director at our church.
10 The morning she was murdered, I was behind her at the
11 bank.

12 THE COURT: So you saw her at the bank --

13 JUROR TAMMY BRUCE: Yes. Before she was
14 murdered.

15 THE COURT: -- shortly before the incident
16 occurred.

17 JUROR TAMMY BRUCE: Um-hum.

18 THE COURT: And I believe you've already said
19 you knew Miss Bertha Tardy and couldn't be fair because
20 of that; is that correct?

21 JUROR TAMMY BRUCE: That is correct.

22 THE COURT: And I would assume that would apply
23 to Miss Rigby also.

24 JUROR TAMMY BRUCE: That is correct.

25 THE COURT: Okay. Thank you.

26 And then Miss Evans.

27 JUROR GLENDA EVANS: My niece, Brenda Rigby,
28 and Carmen were sister-in-laws. And I have known Carmen
29 since she became my sister-in-law.

Voir Dire Examination by the Court

1 And I also knew Bobo Stewart. He was in my home
2 several times when he was a youngster. And I have formed
3 an opinion, and I could not be...

4 THE COURT: A fair juror?

5 JUROR GLENDA EVANS: No. No, sir.

6 THE COURT: Okay. Thank you.

7 And then I'll go ahead and get you even though it is
8 not quite in numerical order. Number 143, while we are
9 still over here on this same side of the courtroom. You
10 knew Miss Rigby.

11 JUROR SHERRIE VOLLBRACHT: I just knew Miss
12 Rigby through the furniture store. But her niece and I
13 were friends. And her husband, he and I attend the same
14 church.

15 THE COURT: And would that influence you or
16 affect you in being a fair and impartial juror in this
17 case?

18 JUROR SHERRIE VOLLBRACHT: Yes, sir.

19 THE COURT: Okay. Thank you.

20 Number 145. Miss Ingram, how did you know Mrs.
21 Rigby?

22 JUROR JENNIFER INGRAM: I knew Mrs. Rigby
23 through her son Brian. We were good friends, went to
24 school together. And also, my sister-in-law and Brian
25 dated for several years.

26 THE COURT: Would these factors influence you
27 or affect you in being a fair juror in this case?

28 JUROR JENNIFER INGRAM: Yes, they would.

29 THE COURT: Thank you.

1 MRS. STEINER: Did she say yes, Your Honor?

2 MR. CARTER: Did she say yes?

3 THE COURT: She said it would.

4 Then Number 132. Mr. Bridges.

5 JUROR MARVIN BRIDGES: I work at Dacus
6 Furniture. I, I have known them in the capacity to be
7 working at the furniture store.

8 THE COURT: And would that influence you or
9 affect you in being a fair and impartial juror today?

10 JUROR MARVIN BRIDGES: No, sir.

11 THE COURT: Okay. Thank you.

12 And then Number 151. Miss Rainey, how did you know
13 Mrs. Rigby?

14 JUROR ANGELA RAINEY: I grew up in Kilmichael
15 and knew her through my parents, going to different
16 functions. And that wouldn't affect my opinion.

17 But I followed this through the years, and I already
18 have an opinion about this trial.

19 THE COURT: So you have got a formed, fixed
20 opinion on the case.

21 JUROR ANGELA RAINEY: (Nodded.)

22 THE COURT: Could you lay that aside and base
23 your decision on the evidence?

24 JUROR ANGELA RAINEY: No.

25 THE COURT: So you have -- saying then that you
26 could not be a fair and impartial juror; is that correct?

27 JUROR ANGELA RAINEY: No, I could not.

28 THE COURT: Okay. Thank you.

29 Then --

1 JUROR LINDA MARTIN: I knew Mr. Golden. I
2 worked at the same company where his brother works.

3 THE COURT: Worked with Mr. Golden's brother.

4 JUROR LINDA MARTIN: Yes.

5 THE COURT: Would that influence you in any
6 way?

7 JUROR LINDA MARTIN: No.

8 THE COURT: Okay. Thank you.

9 COURT REPORTER: Judge, what was her number?

10 THE COURT: Number 75.

11 Counsel, if you will approach.

12 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
13 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
14 OUTSIDE THE HEARING OF THE PROSPECTIVE JURORS.)

15 THE COURT: It looks like already I'm getting a
16 good number of people that are repeating over and over
17 that they can't be fair and impartial because of
18 different reasons, and I was just thinking this might be
19 a good time for us to recess and go ahead and excuse some
20 for cause.

21 You know, I mean we can constantly be receiving the
22 same answers from them. But I don't really -- you know,
23 if somebody says on everybody whose name is called that
24 they can't be fair and impartial, I don't believe there
25 is much point in keeping on having them say it over and
26 over. But you know, I'll just leave that up to y'all.

27 MR. CARTER: Are you talking about taking a
28 break, or are you talking about a recess for today?

29 THE COURT: No. Not recess for the day. I am

1 talking about taking a break to do that. Letting the
2 jury go out and have a recess. And then us take up some
3 names that we know already can be excused for cause and
4 then continue.

5 MR. EVANS: It knocked the panel down quite a
6 bit.

7 MR. CARTER: To be perfectly honest, I have
8 been thinking about trying to ask or rehabilitate a few
9 of them that, that they know Mr. Flowers, not actually
10 kin to him. Of course, I don't know if I would have any
11 success, and I may very well not. Then I might get one
12 or two.

13 What you think, Alison?

14 MRS. STEINER: (Inaudible.)

15 COURT REPORTER: Judge, I can't hear Mrs.
16 Steiner.

17 THE COURT: Well, if we get to some that you
18 feel like possibly could be rehabilitated, we sure don't
19 have to excuse them for cause right now. But I think --
20 but I think there is a lot of them that it is going to be
21 just absolutely perfectly clear that -- so I will just
22 ask all the jurors to step out. And then -- and then we
23 will take up some of those.

24 (THE BENCH CONFERENCE WAS CONCLUDED.)

25 Ladies and gentlemen, we are going to take a little
26 recess. I am going to confer with counsel on some stuff.
27 So if you are on the jury panel, you will need to step
28 out at this time. I mean I was going to allow you to
29 have a recess, because I imagine you are ready for a rest

1 break anyway. Probably be about 15 minutes or something
2 like that. The bailiffs will come -- they will open the
3 door and tell you when to come back in.

4 Any of the spectators or anything, you are welcome
5 to stay. But if you are on the jury, if you will,
6 please, step out for a little bit.

7 (THE PROSPECTIVE JURORS LEFT THE COURTROOM.)

8 Counsel, if you can approach the bench. We will
9 talk loud enough where everybody can hear. But we can
10 kind of just look at the notes now.

11 (MR. EVANS, MR. HILL, MR. HOWIE, MR. HOPPER, MRS. STEINER
12 AND MR. CARTER APPROACHED THE BENCH.)

13 THE COURT: Okay. Miss Johnson, Number 4, has
14 stated on several people that she did not feel she could
15 be fair and impartial.

16 Do both sides agree on her being struck for cause?

17 MR. EVANS: Yes, sir.

18 THE COURT: Then Mr. Sykes, Number 7, was, was
19 saying, you know, he, he knew Mr. Golden. He knew Miss
20 Tardy. He has got a lot of different reasons why he said
21 he could not be fair and impartial.

22 Do y'all agree on him?

23 MR. CARTER: Yes, sir.

24 MR. EVANS: Yes, sir.

25 THE COURT: And then Miss Mills, Number 26 -
26 I'm sorry, original Number 26, Number 9 - knew Bertha
27 Tardy, bought furniture from her. She worked at the
28 bank.

29 Do y'all agree on her for cause?

1 MR. EVANS: Yes, sir.

2 THE COURT: Miss Jefcoat. She knew Miss Tardy
3 and Miss Ballard and said she could not be fair and
4 impartial.

5 Do both of y'all agree?

6 MRS. STEINER: Yes, sir.

7 MR. EVANS: Yes, sir.

8 THE COURT: Then Number 13. He said that he
9 was friends with the Rigby boy, Mr. Rigby's sons. And
10 also, he had transported Mr. Flowers back and forth
11 during the proceedings at different times and could not
12 be fair and impartial.

13 Do y'all agree on that one?

14 MR. EVANS: Yes, sir.

15 THE COURT: Number 19. Miss Eldridge. She
16 knew Mr. Rigby's children, taught them, brother-in-law
17 chief over at -- over at Kilmichael. She said for
18 several reasons she could not be fair and impartial.

19 Do y'all agree on that one?

20 MRS. STEINER: Yes, sir.

21 MR. EVANS: Yes, sir.

22 THE COURT: Then Gina -- Rana Gwen Davis,
23 Number 20, knew Bertha from the store, knew Bennie Rigby,
24 knew the Stewart child and said she could not be fair and
25 impartial.

26 Do y'all agree on that one?

27 MR. CARTER: Yes, sir.

28 MR. EVANS: Yes, sir.

29 THE COURT: Now 61. I mean -- I'm sorry. 21.

1 Mr. Sims that said his wife and Curtis Flowers are second
2 or third cousins and that he could not be a fair and
3 impartial juror.

4 MR. EVANS: Yes, sir.

5 THE COURT: Do y'all agree on that one?

6 MRS. STEINER: Your Honor, 21, I, I had written
7 down could affect, but I'm -- and I'm not sure if that
8 was definitive but I...

9 THE COURT: We can certainly wait on striking
10 that one.

11 MR. CARTER: I have can't be fair.

12 MRS. STEINER: Oh, okay. Then I --

13 THE COURT: Do y'all agree then on Number 21
14 for cause?

15 MR. EVANS: Yes, sir.

16 MR. CARTER: Yes, sir.

17 THE COURT: And then Mr. Russell, Number 23,
18 said he could not be fair and impartial.

19 MR. EVANS: Yes, sir.

20 THE COURT: He is related to Mr. Flowers.

21 MR. CARTER: 23.

22 THE COURT: Do y'all agree on him?

23 MR. CARTER: Yeah. Yeah. Yeah.

24 THE COURT: And then Miss Kirkwood said close
25 to Curtis Flowers, close to his family. I believe works
26 for -- with his brother. Also been places where they
27 sang together.

28 MR. CARTER: I can't agree to that one, Your
29 Honor.

1 THE COURT: We can certainly keep somebody and
2 take them up again later. I mean this is just --

3 MR. EVANS: Well, Your Honor, the ones that are
4 clear -- if we are going to keep some, we might as well
5 keep them all. I mean these are clear as they can be.
6 They unequivocally said they could not be fair and
7 impartial.

8 THE COURT: What is -- what is the basis for
9 thinking Miss Kirkwood could come back in and say
10 something different than what she already said?

11 MR. CARTER: Because I wanted to, quite
12 frankly, voir dire her, ask her questions. She said she
13 knows Curtis from singing.

14 THE COURT: And she knows --

15 MR. CARTER: Were cousin and sisters?

16 THE COURT: I believe brother, sister and
17 cousin. And said she was close to Curtis Flowers.

18 MR. HOWIE: She was around him all the time.

19 THE COURT: Friday she said she was real -- she
20 was the one that wanted to be excused Friday, because she
21 was saying she was close to Mr. Flowers. And we asked
22 her to come on back today, and she is saying the same
23 thing today that she said.

24 MR. CARTER: Okay. Your Honor, I, I agree to
25 that one, reluctantly.

26 MRS. STEINER: Your Honor, did we strike Number
27 23 also?

28 THE COURT: Right.

29 MRS. STEINER: Okay.

Challenges for Cause

1 THE COURT: Then we are down to Miss Briggs,
2 Number 27.

3 Y'all agree on Miss Briggs?

4 MR. EVANS: Yes, sir.

5 THE COURT: Then Miss -- his sister-in-law, I
6 believe. Is this Number 31? Yeah. I'm sorry. We
7 skipped over Number 28, Miss Vance.

8 MR. EVANS: We agree.

9 THE COURT: Do y'all agree on Number 28?

10 MRS. STEINER: Yes, Your Honor.

11 THE COURT: Then how about Number 31?
12 Sister-in-law.

13 MR. CARTER: Oh, yeah.

14 MRS. STEINER: Oh, yes.

15 MR. EVANS: 31?

16 THE COURT: Right.

17 MR. EVANS: Oh, yeah. Yeah.

18 THE COURT: Then Miss Biggers. Well, she knew
19 Miss Tardy. She knew Miss Tardy's mother. She's --

20 MR. EVANS: We agree.

21 THE COURT: Y'all agree on --

22 MR. CARTER: Is this 32?

23 THE COURT: Right.

24 MR. CARTER: Or 33?

25 MR. HILL: 32.

26 THE COURT: 32. Well, 33, also. But right now
27 we are on 32.

28 Do y'all agree on 32?

29 MRS. STEINER: Your Honor, this is one person

1 who -- and if someone else has different notes. He said
2 he knew his sister.

3 THE COURT: No, this is a female. Number 32.

4 MRS. STEINER: Oh, I apologize.

5 MR. CARTER: He did say he couldn't be fair.
6 Yeah.

7 MRS. STEINER: Yeah, he did -- she did say
8 that. She said she couldn't be fair. 32, we have no
9 objection.

10 THE COURT: Then Jessie Lee Crawford.

11 MRS. STEINER: This is -- this is one of the
12 ones --

13 THE COURT: Said his son and Curtis' sister
14 have a baby together.

15 MR. EVANS: Yeah.

16 MR. HILL: Said it would affect him.

17 MR. EVANS: And it would affect him.

18 MRS. STEINER: He said it probably would.

19 MR. CARTER: Right. I want to voir dire that
20 one.

21 MRS. STEINER: That one I wrote down probably,
22 Your Honor.

23 MR. CARTER: I wrote doubts fairness.

24 MRS. STEINER: Doubts fairness. I think that
25 --

26 THE COURT: I can leave him on. I mean we
27 don't have to get rid of him right now. I mean
28 individual voir dire and other things can make it clear.

29 MR. EVANS: Your Honor, for the record I object

1 to them only objecting to cause strikes on certain
2 jurors. I think it is very clear that they are only
3 objecting cause on black jurors, and this is extremely
4 improper.

5 THE COURT: I don't think it is improper.
6 There is only one juror so far that they have asked not
7 to strike.

8 MR. EVANS: Two.

9 THE COURT: No. They agreed on the other one.

10 MR. EVANS: Well, they objected and then
11 agreed, Your Honor.

12 THE COURT: After they looked further at their
13 notes, but I --

14 MR. EVANS: I just wanted to make a record.

15 THE COURT: I mean there is going to be
16 multiple times to have jurors excused for cause
17 throughout. This process is just beginning.

18 MR. EVANS: That was 33.

19 THE COURT: Then Number 36 is married to Mr.
20 Flowers' cousin. Also, he said he was close friends with
21 Mr. Golden and that he could not be -- I think close
22 friends and maybe related to Mr. Golden too.

23 MR. HOWIE: I thought he said it was his
24 cousin.

25 THE COURT: The gentlemen was sitting back
26 there on about the third row.

27 MRS. STEINER: Right. He said he can't fair.

28 THE COURT: Y'all agree on him?

29 MR. CARTER: We agree.

1 MRS. STEINER: Right. He had been equivocal
2 about the Flowers connection but unequivocal about the
3 Golden connection.

4 THE COURT: Then Miss Givens. Number 147.

5 MR. EVANS: How about 37?

6 MR. HOWIE: 37.

7 THE COURT: I'm sorry. Did I overlook
8 something? Julia Campbell. I --

9 MR. EVANS: Her mother is cousin to the
10 defendant, and it would affect her.

11 MR. HOWIE: Yes, sir.

12 MR. CARTER: She said she couldn't be fair.

13 THE COURT: I see that now. I had overlooked
14 that note, but I agree.

15 Do y'all both --

16 MR. CARTER: Yeah, we agree.

17 MRS. STEINER: Yes.

18 THE COURT: I had just clean overlooked that
19 note for a second, turning onto the next page.

20 MR. EVANS: We have got one more on that page.
21 43.

22 MR. CARTER: Which one?

23 MR. HOWIE: 43.

24 THE COURT: Well, I actually have page numbers
25 different than y'all, because I made my own list up.

26 MR. EVANS: Number 43 worked with his father,
27 worked with his sister at Angelica, knows Archie from
28 singing and all that would affect him.

29 MRS. STEINER: Her.

1 MR. EVANS: Her I mean.

2 THE COURT: Do y'all agree on Rita Young?

3 MR. CARTER: Yeah. She did say she couldn't --
4 well, well, she said she couldn't be fair.

5 THE COURT: Let's skip back up to Margaret Ann
6 Givens, because I, I -- she, she is related to Robert
7 Golden.

8 MR. EVANS: What, what number, Your Honor?

9 THE COURT: 41. And I think she said she, you
10 know...

11 MR. EVANS: 41 said it would not affect her.
12 She is related to Robert Golden, first cousin, have known
13 him for a long time, and it would not affect her.

14 THE COURT: I thought she later said it would.
15 But we will do just like that one we didn't excuse for
16 Mr. Flowers. And we'll allow further questioning about,
17 about her.

18 Then I see next, Number 46, Mr. Daniels.

19 MR. EVANS: Yes, sir.

20 MR. CARTER: Hold on. On 41, didn't she say
21 she --

22 MRS. STEINER: I think the judge said we should
23 probably --

24 THE COURT: We will wait, as I say, like the
25 other one y'all wanted to keep around, and ask her
26 further questions.

27 Then James Daniels. Number 46.

28 MR. EVANS: Yes, sir. We agree with 46.

29 MRS. STEINER: He, he also came forth.

Challenges for Cause

1 THE COURT: The next one I see is 40. I'm
2 sorry, 52. Henry Lee Campbell.

3 MR. EVANS: Yes, sir.

4 MRS. STEINER: Yes, sir.

5 THE COURT: And then Number 61, his daddy was a
6 deputy sheriff during the time that this was being
7 investigated. And also, he said he knew the Rigbys, Miss
8 Rigby's sons.

9 MR. EVANS: Yes, sir.

10 MR. CARTER: Agree.

11 MRS. STEINER: Agree.

12 THE COURT: Okay. Then Number 66, Miss
13 Windham. She knows Carmen Rigby and knew her kids from
14 school and --

15 MR. CARTER: Agree with that.

16 MR. EVANS: Yes, sir.

17 THE COURT: And then Number 70. Miss Carodine.
18 She knows Miss Flowers. She knows Archie Flowers. Her
19 mother Lola works with Priscilla.

20 MR. CARTER: Which one are we on? 70?

21 MRS. STEINER: 70.

22 MR. EVANS: 70. We agree, Your Honor.

23 THE COURT: Right. Annie Ruth Carodine.

24 MRS. STEINER: Your Honor, the last quote I
25 have on her is she believes it would affect. And I don't
26 think she gave Your Honor a definitive answer. I think
27 she is one of the few who wouldn't commit either way.
28 And I think she should be --

29 MR. EVANS: Your Honor, she clearly said it

Challenges for Cause

1 would affect her and never equivocated. She said she
2 knew the defendant, knew his father, knew his mother,
3 worked with his sister at LuVada, worked on the same line
4 with his sister at LuVada and it would affect her.

5 MR. CARTER: She is one of the ones, Your
6 Honor, we wanted to ask her further questions.

7 THE COURT: We can -- as I say, we have got two
8 already that we, you know, are not agreeing on. And we
9 can leave some. You know, I mean it's not like there is
10 not going to be a lot of opportunity to bring those back
11 up again if necessary.

12 MRS. STEINER: Right.

13 THE COURT: Number 71. Miss Stewart.

14 MR. HILL: She said the defendant's brother and
15 her son were best friends.

16 MR. EVANS: She had known him and the family
17 for many years. It would affect her.

18 MRS. STEINER: She said it would affect her.

19 THE COURT: I will strike Number -- allow 71
20 for cause.

21 And then Mr. Varnes. Number 271.

22 MR. EVANS: 73.

23 THE COURT: I'm sorry. 73. What I have, is I
24 have got the original number. Then I have also got --
25 the original number and the new number because of trying
26 to keep those questionnaires straight.

27 Do y'all both agree on Number --

28 MR. CARTER: Yes, sir.

29 MR. EVANS: Yes, sir.

1 THE COURT: Then Number 74. Mr. Doyle.

2 MR. EVANS: Yes, sir. Mother and her aunt are
3 best friends. His mother and her aunt are best friends.
4 Works with Archie. Friends with Sherita, his sister. It
5 would affect her -- him.

6 THE COURT: Do y'all agree on that one?

7 MR. CARTER: Do you agree, Alison?

8 MRS. STEINER: I don't have notes for --

9 MR. CARTER: Well, Your Honor, she is certainly
10 one of the ones I had planned to voir dire further. She
11 certainly did say --

12 MRS. STEINER: He.

13 MR. CARTER: I mean he did that say he knows --
14 said, said he couldn't be fair.

15 THE COURT: Do you agree on cause then?

16 MR. CARTER: Yes, sir, I guess. Reluctantly.

17 THE COURT: Then Number 77. Mr. Hammond.

18 MR. CARTER: 77.

19 THE COURT: Then 79. Known Miss Tardy all her
20 life. Knows Roxanne.

21 MR. EVANS: Yes, sir.

22 THE COURT: Good friends with them. Knows
23 Bennie.

24 Do y'all agree on that one?

25 MRS. STEINER: 79. Yes.

26 THE COURT: Rebecca Hodges. She works for the
27 -- I'm sorry. She is married to the county prosecutor
28 and said she could not be fair and impartial being
29 married to --

1 Do y'all agree on that one?

2 MR. EVANS: Yes, sir.

3 MRS. STEINER: I think she is actually Dr.
4 Hodges.

5 THE COURT: Yes, she is.

6 And then Mr. Tompkins. He knows the Rigbys, Miss
7 Rigby's sons, and appears to be about the same age as
8 Miss Rigby's sons were. And he said he couldn't be fair
9 and impartial.

10 MR. EVANS: Yes, sir.

11 THE COURT: Then Phillip Cross, Jr. Number 84.
12 Do y'all agree on that one?

13 MR. EVANS: Yes, sir.

14 MR. CARTER: Yes, sir.

15 MRS. STEINER: Yeah. He wanted to talk about
16 knowing Rigby the first time he stood up.

17 THE COURT: Right.

18 Then Number 85 knows Miss, Miss Flowers. Friends
19 with Sherita. He said he could not be fair.

20 MRS. STEINER: She.

21 THE COURT: I'm sorry. She could not be fair.

22 MRS. STEINER: I think she dated the same
23 cousin as somebody else.

24 THE COURT: Right.

25 Do y'all agree on that one?

26 MR. EVANS: Yes, sir.

27 MRS. STEINER: Yes, sir.

28 THE COURT: Then Carlean Green.

29 MR. CARTER: What's the number for her?

1 THE COURT: Number 86. She is related to Mr.
2 Flowers, said a cousin of his. And she is also a first
3 cousin to Robert Golden by marriage.

4 MR. CARTER: We agree, Your Honor.

5 THE COURT: Number 86. Miss Green.

6 Okay. 88. Mr. Hayes.

7 MR. CARTER: First cousins. Can't be fair. We
8 agree.

9 THE COURT: 88 struck for cause.

10 Then let's see. Number 89. Miss Tompkins. I'm
11 sorry. Miss Tompkins is not here today. She got -- she
12 is in the hospital or something. Her husband called this
13 morning. And she is now in the hospital.

14 And then Number 90. Miss Forrest or -- yeah. Miss
15 Forrest.

16 MR. EVANS: Yes, sir.

17 MR. CARTER: We agree.

18 THE COURT: Then Miss Suggs. Number 99.

19 MR. HOWIE: How about 97?

20 MR. HILL: What about 97?

21 THE COURT: I overlooked 97. I, I -- Number
22 97, Brandon Flowers is Archie, Jr.'s son and Curtis'
23 nephew. And he said he could not be fair.

24 Okay. Miss Suggs. Number 99.

25 MRS. STEINER: Miss Suggs is another one who
26 the last thing she said in response to Your Honor's
27 questions was I believe it would affect. Not -- you
28 know, most jurors agreed, but she was one of the
29 unequivocal ones that I had written down. I don't know

Challenges for Cause

1 if somebody has different...

2 MR. EVANS: I have her niece is first cousins,
3 Patricia Flowers. They are very close to the family, and
4 it would affect her.

5 THE COURT: She said they were very close to
6 the Flowers family, but I will let her hang around a
7 little longer and get that clear.

8 MRS. STEINER: She may be excused, Judge, but
9 it -- I, I put I believe.

10 THE COURT: Then Stanley, Stanley William
11 Rodgers, Number 100, knew the Rigby family, knew Benji
12 Rigby.

13 Y'all agree on --

14 MR. EVANS: He said it would affect him. Yes,
15 sir.

16 MR. CARTER: Yes, sir. We agree.

17 THE COURT: Michael Andrew Parker.

18 MR. CARTER: We agree.

19 THE COURT: Do y'all agree on that one?

20 MR. EVANS: Yes, sir.

21 THE COURT: Timothy Bays. Paul Timothy Bays.

22 MR. EVANS: Yes, sir.

23 MR. CARTER: 102. Let's see. Can't be fair.
24 Okay.

25 THE COURT: Number 109. Eddie Benard Flowers.
26 Related to Curtis. He said he could not be fair.

27 MR. EVANS: Yes, sir.

28 MR. CARTER: We agree.

29 THE COURT: Okay. Then L.D. Daniels. Number

1 112.

2 MR. EVANS: Yes, sir.

3 MR. CARTER: We agree.

4 THE COURT: Let's just call, call her Miss
5 Magee. I mean Mr. -- call him Mr. Magee. His brother
6 dated --

7 Is that a male or female?

8 MR. HOWIE: Female, Your Honor.

9 THE COURT: Okay. I had the race -- I mean,
10 I'm sorry, the sex down wrong, but I knew it didn't sound
11 like a male name. Said her brother dated Mr. Flowers'
12 sister. And she could not be fair and impartial.

13 Do y'all agree on that one?

14 MR. EVANS: Yes, sir.

15 MR. CARTER: She said she didn't know Curtis,
16 also.

17 MR. HILL: Knew Priscilla.

18 THE COURT: But she did say that she couldn't
19 be fair and impartial, that her brother dated --

20 MR. EVANS: Priscilla.

21 THE COURT: -- Priscilla.

22 MR. EVANS: And that she could not be fair.

23 MR. CARTER: To be real honest, I mean I agree
24 with everything I just heard. But the only reason I want
25 to voir dire her is because she said she didn't know
26 Curtis. She might still say she, she can't be fair.

27 THE COURT: Well, I was assuming a relationship
28 with Priscilla precluded her from being able to sit in
29 judgment on Curtis.

1 MR. CARTER: It might. It might.

2 What do you think, Alison?

3 THE COURT: Let her go for cause?

4 MRS. STEINER: Yes, sir.

5 MR. CARTER: Yes, sir.

6 THE COURT: Then Diann Kilpatrick knows Curtis,
7 works with Sharonda. Said she could not be fair. Baby
8 by Curtis' --

9 MRS. STEINER: Your Honor, this is another one
10 who I said -- who I thought the final thing she said,
11 Your Honor, is I believe I can't be fair. I don't know
12 that...

13 THE COURT: Is there a difference in saying I
14 believe I can't be fair and -- but I mean, I'll allow her
15 to be voir dired some more.

16 MR. CARTER: Well, she actually said at one
17 point she probably couldn't be fair, but I thought she
18 came back to another question and said she could be fair.
19 That is what I have.

20 MRS. STEINER: She can be excused.

21 THE COURT: Do y'all agree to have her excused
22 for cause?

23 MR. CARTER: Yes, sir. That's what my notes
24 say.

25 THE COURT: Then Number 116. Miss Powell.

26 MR. EVANS: Yes, sir.

27 THE COURT: Carpools with Miss Sherita. She
28 knows Curtis and said she couldn't be fair.

29 MR. CARTER: Yes, sir.

Challenges for Cause

1 THE COURT: Madonna Woods.

2 MR. HOWIE: What about 117?

3 THE COURT: Did I overlook somebody?

4 MR. EVANS: Yes, sir. 117.

5 THE COURT: Yeah. 117. Miss Vail. Bertha
6 Tardy was her second cousin.

7 Do y'all agree on that one?

8 MR. CARTER: Yes, sir.

9 THE COURT: Then Madonna Woods, Number 122,
10 knows Miss Rigby.

11 MR. EVANS: We agree, Your Honor.

12 MR. CARTER: We agree.

13 THE COURT: Then 129. She works -- she is
14 secretary for the county prosecutor.

15 MRS. STEINER: Um-hum.

16 MR. EVANS: We agree.

17 MRS. STEINER: And she worked for the A.G.'s
18 office.

19 THE COURT: Right. Allow Miss Eldridge for
20 cause.

21 Then Miss Sanders.

22 MR. EVANS: How about 131?

23 MR. HILL: Said Curtis dated her sister.

24 THE COURT: I thought she said she could be
25 fair and impartial.

26 MR. HILL: She said Curtis dated her sister.

27 THE COURT: Yeah. She did say that.

28 MR. EVANS: I've got that he used to date her
29 sister, and it would affect her.

1 MRS. STEINER: She said it -- I was like Your
2 Honor. I thought she said it might affect, but she
3 hasn't said she couldn't be fair.

4 THE COURT: Just wait around on her and make
5 sure I get clear in my notes, because I don't want any --
6 I want to be totally clear on that.

7 Okay. Then Number 133, Sanders.

8 MR. EVANS: Yes, sir.

9 THE COURT: Do y'all agree on that one?

10 MR. CARTER: Yes, sir.

11 THE COURT: And Henson. Number 134.

12 MR. EVANS: Yes, sir.

13 THE COURT: Number 139. Mr. Briggs said he was
14 a police officer in Memphis and because of his prior
15 experience as a police department officer he could not be
16 fair.

17 Do y'all agree on him?

18 MR. EVANS: Yes, sir.

19 MRS. STEINER: We agree.

20 THE COURT: And then Miss Sutton, Number 140,
21 related to Curtis' cousin.

22 MR. EVANS: Yes, sir.

23 MR. CARTER: 140. Yeah.

24 THE COURT: Miss Bruce, Number 141. Then
25 Glenda Evans, 142.

26 MR. EVANS: Yes, sir.

27 MR. CARTER: We agree.

28 THE COURT: Vollbracht, Number 143.

29 MR. EVANS: Yes, sir.

1 THE COURT: Mr. Forrest, Number 144.

2 MR. EVANS: Yes, sir.

3 MR. CARTER: Agree.

4 THE COURT: Stacy Forrest Black, 150.

5 MR. EVANS: Your Honor --

6 MRS. STEINER: Your Honor --

7 THE COURT: Did I miss somebody?

8 MR. EVANS: I've got -- I've got 145 and 146.

9 THE COURT: 145.

10 MRS. STEINER: I have 145 and 1 --

11 MR. EVANS: I may have written it wrong. Let
12 me look at my notes.

13 THE COURT: Yeah, 146 I do have. I had
14 overlooked Number 145.

15 Do y'all both agree on 145?

16 MR. CARTER: Yes, sir.

17 THE COURT: Then 146. I -- it was so close to
18 the top of the page, the staple had it where I couldn't
19 see it.

20 Do y'all agree on that one too?

21 MR. CARTER: Yes, sir.

22 THE COURT: Harold Coleman Carpenter.

23 MRS. STEINER: Yes, sir.

24 THE COURT: In fact, Bertha was his wife's
25 aunt. I believe is what he said.

26 MRS. STEINER: That's correct.

27 MR. CARTER: 146.

28 THE COURT: Yeah. 146.

29 Then Stacy Forrest Black.

1 MR. EVANS: Yes, sir.

2 MR. CARTER: That's 150.

3 THE COURT: Right.

4 MR. CARTER: Yes, sir.

5 THE COURT: And then Miss Rainey, Number 151.

6 MRS. STEINER: Yes.

7 THE COURT: Knew Mr. Rigby from school.

8 MRS. STEINER: She has an opinion.

9 THE COURT: Right.

10 MR. EVANS: We agree.

11 THE COURT: Najaleh Cage, Number 153.

12 MR. EVANS: Yes, sir.

13 MR. HOPPER: Yes, sir.

14 MR. CARTER: What did she say? I wrote down
15 may not be fair.

16 MR. WHITFIELD: Your Honor, for the purposes --

17 THE COURT: She is under indictment for
18 perjury. I think she said because of that she couldn't
19 be fair and impartial.

20 MR. CARTER: Okay. Yeah. She said it.

21 THE COURT: And then Lawrence McCloud, married
22 to his --

23 MR. CARTER: Right. 156.

24 THE COURT: Number 156. Married --

25 MR. EVANS: You've got Woods too. 155.

26 MR. HOWIE: She's a cousin --

27 THE COURT: Yeah. I'm sorry. Number 155.

28 MR. CARTER: We agree.

29 THE COURT: And then 156.

1 Do y'all agree there?

2 MR. EVANS: Yes, sir.

3 THE COURT: And I don't know; I'm going to just
4 throw this out here. I don't care if the person stays on
5 or not. Right now she said she can be fair and
6 impartial, but we have got somebody that is on some
7 non-adjudication. That is, I believe --

8 MR. WHITFIELD: Christy Bartlett.

9 MR. HOWIE: 55.

10 MR. EVANS: I think that is kind of risky.

11 THE COURT: Well, I mean my concern is that if
12 she -- you know, she could --

13 MR. EVANS: She could be a convicted felon
14 before --

15 THE COURT: Well, yeah. But not only that, she
16 may think, okay, well, if I were to stay and support the
17 case for the State on this, then that could curry favor
18 with them. And if she -- you know, if she votes not
19 guilty, then it could be bad favor with them. So I don't
20 --

21 MR. CARTER: I agree with you, Your Honor.

22 MR. EVANS: State agrees also.

23 THE COURT: Well, I'm going to --

24 MR. EVANS: It is just too risky.

25 THE COURT: That is Number 55, Miss Bartlett.

26 MR. HOWIE: Yes, sir.

27 THE COURT: I imagine y'all are ready to
28 stretch for a few minutes too. Why don't we just take a
29 10-minute break and have the jurors come in in ten more

Bench Conference

1 minutes?

2 (THE BENCH CONFERENCE WAS CONCLUDED.)

3 (A RECESS WAS TAKEN.)

4 MRS. STEINER: Your Honor, may we approach?

5 THE COURT: Counsel, if you will approach.

6 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER AND MR.

7 CARTER APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE
8 HAD OUTSIDE THE HEARING OF THE COURTROOM AUDIENCE.)

9 MRS. STEINER: Your Honor, one of my interns
10 who is sitting very close to the jury -- I think this is
11 going to call for somewhat of an individual voir dire on
12 Juror Number 3. When Juror Number 4 advised the Court
13 that she could not be fair, we -- Juror Number 3 was
14 overheard saying you are not supposed to say that. And I
15 think that Juror Number 3 is going to require some
16 individual voir dire.

17 THE COURT: When we -- because I intend to
18 individual voir dire on the knowledge of the case and on
19 the death penalty question, if there is any other issue
20 that comes up during the group voir dire that calls for
21 individual as to particular individual, we will take it
22 up then.

23 MRS. STEINER: That will be fine, Your Honor.
24 I had just -- heretofore she had not answered any
25 questions.

26 THE COURT: Okay.

27 MRS. STEINER: And I wanted to put on the
28 record we were going to ask for individual voir dire on
29 her.

1 (THE BENCH CONFERENCE WAS CONCLUDED.)

2 THE COURT: Ladies and gentlemen, at this time
3 there are a few jurors that we are going to be able to
4 excuse. So as your name is called, you may go. And you
5 can just leave your little fan there in the pew where you
6 are sitting.

7 But Patricia Johnson, you may go at this time.

8 And then Jack Sykes, you may go.

9 And Diana Stoker Mills, you may go.

10 And Patricia Jefcoat, you may go.

11 Michael Develle Woods, you may go.

12 Merrian Eldridge, you may go.

13 Rana Gwen Davis, you may go.

14 Larry Sims, you may go.

15 And Anthony Dallas Russell, you may go.

16 And Melinda Kirkwood, you may go.

17 Judy Briggs, you may go.

18 And Terri Alaina Vance, you may go.

19 And Miss Votrice Flowers, you may go.

20 And Tareeca Ann Biggers, you may go.

21 Arthur Knight, you may go.

22 Julia Campbell, you may go.

23 Rita May Young, you may go.

24 James Daniels, you may go.

25 Henry Lee Campbell, you may go.

26 Christina Bartlett, you may go.

27 Chad Thomas McIntyre, you may go.

28 Patsy Ann Windham, you may go.

29 Barbara Jean Stewart, you may go.

1 Richard Dale Varnes, you may go.

2 Ellis Doyle, you may go.

3 Ronald Hammond, you may go.

4 Pamela McCaulla, you may go.

5 Rebecca Hodges, you may go.

6 Kenneth Joseph Tompkins, you may go.

7 Phillip Cross, Jr., you may go.

8 Mary Dewanda Seals, you may go.

9 Carlean Green, you may go.

10 Alphonso Hayes, you may go.

11 Regina Diane Tompkins. I'm sorry. She is the one
12 that is in the hospital, but she is marked off the list.

13 Number 90, Lynell Forrest, you may go.

14 Brandon Flowers, Number 97, you may go.

15 Revell Suggs, Number 99, you may go.

16 Stanley William Rodgers, Number 100, you may go.

17 Michael Andrew Parker, Number 101, you may go.

18 Paul Timothy Bays, Number 102, you may go.

19 Eddie Benard Flowers, Number 109, you may go.

20 L.D. Daniels, Number 112, you may go.

21 Number 113, Miss Magee, you may go.

22 Number 116, Cynthia Rena Powell, you may go.

23 MR. HILL: Number 114.

24 THE COURT: I said Number 114, already, didn't
25 I?

26 Have I said Diann Kilpatrick?

27 Okay. You may go. Wait a minute. Yeah. I'm
28 sorry. Go ahead and go.

29 Christy Vail, Number 117, you may go.

1 Madonna Woods, Number 122, you may go.
2 Elizabeth Ann Eldridge, Number 129, you may go.
3 Hattie Sanders, 133, you may go.
4 Katherine Henson, Number 134, you may go.
5 Spencer Tracy Briggs, Number 139, you may go.
6 Shanta Sutton, Number 140, you may go.
7 Tammy Elizabeth Bruce, Number 141, you may go.
8 Glenda Evans, Number 142, you may go.
9 Number 143, Sherrie Mae Vollbracht, you may go.
10 Number 144, Theo Ware Forrest, you may go.
11 Number 145, Jennifer Carpenter Ingram, you may go.
12 Number 146, Harold Coleman Carpenter, you may go.
13 Number 150, Stacy Forrest Black, you may go.
14 Number 151, Angela Rainey, you may go.
15 Number 153, Najaleh Cage, you may go.
16 158, Miss Woods, you may go.

17 MR. EVANS: 155.

18 THE COURT: 155. I'm sorry.

19 Then Number 156, Mr. Lawrence McCloud, you may go.
20 I'll continue now with some questions from the
21 Court.

22 I want to know if any of you are related by blood or
23 by marriage to Derrick Stewart or if any of you knew
24 Derrick Stewart during his lifetime. I believe his
25 nickname was Bobo. Are any of you related by blood or by
26 marriage to Mr. Stewart or any of you that knew Mr.
27 Stewart during his life, if you would please stand.

28 Miss Griffin, how did you know Mr. Stewart?

29 JUROR CAROL GRIFFIN: He was an English student

Voir Dire Examination by the Court

1 of mine, former student.

2 THE COURT: And was he a student, like,
3 preceding the time when this occurred or --

4 JUROR CAROL GRIFFIN: He was.

5 THE COURT: Would that influence you or affect
6 you in being a fair and impartial juror in this case?

7 JUROR CAROL GRIFFIN: (Shook head.)

8 THE COURT: And I believe you were Mr. Flowers'
9 teacher at one point. You taught, I guess, a number of
10 people through the years at school.

11 JUROR CAROL GRIFFIN: (Nodded.)

12 THE COURT: And so would you base your decision
13 only on the evidence presented in court and on no other
14 factors?

15 JUROR CAROL GRIFFIN: Yes, sir.

16 THE COURT: Okay. Thank you.

17 And then Number 29. Mr. Waller, and you --

18 JUROR HAROLD WALLER: I just knew him through
19 school. He went to school with my daughter. He was
20 younger, but I know him and know his dad and mother and
21 aunt.

22 THE COURT: And would that influence you or
23 affect you in being a fair and impartial juror in this
24 case?

25 JUROR HAROLD WALLER: No, sir.

26 THE COURT: And would you lay aside any
27 knowledge you have of anybody and base your decision only
28 on the evidence presented here in court?

29 JUROR HAROLD WALLER: Yes, sir.

Voir Dire Examination by the Court

1 THE COURT: Okay. Thank you.

2 Then Number 50. Mr. Lester, and you knew Mr.
3 Stewart.

4 JUROR BOBBY LESTER: Indirectly. My wife is a
5 first grade teacher. He was in her class.

6 THE COURT: Would that influence you or affect
7 you in being a fair and impartial juror in this case?

8 JUROR BOBBY LESTER: No, sir.

9 THE COURT: Okay. Thank you.

10 And Number 39. Mr. Green, you knew Mr. Stewart.

11 JUROR JAMES GREEN: No, I did not. I'm an
12 acquaintance of his father.

13 THE COURT: You knew Mr. Stewart's father. And
14 how do you know him?

15 JUROR JAMES GREEN: Same occupation. Truck
16 driver.

17 THE COURT: Would that influence you or affect
18 you in being a fair and impartial juror in this case?

19 JUROR JAMES GREEN: Yes, sir, it would.

20 THE COURT: So the fact that you know Mr.
21 Stewart's father, you just feel like you couldn't be fair
22 because of that; is that correct?

23 JUROR JAMES GREEN: Correct.

24 THE COURT: Okay. Thank you.

25 Number 54. Miss Box, and tell us about that.

26 JUROR PATRICIA BOX: I work at the school. I
27 knew him, him and his brother both when they were in
28 school.

29 THE COURT: And would that influence you or

Voir Dire Examination by the Court

1 affect you in being a fair and impartial juror in this
2 case?

3 JUROR PATRICIA BOX: No.

4 THE COURT: Okay. Thank you.

5 Number 69. Mr. Carpenter, and you knew Mr. Stewart.

6 JUROR BILLY CARPENTER: I knew him in passing.
7 I coached little league baseball for about six or seven
8 or eight years, and he was always around the ball field.

9 But I grew up with his daddy and his aunt. I know
10 all of his -- Stewarts, and I know all the Loftons. So
11 I...

12 THE COURT: And would those factors influence
13 you or affect you in being a fair and impartial juror in
14 this case?

15 JUROR BILLY CARPENTER: No, sir.

16 THE COURT: And would you lay aside any
17 knowledge you have of people, family-wise and base your
18 decision only on the evidence presented here in court?

19 JUROR BILLY CARPENTER: Yes, sir.

20 THE COURT: Thank you.

21 Then Number 72. Miss Colbert, you knew Mr. Stewart.
22 Is that from --

23 JUROR JULIAN COLBERT: I knew him through my
24 husband's coaching and teaching of both Bobo and his
25 brother, Dale, and cousins and just through school.

26 THE COURT: And would that influence you or
27 affect you in being a fair juror in this case?

28 JUROR JULIAN COLBERT: Would not.

29 THE COURT: And would you base your decision

1 only on the evidence presented here in court?

2 JUROR JULIAN COLBERT: Yes, I would.

3 THE COURT: Thank you.

4 Miss Simmons. Number 80.

5 JUROR BRENDA SIMMONS: Yes, sir. Bobo's older
6 brother and my son graduated, went all the way through
7 school together. And I knew Bobo would be around. But
8 personally, I did not know him.

9 THE COURT: And would that factor influence you
10 or affect you in being a fair and impartial juror in this
11 case?

12 JUROR BRENDA SIMMONS: No, sir.

13 THE COURT: Okay. Thank you.

14 And then Number 94.

15 MR. EVANS: Your Honor, 83, I believe.

16 THE COURT: Did I -- okay.

17 I'll get you after 94 since I'm already...

18 Miss Acy, you knew Mr. Stewart.

19 JUROR MELISSA ACY: I did. I know his parents,
20 his older brother and grandparents.

21 THE COURT: His older brother and who else?

22 JUROR MELISSA ACY: His grandparents. I grew
23 up in Vaiden about a half a mile down the road from the
24 Loftons, grandparents.

25 THE COURT: And would those factors influence
26 you or affect you in being a fair and impartial juror in
27 this case?

28 JUROR MELISSA ACY: I don't think so.

29 THE COURT: Any doubt in your mind?

Voir Dire Examination by the Court

1 JUROR MELISSA ACY: No.

2 THE COURT: And would you base your decision if
3 you are selected only on the evidence presented here in
4 court?

5 JUROR MELISSA ACY: Yes, sir.

6 THE COURT: Okay. Thank you.

7 And then Number 83. Miss Robertson, and you knew
8 Mr. Stewart.

9 JUROR SANDRA ROBERTSON: Yes, sir. My brother
10 was married to his first cousin. I was around family a
11 lot during the funeral process, that type of thing.

12 THE COURT: And your brother was married to Mr.
13 Stewart's first cousin; is that correct?

14 JUROR SANDRA ROBERTSON: (Nodded.)

15 THE COURT: Would that influence you or be a
16 factor in you being a fair and impartial juror in this
17 case?

18 JUROR SANDRA ROBERTSON: Yes, sir. I think it
19 would be hard for me to deal with the situation.

20 THE COURT: So you just couldn't be fair and
21 impartial because of that.

22 JUROR SANDRA ROBERTSON: I don't believe I
23 could.

24 THE COURT: Ma'am.

25 JUROR SANDRA ROBERTSON: I don't believe I
26 could.

27 THE COURT: Don't believe you could. Any
28 doubt?

29 JUROR SANDRA ROBERTSON: (Nodded.)

Voir Dire Examination by the Court

1 THE COURT: So you are saying you pretty much
2 know you couldn't be fair and impartial.

3 JUROR SANDRA ROBERTSON: (Nodded.)

4 THE COURT: Okay. Thank you.

5 Number 108. Mr. Surrell, you knew Mr. Stewart.

6 JUROR MATTHEW SURRELL: Yes, sir. We were
7 classmates, played baseball together.

8 THE COURT: And would that influence you or
9 affect you in being a fair and impartial juror in this
10 case?

11 JUROR MATTHEW SURRELL: No, sir.

12 THE COURT: And if you're selected would you
13 base your decision only on the evidence presented here in
14 court and on nothing else?

15 JUROR MATTHEW SURRELL: Absolutely.

16 THE COURT: Okay. Thank you.

17 Then Number 111. Mr., Mr. Jones, you knew Mr.
18 Stewart.

19 JUROR S. BROOKS JONES: Yes, sir.

20 THE COURT: And how did you know him?

21 JUROR S. BROOKS JONES: His family was my
22 neighbor when he was a small child.

23 THE COURT: And would that factor influence you
24 or affect you in being a fair and impartial juror in this
25 case?

26 JUROR S. BROOKS JONES: No, sir.

27 THE COURT: Okay. Thank you.

28 Then Number 119. Miss King, how did you know him?

29 JUROR ALISHA KING: All through school.

Voir Dire Examination by the Court

1 THE COURT: Were y'all in school about the same
2 time?

3 JUROR ALISHA KING: Yes, sir. He was a year
4 ahead of me.

5 THE COURT: And would that influence you or
6 affect you in being a fair and impartial juror in this
7 case?

8 JUROR ALISHA KING: No, sir.

9 THE COURT: And if you are selected as a juror
10 on the case, would you base your decision only on the
11 evidence presented here in open court?

12 JUROR ALISHA KING: Yes, sir.

13 THE COURT: Okay. Thank you.

14 Then Number 121. Mr. Austin, you knew Mr. Stewart.

15 JUROR MICHAEL AUSTIN: I knew Mr. Stewart. And
16 I've known his dad for many years. And I have a son
17 about Bobo's same age who played sports with him,
18 baseball, whatever.

19 THE COURT: And would those factors come into
20 play or influence you or affect you in being a fair and
21 impartial juror in this case?

22 JUROR MICHAEL AUSTIN: No, sir.

23 THE COURT: Okay. Thank you.

24 Then Number 137. And you would be Mr. Robertson.

25 JUROR JOEL ROBERTSON: Yes, sir. I played
26 baseball with his older brother, Dale. And I coached in
27 the summer, and Bobo was always around the field. I
28 graduated with his first cousin.

29 THE COURT: Graduated with his first cousin.

Voir Dire Examination by the Court

1 JUROR JOEL ROBERTSON: Yes, sir.

2 THE COURT: And would those factors influence
3 you in any way or affect you in being fair and impartial?

4 JUROR JOEL ROBERTSON: No, sir.

5 THE COURT: And if you are selected as a juror
6 in this case, would you base your decision only on the
7 evidence presented here in open court?

8 JUROR JOEL ROBERTSON: Yes, sir.

9 THE COURT: Now, ladies and gentlemen, I know
10 you've answered, some of you did on the jury
11 questionnaires, but I want to ask again if any of you
12 have a situation where you have been the victim of a
13 crime or have had a close family member or a close friend
14 that has been the victim of some type crime. If, if you
15 have, if you will please stand.

16 And Miss Griffin, I believe you had said you had a
17 family member that was murdered at some point in the
18 past.

19 JUROR CAROL ANN GRIFFIN: Janette Vowell from
20 Kosciusko.

21 THE COURT: And I believe that was prosecuted
22 about four years ago, something like that.

23 JUROR CAROL ANN GRIFFIN: Right.

24 THE COURT: And is there anything about the
25 fact that you had that relative that was a murder victim
26 that would influence you in this case or be a factor in
27 you being a fair and impartial juror?

28 JUROR CAROL ANN GRIFFIN: No, sir.

29 THE COURT: Thank you.

1 Then Miss Rodgers, and you had a uncle that was
2 murdered.

3 JUROR MELBA RODGERS: Correct.

4 THE COURT: Where, where did that happen?

5 JUROR MELBA RODGERS: It was in Madison County.

6 THE COURT: Madison.

7 JUROR MELBA RODGERS: Right below Pickens.

8 THE COURT: And how long ago was that?

9 JUROR MELBA RODGERS: About three years ago.

10 THE COURT: And then that person apparently was
11 killed that killed your uncle by --

12 JUROR MELBA RODGERS: Officers.

13 THE COURT: -- law officers. And would that
14 factor influence you or affect you in being a fair and
15 impartial juror in this case?

16 JUROR MELBA RODGERS: No.

17 THE COURT: Okay. Thank you.

18 And then, Miss Johnson, you had a family member that
19 was a victim of a violent crime or --

20 JUROR JANELLE JOHNSON: My [REDACTED] was raped.

21 THE COURT: How long ago was that?

22 JUROR JANELLE JOHNSON: Four or five years ago.

23 THE COURT: And did that happen in this or some
24 other county?

25 JUROR JANELLE JOHNSON: This county.

26 THE COURT: Is there anything about that that
27 would influence you or affect you in being a fair juror
28 in this case?

29 JUROR JANELLE JOHNSON: He had nothing to do

1 with this.

2 THE COURT: Ma'am.

3 JUROR JANELLE JOHNSON: No. He had nothing to
4 do with this. No. No.

5 THE COURT: Okay. Thank you.

6 Then, Miss Wright, you -- what, what is that
7 situation?

8 JUROR CAROLYN WRIGHT: My uncle got killed. He
9 was a security guard at Parchman. He got killed in
10 Charleston, Mississippi.

11 MR. HILL: We can't hear, Your Honor.

12 THE COURT: Your uncle was a guard at Parchman.

13 JUROR CAROLYN WRIGHT: Yes, sir.

14 THE COURT: And did he get killed on the job?

15 JUROR CAROLYN WRIGHT: No, sir.

16 THE COURT: Where did he get killed?

17 JUROR CAROLYN WRIGHT: In Charleston,
18 Mississippi.

19 THE COURT: And how long ago was that?

20 JUROR CAROLYN WRIGHT: About 15 years ago.

21 THE COURT: Would that be a factor or influence
22 you at all in your ability to be a fair and impartial
23 juror?

24 JUROR CAROLYN WRIGHT: No, sir, it wouldn't.

25 THE COURT: Okay. Thank you.

26 Miss Chatham, what is that situation?

27 JUROR JENNIFER CHATHAM: My [REDACTED] was raped.

28 THE COURT: And how long ago was that?

29 JUROR JENNIFER CHATHAM: It was back in 2000.

1 THE COURT: And was that in this county or some
2 other county?

3 JUROR JENNIFER CHATHAM: It was another county.

4 THE COURT: And would that be a factor or
5 influence you in being a fair and impartial juror in this
6 case?

7 JUROR JENNIFER CHATHAM: No, sir.

8 THE COURT: Okay. Thank you.

9 Then Number 29. Mr. Waller, and what is that
10 situation?

11 JUROR HAROLD WALLER: My wife's aunt, Billy
12 Dempsey's mother, was murdered Christmas Eve, 1994.

13 THE COURT: And what county was that in?

14 JUROR HAROLD WALLER: It happened in Carroll
15 County.

16 THE COURT: Carroll County. And I believe
17 somebody has been prosecuted and sentenced in that case.
18 Or is that -- or am I thinking of a different case?

19 JUROR HAROLD WALLER: It was right across the
20 line. I don't know where he -- both of them were from
21 Montgomery County.

22 THE COURT: Okay. I may be thinking about a
23 different case. But is there anything about that that
24 would influence you or affect you in being a fair and
25 impartial juror?

26 JUROR HAROLD WALLER: No, sir.

27 THE COURT: Okay. Thank you.

28 Then Number 49. Mr. Slaughter, and what is that
29 situation?

1 JUROR JOHNNY SLAUGHTER: Nineteen -- I mean in
2 2001 my son was shot. They had to amputate his leg.

3 THE COURT: And what was your son --

4 JUROR JOHNNY SLAUGHTER: Drive-by.

5 THE COURT: Did that happen in this county or
6 some other county?

7 JUROR JOHNNY SLAUGHTER: No, it happened in
8 Calhoun County.

9 THE COURT: Calhoun. And would that influence
10 you or affect you in being a fair --

11 JUROR JOHNNY SLAUGHTER: Oh, yes.

12 THE COURT: Sir.

13 JUROR JOHNNY SLAUGHTER: Yes.

14 THE COURT: So you feel like that would just
15 keep you from being able to be a fair juror in this case.

16 JUROR JOHNNY SLAUGHTER: Yes, sir.

17 THE COURT: Because of what happened to your
18 son.

19 JUROR JOHNNY SLAUGHTER: Yes, sir.

20 THE COURT: Okay. Thank you.

21 Number 59. Miss Nail, and you had a family member
22 murdered.

23 JUROR JULIA NAIL: My nephew.

24 THE COURT: When was that?

25 JUROR JULIA NAIL: It's been over 30 years ago.

26 THE COURT: And was anybody ever arrested or
27 prosecuted?

28 JUROR JULIA NAIL: Yes, sir.

29 THE COURT: And would that influence you or

Voir Dire Examination by the Court

1 affect you in being a fair and impartial juror in this
2 case?

3 JUROR JULIA NAIL: No, sir.

4 THE COURT: Okay. Thank you.

5 And Number 60. Mr. Kenney, what was that situation?

6 JUROR DORWIN KENNEY: My son. James Eskridge.

7 THE COURT: And what happened to him?

8 JUROR DORWIN KENNEY: Burglary.

9 THE COURT: Was he -- somebody stole something
10 from him?

11 JUROR DORWIN KENNEY: No. He was stealing.

12 THE COURT: Okay. So your son was charged --

13 JUROR DORWIN KENNEY: Right.

14 THE COURT: -- with a crime.

15 JUROR DORWIN KENNEY: Yes.

16 THE COURT: What was his name again?

17 JUROR DORWIN KENNEY: James Eskridge.

18 THE COURT: James.

19 JUROR DORWIN KENNEY: Eskridge.

20 THE COURT: James Eskridge. How long ago was
21 that?

22 JUROR DORWIN KENNEY: A couple of months ago.

23 THE COURT: And would that influence you or
24 affect you in being a fair and impartial juror in this
25 case?

26 JUROR DORWIN KENNEY: Yes.

27 THE COURT: You think it would.

28 JUROR DORWIN KENNEY: Yes.

29 THE COURT: Or would it?

1 JUROR DORWIN KENNEY: It would.

2 THE COURT: Okay. Thank you.

3 Number 67. Mr. Amason.

4 JUROR TIMOTHY AMASON: My house was
5 burglarized.

6 THE COURT: How long ago was that?

7 JUROR TIMOTHY AMASON: Probably '96.

8 THE COURT: And would that influence you or
9 affect you in being a fair juror in this case?

10 JUROR TIMOTHY AMASON: No, sir.

11 THE COURT: Okay. Thank you.

12 Then Miss Ray, what is that situation?

13 JUROR JULIA RAY: My father was killed, shot
14 and killed about 40 years ago.

15 THE COURT: And would that influence you or be
16 a factor in you being a fair and impartial juror in this
17 case?

18 JUROR JULIA RAY: No, sir.

19 THE COURT: Okay. Thank you.

20 Then Number 69. Mr. Carpenter.

21 JUROR BILLY CARPENTER: Yes. Our house was
22 burglarized also. And I don't remember what year. It
23 has been several years ago.

24 THE COURT: And would that influence you or
25 affect you in any way in being a fair juror in this case?

26 JUROR BILLY CARPENTER: Absolutely not.

27 THE COURT: Thank you.

28 Then Number 83. Miss Robertson.

29 JUROR SANDRA ROBERTSON: Yes, sir.

1 THE COURT: What is your situation?

2 JUROR SANDRA ROBERTSON: I just put down close
3 friend, I believe, because of Bobo.

4 THE COURT: Okay. So --

5 JUROR SANDRA ROBERTSON: None other than him.

6 THE COURT: So Mr. Stewart was the one on your
7 questionnaire that you had said was murdered. And I
8 believe you said because of that you could not be a fair
9 and impartial juror.

10 JUROR SANDRA ROBERTSON: That's correct.

11 THE COURT: Okay. Thank you.

12 Then Number 87. Miss Locke.

13 JUROR BEVERLY LOCKE: Yes. Excuse me. You did
14 say a victim of a violent crime?

15 THE COURT: Yes, ma'am.

16 JUROR BEVERLY LOCKE: Well, then I will sit
17 down.

18 THE COURT: Well, a victim of any type crime.

19 JUROR BEVERLY LOCKE: Well, my tires were
20 slashed last year.

21 THE COURT: And any arrest made on that?

22 JUROR BEVERLY LOCKE: Well, I don't know if
23 they arrested the fellow. But they called me a couple of
24 weeks later, and told me they had the money sitting down
25 there for my tires. So apparently they got him --

26 THE COURT: Right.

27 JUROR BEVERLY LOCKE: -- or did something.

28 THE COURT: Now --

29 JUROR BEVERLY LOCKE: I have a situation where

Voir Dire Examination by the Court

1 my sister is in prison, if that relates to anything.

2 THE COURT: I was going to get to that a little
3 later, but you can go ahead and tell us about that now if
4 you want to.

5 JUROR BEVERLY LOCKE: Well, I really don't like
6 talking about it.

7 THE COURT: Well, you don't have to tell us
8 much about it, but I mean she --

9 JUROR BEVERLY LOCKE: About 17 years ago she
10 and her live-in killed a fellow in Hattiesburg.

11 THE COURT: And is there --

12 JUROR BEVERLY LOCKE: Shot him a bunch of times
13 and stabbed him a bunch of times.

14 THE COURT: Okay. Well, you didn't have to get
15 into as much detail.

16 JUROR BEVERLY LOCKE: Well, I was just going to
17 say, it's --

18 THE COURT: But I appreciate you doing that.

19 Would the fact that you have been a victim of some
20 type crime influence you or affect you in any way?

21 JUROR BEVERLY LOCKE: No, sir. My son had that
22 done. He was mad at me.

23 THE COURT: Well, I'm sorry to hear that.

24 JUROR BEVERLY LOCKE: That's just an idiot for
25 a kid. That's all.

26 THE COURT: Okay.

27 JUROR BEVERLY LOCKE: No, sir. I am fine, and
28 I can take the facts and weigh them and, you know, do
29 what needs to be done, what should be done, if it's

1 proven.

2 THE COURT: Is there anything about your
3 sister's situation that would be a factor or influence
4 you at all in this case?

5 JUROR BEVERLY LOCKE: Nah. Not in this. I
6 just wish they would keep her.

7 THE COURT: Okay. I appreciate that. I
8 understand.

9 JUROR BEVERLY LOCKE: That is -- here again,
10 that is a family issue. That hadn't got nothing to do
11 with anything.

12 THE COURT: Right. I understand what you are
13 saying.

14 Number 108. Mr. Surrell, what is that situation?

15 JUROR MATTHEW SURRELL: In an effort to fill
16 out the questionnaire completely, I considered Bobo
17 Stewart a close friend.

18 THE COURT: But in spite of him being a friend,
19 you could be a fair and impartial juror in this case; is
20 that correct?

21 JUROR MATTHEW SURRELL: Absolutely.

22 THE COURT: Okay. Thank you.

23 And then Miss Smith.

24 JUROR POLLY SMITH: I have a nephew that was
25 arrested for child molestation.

26 THE COURT: Your nephew arrested.

27 JUROR POLLY SMITH: (Nodded.)

28 THE COURT: And would that influence you or
29 affect you in being a fair and impartial juror in this

1 case?

2 JUROR POLLY SMITH: No, sir. No, sir.

3 THE COURT: Okay. Thank you.

4 And then Number 138. Miss McKey.

5 JUROR MARTHA MCKEY: Yes. My home was
6 burglarized.

7 THE COURT: How long ago was that?

8 JUROR MARTHA MCKEY: Oh, it was around -- in
9 the '70's. Bernalillo County.

10 THE COURT: In what county?

11 JUROR MARTHA MCKEY: Bernalillo.

12 THE COURT: And --

13 JUROR MARTHA MCKEY: Albuquerque, Mexico.

14 THE COURT: Oh, okay. I was trying to think
15 where that might be.

16 And Miss McKey, would that influence you or affect
17 you in any way in being a fair and impartial juror?

18 JUROR MARTHA MCKEY: No, Your Honor.

19 THE COURT: Okay. Thank you.

20 And then Number 154. Miss Alexander, and you had
21 some type victim of a crime or family member or friend.

22 JUROR CONTRILLA ALEXANDER: My little girl's
23 father was murdered.

24 THE COURT: And who was he?

25 JUROR CONTRILLA ALEXANDER: Roger Carr in
26 Grenada County.

27 THE COURT: How long ago was that?

28 JUROR CONTRILLA ALEXANDER: Nine years.

29 THE COURT: How long?

1 JUROR CONTRILLA ALEXANDER: Nine years ago.

2 THE COURT: Would that influence you or affect
3 you in being a fair and impartial juror in this case?

4 JUROR CONTRILLA ALEXANDER: No, sir.

5 THE COURT: Okay. Thank you.

6 MR. EVANS: Your Honor.

7 THE COURT: I'm sorry. Number 35.

8 JUROR AMY COSTILOW: This is kind of going back
9 to knowing the victim and the defendant. I don't know
10 any of them personally; however, I work with Mr. Flowers'
11 aunt. I know who his mother is. And I knew who the
12 Goldens were because of my former employer.

13 THE COURT: So you know who his mother is, Mr.
14 Flowers' mother. And you -- do you currently work with
15 his aunt?

16 JUROR AMY COSTILOW: I currently work with his
17 aunt.

18 THE COURT: And who is that?

19 JUROR AMY COSTILOW: Hazel Jones.

20 THE COURT: Then you also knew some of the
21 Golden family.

22 JUROR AMY COSTILOW: Um-hum.

23 THE COURT: Who did you know in that family?

24 JUROR AMY COSTILOW: The -- his wife, son.

25 THE COURT: And would those factors influence
26 you in any way in being a fair and impartial juror in
27 this case?

28 JUROR AMY COSTILOW: No, but I already have an
29 opinion.

Voir Dire Examination by the Court

1 THE COURT: Can you lay that opinion aside and
2 base your decision on the evidence?

3 JUROR AMY COSTILOW: No.

4 THE COURT: Okay. Thank you.

5 Okay. I'll ask now, this is kind of the other side
6 of the case -- the question I just asked. I've asked if
7 you had a victim of a crime or a close, family member or
8 friend that were a victim. I'll now ask if you had a
9 situation -- and I know a couple of you have already
10 answered this in anticipation of the question. But if
11 any of you had a situation where you have had a close
12 family member -- a family member or close family friend
13 or yourself prosecuted for some crime that would be a
14 felony crime, I need to know that now. So, if any of you
15 have that situation.

16 Miss Forrest, was that the charge you referred to
17 about your mother on your jury questionnaire or was there
18 --

19 JUROR GLORIA FORREST: My son.

20 THE COURT: Son. Okay. Son had embezzlement
21 charges.

22 JUROR GLORIA FORREST: Uh-huh.

23 THE COURT: And is there anything about the
24 fact that he -- did he get convicted or how did that
25 charge turn out?

26 JUROR GLORIA FORREST: Yes. He went to the
27 restitution center in Greenwood and paid restitution.

28 THE COURT: And is there anything -- any other
29 relative or close family friend?

1 JUROR GLORIA FORREST: I have nephew that's in
2 prison for burglary.

3 THE COURT: And who is that.

4 JUROR GLORIA FORREST: C.J.

5 THE COURT: Does he have --

6 JUROR GLORIA FORREST: Daniels.

7 THE COURT: Is there anything about those
8 factors that would influence you or affect you in being a
9 fair and impartial juror in this case?

10 JUROR GLORIA FORREST: No.

11 THE COURT: Okay. Thank you.

12 Then 25. And what is that situation?

13 JUROR SUZANNE WINSTEAD: And I forgot about
14 this on my questionnaire. I had a nephew within the last
15 year that was arrested and prosecuted for drug-related
16 charges.

17 THE COURT: And what was his name?

18 JUROR SUZANNE WINSTEAD: Ray Winstead.

19 THE COURT: That was here in this county.

20 JUROR SUZANNE WINSTEAD: It was.

21 THE COURT: And is there anything about that
22 that would influence you or affect you in being a fair
23 and impartial juror in this case?

24 JUROR SUZANNE WINSTEAD: No, sir. I really
25 don't even know the facts of all of it.

26 THE COURT: Okay. And Number 26. Miss
27 Chatham.

28 JUROR JENNIFER CHATHAM: My uncle is
29 incarcerated over in Parchman for rape.

Voir Dire Examination by the Court

1 THE COURT: And is there anything about that
2 fact that would influence you or affect you in being a
3 fair and impartial juror?

4 JUROR JENNIFER CHATHAM: No, sir.

5 THE COURT: Okay. Thank you.

6 Forty-five. Miss Burnside, and what is your
7 situation?

8 JUROR EDITH BURNSIDE: My son, Jerome Burnside,
9 was convicted of bank robbery about 13 years ago.

10 THE COURT: And would that influence you or
11 affect you in being a fair and impartial juror in this
12 case?

13 JUROR EDITH BURNSIDE: No, sir.

14 THE COURT: Okay. Thank you.

15 Then Miss Bates, what is that situation?

16 JUROR PAULA BATES: My, my brother spent time
17 in federal prison for a short time for food stamp sale.

18 THE COURT: And would that factor influence you
19 or affect you in being a fair and impartial juror in this
20 case?

21 JUROR PAULA BATES: No, it wouldn't.

22 THE COURT: Okay. Thank you.

23 Then, Mr. Slaughter, what is that situation?

24 JUROR JOHNNY SLAUGHTER: I have a sister that
25 did eight years for using.

26 THE COURT: Drugs?

27 JUROR JOHNNY SLAUGHTER: Yes, sir.

28 THE COURT: Drug conviction. Would that
29 influence you or affect you in being a fair and impartial

1 juror?

2 JUROR JOHNNY SLAUGHTER: Oh, yeah.

3 THE COURT: Okay. Thank you.

4 Number 58. Miss Branch, what is that situation?

5 JUROR EMILY BRANCH: My mom was convicted of --
6 well, she was put on parole for embezzlement, but then
7 she got a D.U.I and she got convicted because she
8 violated parole.

9 THE COURT: And how long ago has that been?

10 JUROR EMILY BRANCH: 2005.

11 THE COURT: Would that be a factor or influence
12 you at all in being a fair and impartial juror in this
13 case?

14 JUROR EMILY BRANCH: No, sir.

15 THE COURT: Okay. Thank you.

16 Miss Hargrove. I mean -- yeah. You were both
17 standing up. I saw Mr. Hargrove's number and then I
18 looked at Miss Copper. And I was about to jump out of my
19 skin.

20 Mr. Hargrove, first, since I called your name. What
21 is your situation?

22 JUROR JAMES HARGROVE: 1991 I was arrested and
23 charged with felony possession.

24 THE COURT: Charged with what?

25 JUROR JAMES HARGROVE: Charged with felony
26 possession of marijuana. That was plea bargained in
27 Leflore County Circuit Court to misdemeanor. I paid a
28 fine for that. That was disposed of.

29 Then in 1995 I ran into some trespassers on some

1 hunting club land of mine in Holmes County. They were
2 armed. And in the ensuing discussion, firearms were
3 discharged, and I was charged with aggravated assault.
4 Upon discovery by the D.A., the charges were dismissed.

5 THE COURT: Is there anything about those
6 factors that would influence you or affect you in being a
7 fair and impartial juror in this case?

8 JUROR JAMES HARGROVE: No, sir. I learned my
9 lesson.

10 THE COURT: Thank you.

11 Miss Copper.

12 JUROR DIANE COPPER: Yes.

13 THE COURT: What is your situation?

14 JUROR DIANE COPPER: I, I have a son that did
15 some time. It was a felony charge. And he has served
16 his time. And also, I have some nieces and nephews that
17 have had felony charges too.

18 THE COURT: What was your son charged with?

19 JUROR DIANE COPPER: Burglary of a dwelling in
20 Carroll County, Vaiden.

21 THE COURT: And would that factor influence you
22 or affect you in any way in being a fair and impartial
23 juror in this case?

24 JUROR DIANE COPPER: No.

25 THE COURT: Okay. Thank you.

26 And Miss Lindsey.

27 JUROR MARGARET LINDSEY: I have a stepson. He
28 was convicted and went to prison, came back -- got out.

29 THE COURT: What was he convicted of?

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

Voir Dire Examination by the Court

1 JUROR MARGARET LINDSEY: Burglary.

2 THE COURT: And would that influence you or
3 affect you in being a fair and impartial juror in this
4 case?

5 JUROR MARGARET LINDSEY: I think so.

6 THE COURT: Ma'am.

7 JUROR MARGARET LINDSEY: Yes, sir.

8 THE COURT: It would influence you. Okay.
9 Thank you.

10 Okay. Forty-one.

11 JUROR MARGARET GIVENS: (Laid fan down.)

12 THE COURT: Oh, okay. You didn't have your fan
13 up. You just...

14 I'm trying to -- 87. I mean, I'm sorry, 70. What
15 is your situation?

16 JUROR ANNIE CARODINE: Kenny Bland.

17 THE COURT: Ma'am.

18 JUROR ANNIE CARODINE: Kenny Bland. Drug
19 charges. My nephew.

20 THE COURT: How long ago was that?

21 JUROR ANNIE CARODINE: About four years ago.

22 THE COURT: Would that influence you or affect
23 you in being a fair and impartial juror in this case?

24 JUROR ANNIE CARODINE: A believe it would.

25 THE COURT: Okay. Thank you.

26 Number 87. Miss Locke.

27 JUROR BEVERLY LOCKE: I didn't know if I needed
28 to stand back up or not, but it just has to do with my
29 sister.

1 THE COURT: Yeah, you have already answered
2 that.

3 JUROR BEVERLY LOCKE: Yes.

4 THE COURT: So we've got that answer.

5 JUROR BEVERLY LOCKE: I figured but I...

6 THE COURT: Well, I -- it's better to be safe
7 than sorry, so I appreciate that.

8 Okay. Miss Crow, Number 92. What is your
9 situation?

10 JUROR MARY CROWLEY: I had two sons charged
11 with marijuana.

12 THE COURT: How long ago was that?

13 JUROR MARY CROWLEY: It was in '97 and '98.

14 THE COURT: And would those factors influence
15 you or affect you in any way in being a fair and
16 impartial juror in this case?

17 JUROR MARY CROWLEY: No, sir.

18 THE COURT: Okay. Thank you.

19 Then Number 104. Miss Davis.

20 JUROR DICEY DAVIS: A nephew.

21 THE COURT: And what was that charge?

22 JUROR DICEY DAVIS: Drug charge.

23 THE COURT: Would that influence you or affect
24 you in being a fair and impartial juror in this case?

25 JUROR DICEY DAVIS: Yes, sir, I believe it
26 will.

27 THE COURT: Then 105. Mr. Howard.

28 JUROR ANTHONY HOWARD: Yes, sir.

29 THE COURT: What is your situation?

1 JUROR ANTHONY HOWARD: Going back to the last
2 question, I thought you were just talking about family
3 members. I had in the past two friends that were
4 murdered. One of them Danny Tavares in Kosciusko and
5 Anthony Lucas in Ackerman.

6 THE COURT: And would those factors influence
7 you or affect you in being a fair and impartial juror in
8 this case?

9 JUROR ANTHONY HOWARD: Yes.

10 THE COURT: Number 106. Miss Swindoll.

11 JUROR JENNIFER SWINDOLL: My cousin was
12 arrested for drugs.

13 THE COURT: How long ago was that?

14 JUROR JENNIFER SWINDOLL: 2005. 2006.

15 THE COURT: And would that influence you or
16 affect you in any way in being a fair and impartial juror
17 in this case?

18 JUROR JENNIFER SWINDOLL: No sir.

19 THE COURT: It would not. Okay. Thank you.

20 Number 131. Miss Campbell, what is that situation?

21 JUROR LATONYA CAMPBELL: I had a friend.

22 THE COURT: What was that conviction?

23 JUROR LATONYA CAMPBELL: Armed robbery.

24 THE COURT: And who was that friend.

25 JUROR LATONYA CAMPBELL: C.J. Daniels.

26 THE COURT: Would that fact influence you or
27 affect you in being a fair and impartial juror in this
28 case?

29 JUROR LATONYA CAMPBELL: Yes.

1 THE COURT: Thank you.

2 Number 132. Mr. Bridges, and what is that
3 situation?

4 JUROR MARVIN BRIDGES: My brother-in-law
5 prosecuted for copyright infringement.

6 THE COURT: And would that influence you or
7 affect you in being a fair and impartial juror?

8 JUROR MARVIN BRIDGES: No, sir.

9 THE COURT: Okay. Thank you.

10 And Miss Montana. Number 135.

11 JUROR JENNIE MONTANA: My ex-husband, now
12 live-in, whatever you want to call him, he was convicted
13 of burglary of non-residential.

14 THE COURT: And what is his name?

15 JUROR JENNIE MONTANA: Robert --

16 THE COURT: Robert.

17 JUROR JENNIE MONTANA: -- Montana, Jr.

18 THE COURT: And would that influence you or
19 affect you in being a fair and impartial juror in this
20 case?

21 JUROR JENNIE MONTANA: No, sir.

22 THE COURT: Number 138. Miss McKey.

23 JUROR MARTHA MCKEY: I have a nephew on my
24 husband's side, through the family that was, I believe,
25 convicted in Wayne County, for drive-by shooting. I'm
26 not quite sure about it, to discuss the details. We
27 don't know any here. But I do know he is in jail.

28 THE COURT: And would that influence you or be
29 a factor in you being a fair and impartial juror in this

1 case?

2 JUROR MARTHA MCKEY: No.

3 THE COURT: Okay. Thank you.

4 Then Number 18. Miss Laney.

5 JUROR LILLIE LANEY: Now that I have thought
6 about it, I didn't put it in my questionnaire. But my
7 husband's uncle was paranoid schizophrenic. He went on a
8 shooting rampage, and he shot Billy Costilow and his
9 deputy. And he served time in Parchman. But he passed
10 away last -- I believe it was last year.

11 THE COURT: And would that influence --

12 JUROR LILLIE LANEY: His name was Wardell
13 Laney.

14 THE COURT: Okay.

15 JUROR LILLIE LANEY: But that would not
16 influence my decision.

17 THE COURT: Decision in this case.

18 JUROR LILLIE LANEY: Yes.

19 THE COURT: Okay. Thank you.

20 Number 123.

21 JUROR SHEILA SLEDGE HODGES: Hodges.

22 THE COURT: I'm --

23 JUROR SHEILA SLEDGE HODGES: Hodges.

24 THE COURT: And who was that now?

25 JUROR SHEILA SLEDGE HODGES: My ex-husband,
26 William Anthony Sledge, was found guilty and indicted and
27 put in the penitentiary for manufacturing crystal meth.

28 THE COURT: And was there anything about that
29 that would influence you or affect you in being a fair

1 juror in this case?

2 JUROR SHEILA SLEDGE HODGES: No, sir.

3 THE COURT: Okay. Thank you.

4 Then Number 68. Miss Ray.

5 JUROR JULIA RAY: Don't tell my husband I
6 forgot it. But he was -- he was a victim of a armed
7 robbery. He worked at a liquor store in the '70's.

8 THE COURT: Is there anything about that that
9 would influence you or affect you in being a fair juror
10 in this case?

11 JUROR JULIA RAY: No, sir.

12 THE COURT: Okay. Thank you.

13 Number 15. Miss Forrest.

14 JUROR GLORIA FORREST: About Robert Golden. I
15 knew Robert Golden and his family.

16 THE COURT: And --

17 JUROR GLORIA FORREST: Willie George.

18 THE COURT: And who?

19 JUROR GLORIA FORREST: Willie George.

20 THE COURT: Willie George. And would that
21 influence you or affect you in being a fair and impartial
22 juror in this case?

23 JUROR GLORIA FORREST: Somewhat.

24 THE COURT: Probably would.

25 JUROR GLORIA FORREST: Yeah.

26 THE COURT: So you have got some real doubts in
27 your own mind about whether you could be fair and
28 impartial; is that correct?

29 JUROR GLORIA FORREST: Yeah.

1 THE COURT: Okay. Thank you.

2 And then Number 149.

3 JUROR DAVID HOLIDAY: I have a brother, got a
4 felony DUI, Harrison County back in '92.

5 THE COURT: And would that influence you or
6 affect you in being a fair and impartial juror in this
7 case?

8 JUROR DAVID HOLIDAY: No, sir.

9 THE COURT: Okay. Thank you.

10 Now, ladies and gentlemen, I want to know if any of
11 you have any religious beliefs or philosophical beliefs
12 where you just feel like you should not sit in judgment
13 on anyone for any reason. Certainly the Court respects
14 religious views of that nature and philosophical thoughts
15 and views of life of that nature. But I need to know if
16 any of you have a situation where you just have some view
17 of life or some philosophy or some religious belief where
18 you cannot sit in judgment on anyone for any reason. Do
19 any of you have a situation like that, where you just
20 plain and simply cannot judge for any reason?

21 Number 2. You are saying that you have got some
22 religious or philosophical belief and you can't judge
23 anybody for any reason; is that correct?

24 JUROR CHRISTY HARRIS: Not for the death
25 penalty I do not.

26 THE COURT: We will be getting into that issue
27 a little bit later, but I am just strictly talking about
28 right now guilt or innocence in general. Could you sit
29 as far as deciding guilt or innocence?

1 JUROR CHRISTY HARRIS: As of right now, yes,
2 sir.

3 THE COURT: Okay. Thank you.

4 And then your number -- Mr. -- Number 49. And Mr.
5 Slaughter, what is your situation now? You cannot judge
6 for any reason.

7 JUROR JOHNNY SLAUGHTER: My son was shot,
8 amputated his leg. The boy that done it is still walking
9 around.

10 THE COURT: So because --

11 JUROR JOHNNY SLAUGHTER: It has been nine
12 years. Because of that I don't feel that I should be
13 able, you know, that I should sit on the jury to judge
14 anybody.

15 THE COURT: Because you have got some ill
16 feelings, I guess, because --

17 JUROR JOHNNY SLAUGHTER: Oh, yeah.

18 THE COURT: -- of that. Okay. Thank you.
19 Miss Rodgers, what is your situation?

20 JUROR MELBA RODGERS: I would just find it
21 difficult to make a decision.

22 THE COURT: Is that where you just have some
23 view of life or some reason where you just feel you
24 cannot judge anybody for any reason?

25 JUROR MELBA RODGERS: I guess.

26 THE COURT: I mean everybody in here -- if they
27 are sitting, it is difficult to listen to evidence and
28 decide guilt or innocence. That is not an easy task that
29 anybody is called upon to perform.

Voir Dire Examination by the Court

1 JUROR MELBA RODGERS: Yes.

2 THE COURT: But I want to know if, you know, if
3 you could deliberate on a verdict if you were sitting on
4 a jury.

5 JUROR MELBA RODGERS: Yeah, I guess I could.

6 THE COURT: So --

7 JUROR MELBA RODGERS: But it would be hard.

8 THE COURT: Okay. But you are saying you
9 could, if you were selected though, sit in judgment.

10 JUROR MELBA RODGERS: I guess so.

11 THE COURT: Okay. And Number 93. Tell me
12 about that.

13 JUROR MARJORIE PEARSON: I would be
14 uncomfortable with delivering a verdict --

15 THE COURT: Uncomfortable. Speak up a little
16 bit.

17 JUROR MARJORIE PEARSON: I would be
18 uncomfortable with delivering a verdict because of my
19 Christianity.

20 THE COURT: Well, could you do it or would your
21 religion just prevent you from doing it where you could
22 not do it?

23 JUROR MARJORIE PEARSON: I would be
24 uncomfortable with it.

25 THE COURT: But could you do it?

26 JUROR MARJORIE PEARSON: I wouldn't like it.

27 THE COURT: I don't think anybody would like
28 it. But are you where you could do it, even if you
29 didn't want to?

1 JUROR MARJORIE PEARSON: Yes.

2 THE COURT: Okay. Thank you.

3 Then Miss Smith.

4 JUROR POLLY SMITH: I think you answered my
5 question with hers. I don't believe in the death
6 penalty, but I could reach a verdict with life
7 imprisonment.

8 THE COURT: Okay. Well, we'll, we'll get to
9 those other issues later.

10 Ladies and gentlemen, the way the legal process
11 works in this state is the, the State of Mississippi
12 presents their evidence. Then the defense, if they
13 choose to, calls witnesses and presents their evidence.
14 And then sometimes that results in a little additional
15 proof being presented by the State of Mississippi.

16 But after both sides finally rest, the Court gives
17 you instructions. These are the rules of law that you
18 must follow. You decide the facts of the case. You also
19 decide the guilt or innocence of Mr. Flowers. You do
20 that based on the instructions of law as given to you by
21 the Court. It is your sworn duty to follow the law as
22 given to you by the Court.

23 So I want to know if any of you just feel like you
24 could not follow and obey the instructions of law if you
25 disagreed with the Court on what the law is or if you
26 thought the law was something different than that in
27 which you have been instructed on by the Court. So is
28 there any one of you that could not follow and obey the
29 instructions of law if you disagreed with the Court on

1 what the law is or thought the law ought to be different?

2 And I take it by your silence you are each assuring
3 me that you will follow and obey the instructions of law
4 as given to you by the Court.

5 If counsel approach again.

6 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
7 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
8 OUTSIDE THE HEARING OF THE PROSPECTIVE JURORS.)

9 THE COURT: I thought it is about time to
10 recess again. I thought we would look over what -- I
11 think we had a few more that have said they for various
12 reasons -- I thought we will let everybody take about a
13 ten-minute recess or something, go through the list
14 again.

15 (THE BENCH CONFERENCE WAS CONCLUDED.)

16 THE COURT: Ladies and gentlemen, we will take
17 a 10-minute recess and let you have a little opportunity
18 to stretch and move around a little bit more.

19 (THE PROSPECTIVE JURORS LEFT THE COURTROOM.)

20 THE COURT: If y'all will make your way here
21 and we'll --

22 (MR. EVANS, MR. HILL, MR. HOWIE, MR. WHITFIELD, MRS.
23 STEINER AND MR. CARTER APPROACHED THE BENCH FOR THE
24 FOLLOWING:)

25 THE COURT: I was looking down my list. Looks
26 like Number 15, Miss Forrest.

27 Do y'all agree on her?

28 MR. EVANS: Yes, sir.

29 THE COURT: And let's see. James Bradley

1 Green. Number 39.

2 MR. WHITFIELD: Your Honor, what about Number
3 35?

4 THE COURT: Yeah. 35. I'm sorry. I passed
5 35. 35 also.

6 MRS. STEINER: Yes.

7 MR. EVANS: You've marked 35 and 39 off so far.

8 THE COURT: Right.

9 MR. EVANS: All right.

10 THE COURT: Number 49, Slaughter. Mr. Kenney,
11 Number 60.

12 MR. HOWIE: Yes, sir.

13 MRS. STEINER: Yes, Your Honor.

14 THE COURT: Miss Lindsey, Number 64.

15 MR. EVANS: Yes, sir.

16 MRS. STEINER: Yes, Your Honor.

17 THE COURT: Miss Carodine. She -- if there was
18 any doubt about her, she cleared it.

19 MR. EVANS: What is her number?

20 THE COURT: 70. Miss Carodine.

21 Sandra Robertson, Number 83.

22 Y'all agree on that one?

23 MR. EVANS: Yes, sir.

24 MR. CARTER: Yes, sir.

25 MR. HILL: 77. Yeah.

26 THE COURT: 105. 104.

27 MR. HILL: What about -- I have got Number 77.

28 Did y'all have that?

29 THE COURT: Let me go back.

1 MR. EVANS: That one is already off for cause.

2 MR. HILL: Already off. Okay.

3 THE COURT: Yeah. 77 is off.

4 MRS. STEINER: Yes, Your Honor.

5 THE COURT: Miss Dicey Ann Davis, Number 104.

6 MR. EVANS: Yes, sir.

7 THE COURT: Y'all agree on that one? The
8 nephew drug conviction.

9 MRS. STEINER: Yes.

10 THE COURT: Anthony Craig Howard.

11 MRS. STEINER: He had two friends murdered.

12 THE COURT: Murdered.

13 MR. EVANS: Right.

14 MR. CARTER: What number was that?

15 THE COURT: Number 105. Danny Tavares and
16 Anthony Lucas were friends of his that were murdered.
17 Number 131, Campbell.

18 MR. EVANS: Yes, sir.

19 THE COURT: Y'all agree on that one?

20 MRS. STEINER: Yes, Your Honor. She cleared up
21 the ambiguity.

22 THE COURT: That is all I see for now.

23 Any additional ones? Do either of you see anymore?

24 MR. EVANS: No, sir.

25 THE COURT: The only thing I have got left is
26 I'm going to go through the list of witnesses, and I'm
27 going to ask questions about the witnesses. I'm going to
28 try to be general by and large. But I think after that,
29 I will be ready to let the State start asking questions.

1 MRS. STEINER: Your Honor, there are two on the
2 defense list that we were unable -- returned not found
3 summons on.

4 THE COURT: Would it be safe to remove those
5 from the list then?

6 MRS. STEINER: Yes. Daniel Lee Burt and --
7 sorry, Your Honor.

8 (THE BENCH CONFERENCE WAS CONCLUDED.)

9 (THE PROSPECTIVE JURORS RETURNED TO THE COURTROOM.)

10 MR. EVANS: Your Honor, may we approach?

11 THE COURT: Just wait for Mrs. Steiner.

12 (MR. EVANS AND MRS. STEINER APPROACHED THE BENCH FOR THE
13 FOLLOWING BENCH CONFERENCE HAD OUTSIDE THE HEARING OF THE
14 PROSPECTIVE JURORS.)

15 MR. EVANS: Judge, I just wanted to kind of get
16 your thinking. I know you've still got probably a long
17 list of things to go through. Are you planning on us
18 doing all of this voir dire today or stopping when you do
19 yours and doing our parts tomorrow? Or just kind of what
20 are you thinking?

21 THE COURT: Just wait and see how much time --
22 I am going to go through this list. Of course, both of
23 you submitted -- I mean the combined list is a long, long
24 list of witnesses. And I don't -- and I don't anticipate
25 having to go into detail with most of them, because the
26 only thing that I think would disqualify any of them as
27 far as witnesses would go is if they -- because of their
28 knowledge of a witness they couldn't be fair or impartial
29 or would consider that witness's testimony differently

1 than somebody else. But I don't know how long it will
2 take. It may be quitting time by the time I get through.
3 I will just have to wait and see.

4 MRS. STEINER: Let me say, Your Honor, in
5 considering this, apparently, Mr. Flowers ordinarily
6 takes an insulin shot at 4:30. Now, they did not bring
7 his medication today. We can ask that they bring it but,
8 you know, if you are going to stop shorter or longer at
9 least on today --

10 THE COURT: Why don't you just see if they will
11 go ahead and bring it now? I would rather have it here
12 and not need it than to be -- they should have brought it
13 over here.

14 MRS. STEINER: I don't know if they did. I
15 will make sure it comes tomorrow, but for today --

16 THE COURT: How long can he go without
17 receiving it?

18 MRS. STEINER: I don't think a hour or so would
19 make a difference. But if you were thinking of going to
20 6:00, it might be a problem.

21 THE COURT: I will let you step in there and
22 investigate and find out.

23 (THE BENCH CONFERENCE WAS CONCLUDED.)

24 THE COURT: Ladies and gentlemen, there are a
25 few more that I can allow to go at this time.

26 Gloria Forrest, you may go.

27 Amy Sanders Costilow, you may go.

28 James Bradley Green, you may go.

29 Johnny Wayne Slaughter, you are excused and may go.

1 Dorwin Dewayne Kenney, you are excused and may go.

2 Margaret Ann Lindsey, you are excused and you may
3 go.

4 Annie Ruth Carodine, you are excused and you may go.

5 Sandra Robertson, you are excused and you may go.

6 Dicey Ann Davis, you are excused and you are free to
7 go.

8 Anthony Craig Howard, you are excused and you may
9 go.

10 Latonya Campbell, you are excused and you may go.

11 Ladies and gentlemen, I am now going to go through a
12 list of people that are listed as possible witnesses in
13 this case and ask a few questions about them. These
14 people whose names I call who are listed as potential
15 witnesses does not mean they will testify but it means
16 that they could possibly testify. And so that is why I
17 am going to ask you questions about them.

18 Now, the way -- when I ask you questions about
19 witnesses, these are the things I want you to think
20 about. I want you -- because I am sure there is going to
21 be a number of these witnesses who names are somewhat
22 familiar to some of you. I know we have got Mr.
23 Thornburg, former sheriff here in the county, and Mr.
24 Hargrove, chief of police. And there will be other names
25 who you recognize.

26 I'll ask you, you know, any time I recognize -- you
27 recognize someone's name, I will ask you to hold your
28 hand or your card up. And we will take that information.
29 Then the next question I'll ask you about these witnesses

1 is whether the fact that you know that person, just by
2 the mere fact that you know them, whether that would
3 influence you to where you could not be fair and
4 impartial or whether you would automatically just because
5 you know them give them -- their testimony greater weight
6 and credibility than someone that you did not know?

7 Because right now you have heard no evidence from
8 anyone so right now you are required pretty much to
9 consider all witnesses' testimony to be equal right now,
10 because you haven't heard anything from any of them. But
11 if, if the mere fact that you have got some relationship
12 or knowledge of one of these witnesses would cause you to
13 have greater faith and credibility in their testimony
14 than in somebody that you did not know, then I would need
15 you to let me know that.

16 So first off, I'll ask -- it's Sam Jones, Jr. And I
17 think he is going to be -- his testimony is going to be
18 read from a previous occasion. I don't think he will be
19 a live witness in this case. But if you know Sam Jones,
20 if you will, hold your card up. And then I'll -- or if
21 you knew anything about Mr. Jones. I think he is
22 deceased now. But if you knew him when he was alive, if
23 you will hold those cards up and let me get your numbers.

24 If you will, hold them high enough where I can see.
25 Okay. As your numbers are called, you can hold your fan
26 down. Number 5.

27 And Mr. 8, Number 8, did you know him? Did you know
28 him?

29 JUROR ALEXANDER ROBINSON, JR.: (No response.)

1 THE COURT: Mr. Robinson, did you know Mr.
2 Jones?

3 JUROR ALEXANDER ROBINSON, JR.: (No response.)

4 THE COURT: Mr. Robinson.

5 JUROR ALEXANDER ROBINSON, JR.: Oh, how you
6 doing?

7 THE COURT: Were you holding your card up?

8 JUROR ALEXANDER ROBINSON, JR.: I had it over
9 there. I didn't --

10 THE COURT: Okay. You did not know him then.
11 Okay. Then Number 16, you knew Mr. Jones.

12 JUROR CHARLES CURRY: (Nodded.)

13 THE COURT: Okay. 45. 62. 80. 115. And
14 147.

15 Now, for those of you that did know Mr. Jones during
16 his life, is there any of you that would automatically
17 give his testimony greater or lesser weight or
18 credibility than somebody that you might not know in this
19 case, a witness whose name you might not recognize?

20 So I assume that each of you are assuring me that
21 will not be an influence and would not affect your
22 ability to be a fair and impartial --

23 Okay. Number 47.

24 JUROR BOBBI DAVIS: I didn't know then, but I
25 got instructed before we went out for recess, I thought
26 about it. My son was passed -- possession, drug charge.
27 That's what I want to tell you.

28 THE COURT: And you are -- so you are saying
29 your son was charged with drugs.

Voir Dire Examination by the Court

1 JUROR BOBBI DAVIS: Um-hum.

2 THE COURT: And how long ago was that?

3 JUROR BOBBI DAVIS: It was about two years ago.

4 THE COURT: And is there -- would that
5 influence you or affect you in being a fair and impartial
6 juror?

7 JUROR BOBBI DAVIS: No, sir.

8 THE COURT: Okay. Thank you.

9 JUROR BOBBI DAVIS: Okay. Thank you.

10 THE COURT: The next witness - and this would
11 be the chief of police for the city - would be Chief
12 Johnny Hargrove. So if you know who he is or know the
13 chief, if you will hold your card or your fan up.

14 JUROR JANELLE JOHNSON: Just know his name?

15 THE COURT: Well, I mean if you have got some
16 knowledge of him. I mean I am sure that a lot of you
17 know who he is. But if you have got a situation where
18 you, you know, spoke to him or know him in anything other
19 than just who he happens to be.

20 That would be Number 14. I'm sorry. Number 5, 14,
21 6, 33, 22.

22 Okay. I got you, Number 33.

23 You would be amazed at how all these numbers bleed
24 together when I am looking at them.

25 Number 29.

26 So I may not call them all in the exact order you
27 are holding them numerically speaking.

28 41. 44. 45. 51. 54. 57. 62. 65. 68. 69.

29 And 72. 50. 76. 91. 92. 94. And 95. And 96. And

Voir Dire Examination by the Court

1 Number 80. And 98. Number 121. 120. 137. 136. 120.
2 154. 111. 132. 148. 149. 110. 127. 128. And 147.

3 Now, for those of you that have held your cards up
4 that you know who the chief of police is, is there
5 anything about the fact that you just know him and that
6 he is a potential witness in this case that would, would
7 that alone influence you or affect you in being a fair
8 and impartial juror or cause you to give his testimony
9 greater weight or credibility than somebody that you
10 might not know?

11 I take it by your silence that would be not, no.

12 Next one would be Dr. Steven Timothy Hayne. Do any
13 of you know Dr. Hayne?

14 The next one would be Barry Eskridge.
15 E-s-k-r-i-d-g-e.

16 Okay. Number 14. 17. And 18. And 5. Number 22.
17 29. 50. 50. 54. 58. 63. 67. 68. 69. 51. 76.
18 80. 80. 94. 111. 110. 120. 124. 121. 137. And
19 149.

20 Of those that have said that you know Mr. Eskridge,
21 is there any of you that would give his testimony any
22 greater or lesser weight and credibility than somebody
23 you did not know or would the fact that he is a potential
24 witness in this case influence you or affect you in any
25 way in being a fair and impartial juror?

26 The next one would be Miss Melissa Schoene. And
27 I'll spell the last name because it's pronounced somewhat
28 different than it looks. She is not from around here.
29 She used to work with the crime lab. But her last name

1 is S-c-h-o-e-n-e. Do any of you know her?

2 Okay. How about James Edward Kennedy? Any of you
3 know Mr. Kennedy?

4 How about Catherine Snow?

5 Number 94, you know Catherine Snow.

6 And does anybody else know Catherine Snow?

7 Would the fact that you know Catherine Snow
8 influence you or affect you in being a fair and impartial
9 juror or have any affect on you at all as a juror?

10 JUROR MELISSA ACY: No.

11 THE COURT: Clemmie Fleming. Any of you, if
12 you will hold your cards up if you know Clemmie Fleming.

13 Okay. Number 5. 14. 45. 62. 16. 68. 95. And
14 96. 110. 136. And 137. 148. And 154.

15 Now, those of you that have indicated that you know
16 who Clemmie Fleming is, would the fact that you know him
17 influence you or affect you in any way? Or would you
18 give testimony of Clemmie Fleming either greater or
19 lesser weight or credibility than anybody else in this
20 case?

21 And the next witness is going to be Bill Thornburg.
22 He was sheriff in this county or deputy sheriff for a
23 long time as well.

24 Okay. Number 6. 11. 12. 14. 17. And 18. 8.
25 Number 38. 40. 22. 41. 42. 33. 34. 54. 29. 45.
26 44. 62. 59. 51. 50. 67. 72. 68. And 69. 76. 63.
27 91. 94. 93. And 92. 96. 80. 103. 123. 124. 126.
28 120. 115. 111. 98. 136. 137. 152. 121. 130. 110.
29 132. 127. 147. 128. 148. And 149.

1 Now, those of you that know who Sheriff Thornburg
2 is, would the fact that you know him cause you to have
3 any greater weight -- give his testimony greater weight
4 or credibility of somebody that you do not know? Or
5 would it affect you in any way in being a fair and
6 impartial juror in this case?

7 JUROR MELBA RODGERS: Your Honor.

8 THE COURT: Yes, ma'am.

9 JUROR MELBA RODGERS: I just wanted -- Mr.
10 Thornburg's oldest daughter, Cheryl, and I are best
11 friends. And I've spent many times, many hours at their
12 home growing up. We grew up together.

13 THE COURT: And would that come into play or
14 influence you or affect you in being a fair and impartial
15 juror in this case?

16 JUROR MELBA RODGERS: I'll try not to.

17 THE COURT: Well, what I'm asking -- I'll ask
18 you, will you listen to his testimony and the testimony
19 of every other witness and before you hear any testimony
20 from anybody, would you consider his testimony along with
21 anybody else's that you don't know?

22 JUROR MELBA RODGERS: Yeah.

23 THE COURT: And so without hearing his
24 testimony at all, would you automatically just give his
25 testimony greater weight just because you do know him?

26 JUROR MELBA RODGERS: It's possible.

27 THE COURT: So you have got some doubts about
28 whether his testimony would influence you because of
29 growing up around his daughter; is that correct?

1 JUROR MELBA RODGERS: Right.

2 THE COURT: Okay. Thank you.

3 Okay. Jack Matthews. Does anybody know Jack
4 Matthews?

5 Okay. David B-a-l-a-s-h.

6 I'm sorry. You know Mr. Matthews. Number 18. And
7 Miss Laney, would the fact that you know Mr. Matthews
8 influence you or affect you in any way in being a fair
9 juror in this case?

10 JUROR LILLIE LANEY: No, sir, it wouldn't.

11 THE COURT: Okay. Thank you.

12 And then Number 40, okay, and, Number 111. Would
13 the fact that you know Mr. Matthews influence or affect
14 you or cause you to give greater weight or testimony --
15 credit to his testimony?

16 JUROR CHARLES DAVIS: (Shook head.)

17 JUROR S. BROOKS JONES: (Shook head.)

18 THE COURT: Okay. Thank you.

19 David B-a-l-a-s-h. Balash or Balash.

20 MR. EVANS: Balash.

21 THE COURT: Balash. David Balash.

22 Do any of you know him?

23 Okay. Joe Edward Andrews.

24 Elaine Gholston. Number 14 and 136.

25 Of those that know Miss Gholston, would the fact
26 that she potentially could be a witness in this case
27 influence you in any way or affect your ability to be
28 fair and impartial or cause you to give her testimony
29 greater or lesser weight and credibility than anybody you

1 do not know? Would that affect you in any way?

2 Where is Number 14?

3 JUROR CAROLYN WRIGHT: No, sir.

4 THE COURT: How about you, Number 136?

5 JUROR JIMMY ALLEN, JR.: (Shook head.)

6 THE COURT: Mary Ella Fleming. Anybody know
7 Mary Ella Fleming?

8 Okay. 5. 12. 14. 95.

9 I've got you, 12.

10 68. 87. 16. 95. 62. 110. 147. 148.

11 Of those of you that know Mary Ella Fleming, would
12 the fact that you know her cause you to give her
13 testimony greater weight or credibility than somebody
14 that you do not know or would that influence you or
15 affect you to where you could not be a fair and impartial
16 juror in this case?

17 Sharon Bailey. Does anybody know Sharon Bailey?

18 MR. EVANS: She probably won't be a witness.

19 THE COURT: Okay. Well, I can strike her, I am
20 advised. She was on a potential list here. No point in
21 asking on Sharon Bailey.

22 Patricia Hallmon Sullivan Odom. Any of you know
23 Miss Hallmon Odom?

24 Doyle Simpson.

25 Okay. Number 5. 14. 30. Did I see 30? Okay.
26 33. 17. 53. 50. 68. 44. 45. 62. 136. 95. 130.
27 And 127.

28 Of those of you that know who Doyle Simpson is,
29 would any of you be affected by his testimony where you

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1 would give his testimony greater weight or credibility
2 than somebody you did not know? Or would that influence
3 you or affect you in being a fair and impartial juror?

4 The next one would be Edward Lee McChristian. Any
5 of you know Mr. McChristian.

6 Odell Hallmon. Do any of you know Odell Hallmon?

7 Number 62, and would the fact that you know Mr.
8 Hallmon influence you or affect you or cause you to give
9 his testimony greater weight or lesser weight or
10 credibility than somebody you did not know?

11 JUROR DIANE COPPER: No.

12 THE COURT: Okay. Thank you.

13 And Charles Porky Collins. Mr. Collins is deceased.
14 He will be -- his testimony will be read into evidence,
15 but he will not be testifying live.

16 Number 56. I'm sorry. There are several of you.
17 Number 5. 14. 16. 17. 11. 29. 50. 51. 22. 56.
18 68. 69. 72. 56. 75. 59. Number 80. 121. 137.
19 115. 76. 94. 91. 111. And 132.

20 Of those that indicated that you know Mr. Collins or
21 knew him during his life, is there any of you that would
22 give his testimony greater weight or credibility than
23 that of somebody you did not know or would the fact that
24 you know him be a factor or influence you in any way?

25 Number 56, I got your number.

26 JUROR SUE AUSTIN: Well...

27 THE COURT: Okay. You can speak up now if you
28 have got some situation.

29 JUROR SUE AUSTIN: He was married to my

1 husband's first cousin. And, you know, we have a close
2 family.

3 THE COURT: So Mr. Collins was married to who
4 now?

5 JUROR SUE AUSTIN: My husband's first cousin.

6 THE COURT: And would that influence you or
7 affect you in being a fair and impartial juror in this
8 case?

9 JUROR SUE AUSTIN: I think it probably would.

10 THE COURT: Would you automatically just listen
11 to his testimony and give it greater weight or
12 credibility than somebody you did not know just strictly
13 because you do know Mr. Collins?

14 JUROR SUE AUSTIN: I think so.

15 THE COURT: Okay. The next one would be Beneva
16 Henry. Anybody know Beneva Henry?

17 Okay. Number 14 and 94 and 148, 72.

18 Of those that know Miss Henry, would you give her
19 testimony greater weight or credibility than somebody
20 that you do not know? Or would that influence you or
21 affect you to where you could not be fair and impartial
22 in the case?

23 Okay. Then Roxanne Ballard. That is Miss Tardy's
24 daughter. I know that we had some people mention her.
25 But I'll ask you again. Well, maybe I will just ask you
26 for those of you that have not indicated already that you
27 knew Miss Ballard. If there is any of you that have not
28 indicated that you somehow know Miss Ballard already.

29 And that would be Number 5, 45, 69, 108, 63, 137 and

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1 94.

2 This applies to you whose names I called and anyone
3 else. Would the fact that you know Miss Ballard affect
4 you in being a fair and impartial juror or cause you
5 automatically to give her testimony greater weight or
6 credibility than somebody that you do not know, just the
7 mere fact that you might know Miss Ballard?

8 The next person would be Jerry Dale Bridges. He is
9 a constable in the county, and he is a potential witness.
10 Again, it is not positive, but he could potentially
11 testify.

12 Number 2. And 6. And 12. 14. 16. 17. And 18.
13 8. 38. 40. 22. 26. 29. 33. 41. 42. 50. 51. 72.
14 54. 56. 44. 45. 59. 63. 62. 67. 68. 69.

15 I think I will just get -- 121, -23 and -24. 80.
16 115. 119. 136. Number 137. Number 120. 75. 91. 76.
17 92. 94. 96. 111. 110. 128. 147. 127. 149. And
18 132.

19 Of those of you that indicated that you know Mr.
20 Bridges, is there any one of you that would just by the
21 fact that you know him automatically give his testimony
22 greater weight or credibility than somebody that you did
23 not know or would any of you be influenced where you
24 could not be a fair and impartial juror by the mere fact
25 that you do know Mr. Bridges?

26 The next one is Randy Keenum. Do any of you know
27 Randy Keenum?

28 Okay. Number 17, 18, 22, 26, 29, 50, 68 and 69, 65,
29 80. I got 65.

1 I've got you, Number 65.

2 121. 124. 120. 137. 59. 76. 94. 111. 149.
3 132. Of those of you that indicate that you do know Mr.
4 Keenum, is there any of you that would give Mr. Keenum's
5 testimony greater weight or credibility than that of a
6 witness that you did not know? Or is there any one of
7 you who because you might know Mr. Keenum that would
8 influence you and affect you in being a fair and
9 impartial juror in this case?

10 And Randy Stewart. I think his name has been
11 mentioned as being related to one of the victims, Derrick
12 Bobo Stewart. But if any of you know Randy Stewart, who
13 had not already raised your card or let us know that,
14 then if you will do that at this time.

15 Number 29. And Number 50, 22. Anyone else?

16 And I'll ask this to those who just held their card
17 up and also to those who earlier indicated they might
18 know Mr. Stewart. Is there any one of you that would
19 give his testimony greater weight or credibility than
20 somebody that you do not know or would any of you have a
21 situation where because you know Mr. Stewart it would
22 affect you where you could not be a fair and impartial
23 juror?

24 Next one -- and I assume this would be Willie
25 Golden, Jr., is that correct, from the State?

26 MR. EVANS: Yes, sir.

27 THE COURT: He is a junior. Any of you know --
28 and I think -- is he the son of one of the victims?

29 MR. EVANS: This is his brother.

1 THE COURT: Brother. I'm sorry. I had the
2 name wrong. Robert Golden, I'm sorry, was the victim.
3 And Willie Golden is Mr. Robert Golden's brother. I
4 think some of you said already you know Willie Golden.
5 But if you have not already told us that, then we need to
6 know that.

7 Okay. Number 111. 128. Number 75. 33. 16. 121.
8 126. And 41. Of those that --

9 Okay. Number 34.

10 Of those of you that know Mr. Golden, that held up
11 your card now or had spoken up earlier about knowing him,
12 is there anything about the fact that you know him that
13 would influence you or affect you in any way where you
14 could not be a fair and impartial juror to both sides in
15 this case?

16 Next one would be Cathy Permenter.

17 I know Brian Rigby and Bennie Rigby's names have
18 both been mentioned already. I'll ask if any of you know
19 Brian Rigby who have not already indicated that, if you
20 will hold your card up.

21 Number 69.

22 And I'll now ask this of all of you that know Brian
23 Rigby. Is there any of you that the fact you know Mr.
24 Brian Rigby and the fact he might be a witness in this
25 case that you would automatically give his testimony
26 greater weight or credibility than somebody that you did
27 not know? Or would the fact you know him in any way
28 influence you as to being a fair and impartial juror in
29 this case?

1 And Bennie Rigby. I know Bennie Rigby's name has
2 been mentioned as well. Anybody who has not already
3 indicated that they know Bennie Rigby, if your card will
4 please be held.

5 17. 18. 14. 33. 67. 69. 51. 108. 65. 120.
6 115.

7 For those of you who just held your cards up and
8 those that have already indicated previously that you
9 know Mr. Rigby, would any of you be affected by Mr.
10 Rigby's testimony or give his testimony greater weight or
11 credibility than somebody that you do not know? Or would
12 his testimony in any way affect any of you in being a
13 fair and impartial juror?

14 John Johnson. How many of you would know John
15 Johnson?

16 Okay. That would be Number 2. 5.

17 I got, you, Number 5.

18 17. 18. 12. 22. 33. 38. 29. 50. 51. 54.
19 59. 62. 45. 67, -8 and 69. And 72. 124. 123. 121.
20 120. 119. 80. 115. 115. 137. 76. 95. 94. 111.
21 91. 132. 128. 127. 147. And 149.

22 For those of you that have indicated that you know
23 Mr. Johnson, is there any of you that would give his
24 testimony greater weight or credibility than somebody
25 that you do not know? Or would the fact that he is a
26 witness in this case influence or affect you in being a
27 fair and impartial juror?

28 Okay. The next one would be Horace Wayne Miller.
29 He is a retired investigator, I think, for the

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1 Mississippi Department of Public Safety or State Highway
2 Patrol, what we used to call the patrol. Any of you know
3 Mr. Miller?

4 Okay. Number 11. 50. 29. 63. And 111. Those of
5 you that know Mr. Miller, would the fact that you know
6 Mr. Miller cause you to give his testimony greater weight
7 or credibility than somebody that you do not know or
8 would that in any way affect you in being a fair and
9 impartial juror in this case?

10 Jessie Sawyer. Do any of you know Jessie Sawyer?

11 Okay. Number 8. 14. 17. 6. 33. 34. 44. 41.
12 45. 62. 50. 53. 69. 103. 121. 69. 65. 98. 136.
13 95. 110. 127. 128. 147. And 148.

14 Is there any of you that know Mr. Sawyer that just
15 by the mere fact you know him it would affect you in
16 being a fair and impartial juror or affect -- or would
17 you automatically give his testimony greater or lesser
18 weight and credibility than somebody that you did not
19 know?

20 Sarah Barrentine. Any of you know Sarah Barrentine?

21 Okay. That would be Number 5. 17. And 18. 50.
22 69. 80. 121. And 94.

23 Those of you that know Sarah Barrentine, would any
24 of you give Miss Barrentine's testimony greater weight or
25 credibility just because you know her or would that
26 influence you or affect you in any way in being a fair
27 and impartial juror in this case?

28 Robert Jennings. How many of you know Robert
29 Jennings? I take it by your silence you would not know

1 Mr. Jennings.

2 Vernon Peeples. Any of you know Vernon Peeples?

3 Okay. Number 127. Number 16. Number 14.

4 Of those of you that know Vernon Peeples, would you
5 give his testimony greater weight or credibility than
6 somebody that you do not know or would the fact that you
7 know Mr. Peeples influence you or affect you in being a
8 fair and impartial juror?

9 Marcus Moore. Any of you know Marcus Moore?

10 And how about LaMarcus Moore?

11 Claude Dale --

12 I'm sorry. Who knows -- anybody know --

13 THE BAILIFF: 148.

14 THE COURT: Who knows LaMarcus Moore?

15 JUROR LATOYA FLEMING: I know Marcus Moore.

16 THE COURT: Marcus Moore. 148. And would the
17 fact that you know him influence you or affect you in
18 being a fair juror in this case?

19 JUROR LATOYA FLEMING: No, sir.

20 THE COURT: Okay. Thank you.

21 Claude Dale Eskridge.

22 Eddie Robinson, Jr.

23 Kenny Townsend.

24 Okay. Number 14. Number 16. Number 34. Number
25 53. Number 68. Number 41. Number 14. Number 62.
26 Number 65. Number 80. 136. 96. 110. 111. 149. 127.
27 147. 130. And 149.

28 Of those of you that know Mr. Townsend, is there
29 anybody who just strictly because you know him would be

1 influenced or have it where it would affect you in being
2 a fair and impartial juror in this case or would any of
3 you give his testimony greater weight or credibility
4 because you know him and might not know somebody else
5 involved that is a witness?

6 Okay. Vincent Small. Any of you know Vincent
7 Small.

8 Okay. 14. 16. 17. 18. Number 1. 6. 29. 33.
9 41. 44. 45. 50. 53. 62. 67. 68. 69. 72. 65.
10 120. Number 80. 115. 136. 137. 96. 95. 92. 94.
11 111. 149. 148. 128. 147. 127. And 110.

12 Of those of you that indicate you know Vincent
13 Small, is there any one of you that would give his
14 testimony greater or lesser weight or credibility than
15 somebody you do not know? Or would any of you be
16 influenced or have your ability to be fair and impartial
17 influenced by the fact that you do know him?

18 James Taylor Williams.

19 Okay. Number 5. 2. 11. 14. 16. 17. 18. 22.
20 42. 29. 50. 54. 59. 67. 68. And 69. 72. 75. 76.
21 94. 111. 80. 115. 119. 120. 137. 108. 124. 121.
22 110. 132. And 149.

23 Now, is there any one of you that know Mr. Williams
24 who because of the fact that you do know him you would
25 give his testimony greater weight or credibility than
26 somebody that you do not know? Or is there any one of
27 you that because he is a witness in this case or a
28 potential witness, where your ability to be fair and
29 impartial would be affected?

1 Number 115, why is that? And what is that
2 situation?

3 JUROR POLLY SMITH: He is my nephew.

4 THE COURT: So if he was testifying would you
5 just automatically listen to his testimony and give that
6 greater weight or credibility than somebody you did not
7 know?

8 JUROR POLLY SMITH: Yes, sir, I probably would.

9 THE COURT: You probably would. So you are
10 saying without hearing anybody's testimony --

11 JUROR POLLY SMITH: Not without hearing
12 anybody's.

13 THE COURT: I'm saying without -- you would not
14 knowing --

15 MR. EVANS: Your Honor, he is not going to
16 testify in this case.

17 THE COURT: Okay. Well, the prosecutor had
18 that potential witness, but he is telling me now Mr.
19 Williams will not be a witness in this case.

20 MR. EVANS: He had been listed on original
21 discovery.

22 THE COURT: That covers that situation then,
23 because he is apparently not going to be a witness. So
24 that takes care of that.

25 MR. CARTER: We may call him, Your Honor.

26 MRS. STEINER: He is on our list.

27 THE COURT: Is he subpoenaed as a witness for
28 you?

29 MRS. STEINER: Yes, Your Honor. I believe the

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1 sheriff served a subpoena on him on our behalf.

2 THE COURT: Okay. I see -- okay.

3 And so you would give Mr. Williams' testimony
4 greater weight or credibility than somebody you did not
5 know.

6 JUROR POLLY SMITH: (Nodded.)

7 THE COURT: And what is your number again?

8 JUROR POLLY SMITH: 115.

9 THE COURT: Liz Vanhorn. Liz Vanhorn.

10 5. 14. 16. 17. 18. 22. 29. 33. 45. 62. 42.
11 57. 56. 51. 54. 53. 72. 50. 59. 63. 67. 68.
12 And 69. 65. 75. 76. 87. 91. 92. 80. 108. 124.
13 121. 120. 119. 137. 136. 115. 95. 94. 96. 111.
14 147. 110. 127. 128. 132. 148. And 149.

15 Of those of you that know Liz Vanhorn, is there any
16 one of you that would have a situation where you would
17 give her testimony greater weight or credibility than
18 somebody that you do not know? Or would the fact that
19 she might be a witness influence or affect any of you in
20 being a fair and impartial juror in this case?

21 Okay. How about Dennis Woods? Any of you know
22 Dennis Woods?

23 Number 2. Number 5. Number 6. 14. 16. 17. 22.
24 25. 29. 33. 41. 50. 55. I'm sorry. 53. 57. 44.
25 45. 62. 67. 68. 69. 65. 91. 94. 95. 96. 92.
26 110. 119. 120. 115. 127. 128. 136 and -37. 111.
27 147. And 148. And 149. And 154.

28 Is there any one of you that know Mr. -- the mere
29 fact that you know who Mr. Woods is would affect you in

1 being a fair and impartial juror or where you would
2 automatically give his testimony greater weight or
3 credibility than somebody that you did not know just
4 strictly because you do know Mr. Woods?

5 Okay. Emmitt Simpson. Any of you know Emmitt
6 Simpson? Okay. Number 14, 16, 17, 6, 33, 50, 53, 65,
7 110, 127, 147, 128, 136 and 118.

8 Of those of you that know Mr. Simpson, is there any
9 of you that would give his testimony greater weight or
10 credibility than somebody that you did not know, or would
11 you automatically know that you could not be fair and
12 impartial because of the possibility of him being a
13 witness in this case?

14 Okay. How about Shawn Eskridge? Anybody know Shawn
15 Eskridge?

16 How about Clarence Bernard Forrest?

17 THE BAILIFF: You have one back here.

18 THE COURT: Okay. Did you know Mr. Eskridge?
19 What is your number?

20 JUROR LESLIE CRAWFORD: (Held up card.)

21 THE COURT: Would the fact that you know Shawn
22 Eskridge cause you to automatically believe his testimony
23 over somebody you did not know or affect you in any way
24 in being fair and impartial?

25 JUROR LESLIE CRAWFORD: No, sir.

26 THE COURT: Okay. Thank you.

27 And Clarence Bernard Forrest. Do any of you know
28 Clarence Bernard Forrest?

29 How about Vera Latham? Vera Latham.

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1 That would be Number 5. 14. 16. 17. 50. 54.
2 72.

3 Is there any one of you that because you know Vera
4 Latham you would automatically give Vera Latham's
5 testimony greater weight or credibility than somebody
6 that you did not know or would any of you have a
7 situation where your ability to be fair and impartial was
8 affected because of knowing Vera Latham?

9 Okay. And Frank Ballard.

10 Okay. Number 5. Some of you may have already
11 spoken up. If you hadn't as to Frank Ballard --

12 Number 5. Number 12. 17. 22. 50. 25. 45. 65.
13 72. 69. 63. 137. 111. 94. And 149.

14 Of those of you that know Frank Ballard, is there
15 anything about just the fact that you know him that would
16 influence you or affect you in being a fair and impartial
17 juror? Or is there any one of you that just because you
18 know him that would affect you in being a fair and
19 impartial juror in this case?

20 Mary Jeanette Fleming. Any of you know Mary
21 Jeanette Fleming?

22 Number 14. And would the fact --

23 And Number 87.

24 JUROR BEVERLY LOCKE: I have a question, sir.

25 THE COURT: Yes, ma'am.

26 JUROR BEVERLY LOCKE: I knew a Mary Fleming. I
27 don't know which one she was. And I hadn't seen or
28 talked to Mary Fleming, I guess, in seven or eight years.
29 I worked with a woman named Mary Fleming.

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1 JUROR CAROLYN WRIGHT: Mary Jeanette Fleming.
2 Then Mary Ella Fleming.

3 JUROR BEVERLY LOCKE: Well, I don't know.

4 THE COURT: Let me just put it this way. If
5 this was the person that you know, would you
6 automatically give her testimony greater weight or
7 credibility than somebody that you did not know? Or
8 would that influence you in being a fair and impartial
9 juror?

10 I am asking you, Number 87.

11 JUROR BEVERLY LOCKE: Oh, no. I don't -- you
12 know, I would probably fall over now, I mean.

13 THE COURT: Then Number 14, would the fact that
14 you know Miss Fleming influence you or affect you in any
15 way?

16 JUROR CAROLYN WRIGHT: No, sir.

17 THE COURT: Miss Wright, would that --

18 JUROR CAROLYN WRIGHT: Oh, no, sir.

19 THE COURT: Okay. Mike McSparrin.

20 M-c-S-p-a-r-r-i-n. Mike McSparrin. Or McSparrin.

21 Essa Ruth Campbell. Essa Ruth Campbell.

22 Connie Moore.

23 Okay. 14. 16. 17. I got 14. 53 over there. 65.
24 45. 62. 134. 41. 110. 128. 148 and 147.

25 Of those of you that know Connie Moore, would the
26 fact that you know Connie Moore influence you or affect
27 you or in any way cause you to believe the testimony of
28 Connie Moore over that of somebody that you did not know?

29 James Ward. Anybody know James Ward?

1 And I think we have had several people that
2 indicated that they knew Patricia -- I'm sorry.
3 Priscilla Flowers Ward. Anybody that knows Priscilla
4 Flowers Ward that has not already spoken up previously
5 and let us know that?

6 Is there any one of you that because of knowing her
7 that would influence you in being fair and impartial or
8 would any of you would give her testimony greater weight
9 or credibility just because you knew her and did not know
10 someone else testifying?

11 Excuse me while I take a cough drop. My throat is
12 getting scratchy. It is getting hot. I am about to
13 start coughing if I get a scratchy throat and I'm hot.
14 They tell me the air conditioner is as low as it will go,
15 which means it ain't very low. But let me tell you, it
16 gets warmer up where I am sitting. The robe seems to
17 draw the heat to me, but we are going to do the best we
18 can.

19 James Akin. Any of you know James Akin?

20 Okay. Reverend Billy Little.

21 Okay. Number 29. Number 11. Number 126. Number
22 80. Number 132 and 111. And Number 18.

23 Is there any one of you that would just because you
24 happen to know Billy Little, Reverend Little, that would
25 automatically give his testimony greater weight or
26 credibility than somebody that you did not know or would
27 any of you have a situation where your ability to be fair
28 and impartial would be tested or where you couldn't be
29 fair and impartial because of knowing him?

1 Okay. And this is another person whose name has
2 been mentioned already. But if you haven't spoken up as
3 to knowing her. Cora Felicia Flowers Tyson. Her last
4 name is Tyson now apparently. Any of you that have not
5 spoken up about knowing Felicia Flowers Tyson?

6 Okay. 33. 45. 62. 115. 110. 147.

7 Are you just fanning, 14?

8 JUROR CAROLYN WRIGHT: No, sir.

9 THE COURT: Okay. 14. And 16.

10 For those and all -- anybody else that might know
11 Miss Flowers Tyson? Is there any one of you that would
12 give her testimony greater weight or credibility than
13 somebody that you do not know or would the fact that she
14 was a witness in this case cause any of you to be where
15 you could not be a fair and impartial juror?

16 And Sherita Flowers Baskin.

17 Any of you that haven't spoken up about knowing her?

18 Number 148 and Number 44. Anyone else?

19 Would the fact that she might testify in this case
20 cause any of you to give her testimony greater weight or
21 credibility than that of somebody you did not know, or
22 would it influence you where you could not be fair and
23 impartial in this case?

24 Angela Flowers Jones. Any one of you know her that
25 has not already spoken up?

26 Number 17 and Number 53.

27 And if Miss Jones is a witness in this case, is
28 there any one of you that would let that influence you or
29 affect you in being a fair and impartial juror or would

1 you give her testimony greater weight or credibility than
2 that of someone you did not know?

3 Then I know we have already mentioned Lola Flowers.
4 That's Mr. Flowers' mother. Is there any one of you that
5 know her who have not already spoken up about knowing
6 Miss Flowers? Is there any one of you --

7 Number 62, were you saying you knew Miss Flowers?

8 JUROR DIANE COPPER: I know her. His mother.

9 THE COURT: Okay. And anybody else or anybody
10 that hadn't spoken up about knowing her already?

11 41. Okay. And Number 33.

12 Is there any one of you that know Miss Lola Flowers
13 either that have held your card up or already indicated
14 that because of knowing her you could not be a fair and
15 impartial juror or would automatically give her testimony
16 greater weight or credibility than that of somebody you
17 did not know?

18 And Archie Flowers. Of course, I think it has been
19 established that he is Mr. Curtis Flowers' father. Any
20 of you know Archie that have not already spoken up
21 previously?

22 Number 5. 6. 14. 16. 41. 33. 53. 41. 62.
23 69. 65. 94. 92. 115. 136. 138. 154. 128. And
24 Number 147.

25 Those of you that know Archie and those of you that
26 have spoken up already about knowing him, is there any
27 one of you that because he might testify you would give
28 his testimony greater weight or credibility than that of
29 somebody you do not know? Or would you have any

1 difficulty being a fair and impartial juror because he
2 might testify as a witness?

3 And next one would be Archie Renaldo Flowers.

4 Is that -- is that Mr. Curtis Flowers' brother,
5 Defense Counsel?

6 MRS. STEINER: Yes, Your Honor.

7 THE COURT: Okay. Is he also known as Archie,
8 Jr.?

9 MRS. STEINER: Yes.

10 THE COURT: Okay. Any of you know -- I'll just
11 call him Archie, Jr., because I have heard several refer
12 to him that way today. Any of you that know him that
13 have not already made that known?

14 Okay. Number 5. 67. 69. Number 6. Number 8.
15 Number 34. 62. 136. 110. 127. 128. 147. 148. And
16 154.

17 Of those of you that know Mr. Flowers, is there any
18 one of you that would have that influence you or affect
19 you in being a fair and impartial juror or give his
20 testimony greater weight or credibility than somebody
21 that you do not know?

22 How about Crystal Gholston? G-h-o-l-s-t-o-n.
23 Crystal Gholston.

24 Kenyatte Knight.

25 I'm sorry. Number 94. And you know Knight; is that
26 correct?

27 JUROR MELISSA ACY: Kenyatta.

28 THE COURT: Would the fact that you know
29 Kenyatta Knight, would that cause you to believe or give

1 that testimony greater or lesser weight or credibility
2 than somebody you did not know? Or would that influence
3 you at all in being a fair juror?

4 JUROR MELISSA ACY: No.

5 THE COURT: Okay. Thank you.

6 Latarsha Blissett.

7 Okay. Number 5. Number 17. 62. 95. Number 50.

8 Anybody else that knows Latarsha?

9 Of those of you that know Latarsha Blissett, would
10 any of you have a situation where that would influence
11 you or affect you in being a fair and impartial juror?
12 Or would any of you give Blissett's testimony greater
13 weight or credibility than somebody that you did not
14 know?

15 Harvey Christopher Freelon. Anybody know Harvey
16 Christopher Freelon?

17 Stacey Wright.

18 Number 5. 16. 8. 14. 16. 45. 41. 62. 95.
19 127. 148. 136. And 154.

20 Those of you that know Stacey Wright, is there any
21 of you that would give Stacey Wright's testimony greater
22 weight or credibility than that of somebody you did not
23 know? Or is there any one of you that would be affected
24 in any way by that?

25 And Number 16, tell us that situation as it applies
26 to Stacey Wright.

27 JUROR CHARLES CURRY: That is my sister's
28 daughter. So it's my niece. We was raised up together.
29 She was raised up around my grandmother and my house.

1 THE COURT: So that is your niece.

2 JUROR CHARLES CURRY: Yes.

3 THE COURT: And if she testified as a witness
4 in this case, would you automatically give her testimony
5 a little bit more weight and believe her before you would
6 somebody you did not know?

7 JUROR CHARLES CURRY: Yes, I would.

8 THE COURT: Okay. Thank you.

9 Tarryon. T-a-r-r-y-o-n. Tarryon Daniels.

10 Number 5, you know Daniels.

11 Anybody except for 137?

12 Of those of you that know Tarryon Daniels, is there
13 any one of you that would automatically give that
14 testimony greater weight or credibility than somebody
15 that you did not know or be influenced where you couldn't
16 be fair and impartial because of that testimony?

17 Alphonsos Alexander. Any of you know Alphonsos
18 Alexander? Number 16. 17. 154. 137.

19 Anyone else?

20 Of those of you that know Alphonsos Alexander, is
21 there any one of you that would give that testimony
22 greater or lesser weight or credibility than somebody
23 that you did not know? Or would any of you be influenced
24 where you couldn't be fair and impartial if that person
25 were to testify?

26 Jimmy Lewis Forrest.

27 I'm sorry. Number 154. What is your situation
28 where Alphonsos Alexander is concerned?

29 JUROR CONTROLA ALEXANDER: I'm thinking that

1 that is my uncle.

2 THE COURT: Can defense counsel give me a
3 little guidance so I can inform this witness on -- where
4 is Mr. Alexander? Is he from here or somewhere else?

5 MRS. STEINER: He is a family friend.

6 THE COURT: Of the Flowers family.

7 MRS. STEINER: Of the Flowers' family. And may
8 have had a professional relationship. But I know he is a
9 family friend.

10 THE COURT: Well, Miss Alexander, Number 54, if
11 your uncle's testifying in this case, would you give his
12 testimony greater weight or credibility or tend to favor
13 the side he was testifying for just because of that
14 relationship?

15 JUROR CONTROLLA ALEXANDER: Yes, sir.

16 THE COURT: Okay. Thank you.

17 Jimmy Lewis Forrest.

18 14. 16. 17.

19 A JUROR: Is he a reverend?

20 THE COURT: Ma'am.

21 A JUROR: Reverend Jimmy Lewis?

22 THE COURT: Is, is Jimmy Lewis a reverend?

23 MRS. STEINER: Yes.

24 THE COURT: Okay. He is. His title was
25 written out here. 14. 16. 17. 33. 34. 53. 50. 44.
26 45. 62. 65. 80. 115. 98. 136. And 138. And 127.
27 110. 128. 147.

28 Of those of you that indicated that you might know
29 Reverend Forrest, is there any one of you that would

1 automatically give his testimony greater weight or
2 credibility, or any of you that would be influenced by
3 that testimony where you could not be a fair and
4 impartial juror?

5 How about Nelson Forrest? Any of you know Nelson
6 Forrest?

7 Okay. Number 14. 16. 17. Number 2. 33. 34.
8 44. 45. 50. 41. 53. 62. 68. 69. 72. 65. 80.
9 115. 98. 136. 137. 138. Did I say -- no. Number
10 121. 94. 111. 110. 128. 127. 147. 149.

11 Of those of you that know Nelson Forrest, is there
12 any one of you that just because you know Nelson Forrest
13 would automatically give his testimony greater or lesser
14 weight and credibility than somebody you do not know or
15 would any of you have a situation where you could not be
16 fair and impartial because of that?

17 And Number 138, and you are indicating, Miss McKey,
18 something about knowing Nelson Forrest. So can you tell
19 us what that is?

20 JUROR MARTHA MCKEY: He is the pastor at my
21 husband's family's church in Webster County. And I kind
22 of respect him, sir.

23 THE COURT: So would you automatically just
24 tend to go along with what he would say just because of
25 that pastoral relationship?

26 JUROR MARTHA MCKEY: I feel like he would be a
27 big influence on it.

28 THE COURT: And would that influence you to the
29 extent you could not be a fair and impartial juror?

Voir Dire Examination by the Court

1 JUROR MARTHA MCKEY: I wouldn't want to take
2 the chance on it.

3 THE COURT: So you have got some doubts in your
4 own mind about being fair and impartial because of that.

5 JUROR MARTHA MCKEY: Right.

6 THE COURT: Okay. Thank you.

7 Okay. Anybody know Hazel Jones?

8 14. 16. 17. 18. 5. 33. 53. 50. 45. 41. 62.
9 65. 80. 115. 154. 87. 95. 94. 110. And 128.

10 Of those of you that know Hazel Jones, is there any
11 one of you that would give Hazel Jones' testimony greater
12 weight or credibility than somebody that you do not know,
13 or is there any one of you that would have your ability
14 to be fair and impartial where you couldn't be fair and
15 impartial because of knowing Hazel Jones?

16 Henry Stansberry. Do any of you know Henry
17 Stansberry?

18 Number 17.

19 Any one else know Henry Stansberry?

20 Would the fact you know Henry Stansberry influence
21 you or affect you in being a fair and impartial juror, or
22 would you give that testimony greater weight or
23 credibility than somebody you did not know?

24 JUROR PAMELA CHESTEEN: No.

25 THE COURT: Okay. Robert Merrit.

26 Number 5. 16. 6. 29. 53. 95. 127. 154. And
27 136.

28 Of those of you that know Robert Merrit, is there
29 any one of you that would have that affect your ability

1 to be fair and impartial or give his testimony greater
2 weight or credibility than somebody you did not know?

3 Larry Smith. Okay.

4 I believe you two know everybody. And I appreciate
5 you holding your hand up every time, but y'all are
6 obviously well-known and well-liked people in the county.

7 14. 16. 41. 62. 69. 95. 115. 110. 127. 147.
8 128. 148. 137.

9 Of those of you that know Larry Smith, is there any
10 one of you that would give that testimony greater weight
11 or credibility than somebody that you did not know, or
12 would any of you have a situation where you just feel you
13 couldn't be fair and impartial if Larry Smith was a
14 witness?

15 Frances Hayes. Anybody know Frances Hayes?

16 And number 14. 16. 62. 80. And 115.

17 Of those of you that know Frances Hayes, is there
18 any one of you that would automatically give that
19 testimony greater weight or credibility that you -- of
20 somebody that you did not know? Or is there any one of
21 you that could not be fair and impartial because of that?

22 Robert Campbell.

23 Latoya Campbell Harding.

24 Kittery Jones. Okay. Number 5. 16. 17. 95. 53.
25 And 72.

26 Of those of you that --

27 And 154.

28 Of those of you that know Kittery Jones, is there
29 any one of you that feel like you would give that

1 testimony greater weight or credibility than somebody you
2 did not know, or is there any one of you that would be
3 influenced where you couldn't be fair and impartial just
4 because of knowing Kittery Jones?

5 JUROR CAROLYN WRIGHT: Excuse me.

6 THE COURT: Yes, ma'am.

7 JUROR CAROLYN WRIGHT: I know Kittery.

8 THE COURT: And you're Number 14. Okay.

9 JUROR DIANE COPPER: I know him.

10 THE COURT: And Number 62. I'm sorry. I
11 didn't get the hand of you two.

12 But would the fact that you know Kittery Jones
13 influence any of you or affect you where you would give
14 that testimony greater weight, credibility or would that
15 affect you where you couldn't be fair and impartial?

16 Okay. Danny Joe Lott.

17 Okay. 14. 16. 33. 53. 44. 62. 136. 41. 57.
18 92. 127. And 148.

19 Of those of you that know Danny Lott, Danny Joe
20 Lott, is there any one of you by the fact that you know
21 him that would influence you or affect you where you
22 could not be a fair and impartial juror? Or would any of
23 you give his testimony greater weight or credibility
24 strictly because you know him and would not possibly know
25 some other witnesses?

26 Ray Charles Weems.

27 14. 33. 16. 53. And 65. 62. 136. 41. 128.
28 And 127. And 41.

29 Of those of you that know Ray Charles Weems, is

1 there any one of you that would -- the fact that you know
2 Ray Charles Weems that would influence you or affect you
3 in being a fair and impartial juror or influence you in
4 any way or affect you where you would give his testimony
5 greater weight or credibility than somebody that you did
6 not know?

7 Okay. Denise Kendle. K-e-n-d-l-e.

8 14. 16. 17. 53.

9 Of those of you that know Denise Kendle, is there
10 any one of you that would give that testimony greater
11 weight or credibility than somebody that you did not know
12 or would you tend to believe that testimony? Or would
13 that in any way influence you in being fair and
14 impartial?

15 Okay. Erving Bays. Erving Bays.

16 Number 65. 136. 154.

17 Of those of you that know Erving Bays, is there any
18 one of you that would -- where that would influence you
19 or affect you in being a fair and impartial juror or
20 cause you to believe that testimony over somebody's
21 testimony you didn't know?

22 Okay. Steve Byrd.

23 Ann Montgomery.

24 Robert Johnson.

25 Jeffery Armstrong.

26 Billy James Glover.

27 I'm sorry. Which -- you know which one?

28 JUROR TIMOTHY AMASON: Jeffery Armstrong.

29 THE COURT: Jeffery Armstrong. Number 67.

1 Would the fact that you know Mr. Armstrong cause you to
2 give his --

3 I'm sorry. Number 5.

4 Those of you that know Mr. Armstrong would that
5 cause you to give his testimony greater weight or
6 credibility than somebody that you do not know or
7 influence you or affect you in being a fair and impartial
8 juror?

9 Okay. Thank you.

10 Ladies and gentlemen, I want to ask you now -- and
11 this may seem like a foolish exercise, but I will explain
12 why I'm doing it. I want you to look around the panel of
13 who is left on here. And I want to know if any of you
14 are related by blood or by marriage to somebody else that
15 is sitting in this jury panel. Because I want to ask you
16 if you are, if you would judge the case independently of
17 somebody you might be related to.

18 So if you are related to somebody else that is on
19 this jury panel, if you will please stand at this time.

20 Okay. Number 12. Miss Johnson, who is it you are
21 related to?

22 JUROR JANELLE JOHNSON: My husband is married
23 to his wife.

24 THE COURT: And that is Number --

25 JUROR TIMOTHY AMASON: Your husband is married
26 to my wife?

27 THE COURT: What is your number?

28 JUROR TIMOTHY AMASON: Sixty-seven. Her
29 husband and my wife are first cousins.

1 THE COURT: Okay. So Miss Johnson, your
2 husband and Mr. Amason's wife are first cousins.

3 JUROR JANELLE JOHNSON: They are.

4 THE COURT: And Miss Johnson, if you and Mr.
5 Amason were on the case serving together, would you be
6 able to judge that case independently of him and not let
7 that family connection interfere with you at all in that?

8 JUROR JANELLE JOHNSON: Yes, sir.

9 THE COURT: And Mr. Amason, if you were on the
10 panel with Miss Johnson, would you let that family tie or
11 relationship influence you at all?

12 JUROR TIMOTHY AMASON: No.

13 THE COURT: And could you judge the case
14 independently of her?

15 JUROR TIMOTHY AMASON: Yes, sir.

16 THE COURT: Okay. What is your number? Number
17 33. And Mr. Crawford, who is it you are related to?

18 JUROR JESSIE CRAWFORD: (Inaudible.)

19 THE COURT: What's that number?

20 COURT REPORTER: Judge, I can't hear him.

21 THE COURT: Okay. Mr. Crawford is related to
22 Juror Number 95. And how are y'all related, Mr.
23 Crawford?

24 JUROR JESSIE CRAWFORD: She is my niece.

25 THE COURT: And Mr. Crawford, if you and your
26 niece were sitting on the jury together, would you be
27 able to judge that independently of her and not have --
28 feel like you have to go along with your niece just
29 because y'all were relatives?

1 JUROR JESSIE CRAWFORD: Probably not.

2 THE COURT: So would you judge that
3 independently of her, the case?

4 JUROR JESSIE CRAWFORD: Right.

5 THE COURT: And Miss Crawford, would you judge
6 it independently of your uncle and not have the fact that
7 y'all are related influence you in your deliberation?

8 JUROR LESLIE CRAWFORD: No, sir.

9 THE COURT: Okay. Thank you.

10 Number 34. Mr. Eskridge, and who is -- what number?

11 JUROR JOHN ESKRIDGE: Sixty-five.

12 THE COURT: Mr. Eskridge, how are you and Miss
13 Woods related?

14 JUROR JOHN ESKRIDGE: Sister-in-law. My
15 brother's wife.

16 THE COURT: And, Mr. Eskridge, would you feel
17 if you were on the jury with your sister-in-law that you
18 had to agree with her or find the same way she did just
19 strictly because y'all were related?

20 JUROR JOHN ESKRIDGE: No.

21 THE COURT: And would you judge it
22 independently of her?

23 JUROR JOHN ESKRIDGE: (Nodded.)

24 THE COURT: And Miss Woods, would you judge the
25 case independently of Mr. Eskridge --

26 JUROR JUANITA WOODS: (Nodded.)

27 THE COURT: -- if you were both on the panel
28 together?

29 JUROR JUANITA WOODS: (Nodded.)

1 THE COURT: Okay. Thank you.

2 Number 38. And, Mr. Davis, who are you related to?

3 JUROR BARRON DAVIS: I'm related to Charles
4 Davis, Leigh Davis, Number 47, and my wife Linda Davis,
5 Number 152.

6 THE COURT: Okay. Who was the first one you
7 were saying?

8 JUROR BARRON DAVIS: Charles Davis.

9 THE COURT: Okay. And Charles is your son.

10 JUROR BARRON DAVIS: He is my son.

11 THE COURT: And then your wife is --

12 JUROR BARRON DAVIS: My wife is 152. Linda
13 Davis.

14 THE COURT: Okay. We got the whole family,
15 didn't we?

16 JUROR BARRON DAVIS: Well, I have Leigh Davis
17 is my, my --

18 JUROR CHARLES DAVIS: My wife. 47.

19 THE COURT: And what is Miss Davis back here?

20 JUROR LINDA DAVIS: Linda.

21 THE COURT: Okay. Miss Linda Davis.

22 I'll first ask you, Mr. Barron Davis, if you were on
23 the panel with your son, your daughter-in-law or your
24 wife, would you judge the case independently of anybody
25 you might be related to on the panel?

26 JUROR BARRON DAVIS: Yes, I would.

27 THE COURT: And would you feel like you had to
28 go along with any -- if you saw it one way and they saw
29 it the other way, would you stand your ground and hold to

1 what you thought?

2 JUROR BARRON DAVIS: I would. Yes.

3 THE COURT: Okay. And then -- okay. And then,
4 Charles LLOYD Davis.

5 JUROR CHARLES DAVIS: Yes, sir.

6 THE COURT: If, if you were on the jury with
7 your father or mother or wife, would you be able to judge
8 the case independently of them and not have that family
9 tie come into play in your deliberations?

10 JUROR CHARLES DAVIS: Yes, sir.

11 THE COURT: And if you disagreed with one or
12 more of your relatives, if you were on the panel
13 together, would you hold your ground and stick to your
14 view regardless of whether they agreed or not?

15 JUROR CHARLES DAVIS: Yes, sir.

16 THE COURT: Okay. Thank you.

17 Then Miss Bobbi Davis, if your husband or your
18 father-in-law or your mother-in-law happened to be on the
19 panel together, would you be able to judge this
20 independently of them?

21 JUROR BOBBI DAVIS: Yes, sir, I would.

22 THE COURT: And would you base your decision
23 only on the evidence?

24 JUROR BOBBI DAVIS: Yes, sir.

25 THE COURT: And if you disagreed with them on
26 what the evidence showed, would you hold your ground and
27 base your decision strictly on that and not do something
28 just to keep peace among your husband or your in-laws?

29 JUROR BOBBI DAVIS: Yes, sir, I would.

1 THE COURT: Okay. Thank you.

2 And then back here in the back. Miss Linda Davis, _
3 if you were on the panel with your husband or your
4 daughter-in-law or your son, would you be able to judge
5 that case independently of them?

6 JUROR LINDA DAVIS: I would. Yes.

7 THE COURT: And would you hold your ground and
8 not agree with them strictly to keep peace or to be -- to
9 have family relations be good?

10 JUROR LINDA DAVIS: Yes, I would.

11 THE COURT: Okay. Thank you.

12 All you Davis's that stood, you can be seated now.

13 Okay. And Mr. Fielder, Number 42, who is it you are
14 related to?

15 JUROR MARCUS FIELDER: Curtis Wayne Britt,
16 Number 126. He is my wife's cousin, I think.

17 THE COURT: And Mr. Fielder, if you and Mr.
18 Britt were on the jury together, would you be able to
19 judge a case independently of him?

20 JUROR MARCUS FIELDER: Yes, sir.

21 THE COURT: And would you feel you had to agree
22 with him just strictly because y'all were some --
23 relatives?

24 JUROR MARCUS FIELDER: (Shook head.)

25 THE COURT: And Mr. Britt, would you able to
26 judge the case independently of Mr. Fielder?

27 JUROR CURTIS BRITT: I would.

28 THE COURT: Would you feel like you had to go
29 along with him to keep peace in the family or any

1 agreements of any kind there?

2 JUROR CURTIS BRITT: No.

3 THE COURT: Okay. Thank you.

4 You can both be seated.

5 Are you related to somebody else as well?

6 JUROR CURTIS BRITT: 124. She is married to my
7 first cousin.

8 THE COURT: Okay. You and Mary Ann Britt.

9 JUROR CURTIS BRITT: Right.

10 THE COURT: And how are y'all related?

11 JUROR CURTIS BRITT: Her husband is first
12 cousins with me.

13 THE COURT: Okay. And would that influence you
14 or cause you to have to feel like you had to agree with
15 Miss Mary Ann because of that family tie?

16 JUROR CURTIS BRITT: Her name is Martha.

17 THE COURT: Martha. I'm sorry. Would you
18 judge the case independently of Martha?

19 JUROR CURTIS BRITT: (Nodded.)

20 THE COURT: Then, Miss Martha, would you be
21 able to judge the case independently of Charles Wayne and
22 base your decision on the evidence and not on family
23 connections?

24 JUROR MARTHA BRITT: Yes, sir.

25 THE COURT: I'm sorry. I was looking at the
26 wrong...

27 Okay. And are you related to anybody else on the
28 panel?

29 JUROR MARTHA BRITT: (Shook head.)

1 THE COURT: Okay. Thank you.

2 Then Number 76. And who are you related to, Mr.
3 King?

4 JUROR RICHARD KING, III: Related to Alisha
5 King, 119. She is my cousin.

6 THE COURT: And, Mr. King, if you and your
7 cousin were on the panel together, would you be able to
8 judge that case independently of her?

9 JUROR RICHARD KING, III: I could.

10 THE COURT: And would you feel like you had to
11 agree with her just to keep peace in the family or
12 anything like that?

13 JUROR RICHARD KING, III: No, sir.

14 THE COURT: And, Miss King, if you are on the
15 panel with your cousin, Richard, would you feel you had
16 to agree with him or go along with him just because y'all
17 are related?

18 JUROR ALISHA KING: No, sir.

19 THE COURT: And would you judge the case
20 independently of him?

21 JUROR ALISHA KING: Yes, sir.

22 THE COURT: Okay. You can be seated.

23 Okay. Number 93. Miss Pearson, who is it you are
24 related to?

25 JUROR MELISSA ACY: (Indicated.)

26 JUROR MARJORIE PEARSON: Ninety-four.

27 THE COURT: You and Miss, 94, Acy.

28 JUROR MARJORIE PEARSON: Second cousin.

29 THE COURT: You and Miss, 94, Acy.

Voir Dire Examination by the Court

1 And, Miss Pearson, would you be able to judge the
2 case independently of Miss Acy?

3 JUROR MARJORIE PEARSON: Yeah.

4 THE COURT: And Miss Acy, would you be able to
5 judge the case independently of Miss Pearson?

6 JUROR MELISSA ACY: Yes.

7 THE COURT: Okay. Thank you.

8 And then Number 95. Miss Crawford, and who are you
9 related to?

10 JUROR LESLIE CRAWFORD: Jimmy Joe Allen.
11 Number 136.

12 THE COURT: Okay. And Miss Crawford, if you
13 and Mr. Allen were on the panel together -- and how is it
14 y'all are related?

15 JUROR LESLIE CRAWFORD: Cousin.

16 THE COURT: If you and your cousin were on the
17 panel together, would you be able to judge the case
18 independently of him?

19 JUROR LESLIE CRAWFORD: Yes, sir.

20 THE COURT: And would you feel like you had to
21 agree with him to keep peace in the family or anything
22 like that?

23 JUROR LESLIE CRAWFORD: No, sir.

24 THE COURT: Okay. Then, Mr. Allen, if you and
25 your cousin, Miss Crawford, were on the panel together,
26 could you judge the case independently of her?

27 JUROR JIMMY ALLEN, JR.: Yes, sir.

28 THE COURT: Would you feel like you had to
29 agree with her because y'all are cousins --

Voir Dire Examination by the Court

1 JUROR JIMMY ALLEN, JR.: No, sir.

2 THE COURT: -- or to keep peace in the family?

3 JUROR JIMMY ALLEN, JR.: (Shook head.)

4 THE COURT: Then Number 98. Mr. Robinson, who
5 are you related to?

6 JUROR WILLIE ROBINSON: One-twenty-five.
7 That's my son.

8 THE COURT: Okay. And first to you, Mr. Willie
9 Robinson, if you and your son were on the panel together,
10 would you feel like you had to reach the same opinion as
11 your son or view the case the same way just because of
12 the father and son relationship?

13 JUROR WILLIE ROBINSON: No.

14 THE COURT: If you disagreed with him and he
15 thought one way and you thought the other way, would you
16 hold your ground and stick to your belief?

17 JUROR WILLIE ROBINSON: Yes, I would.

18 THE COURT: And, Mr. Robinson, Number 125, if
19 you and your dad happen to be serving together on the
20 jury, would you feel you had to agree with your father on
21 the verdict?

22 JUROR RICHARD ROBINSON: No sir.

23 THE COURT: And would you stand your ground and
24 base your decision on your personal view of the evidence
25 and not on his opinion?

26 JUROR RICHARD ROBINSON: Yes, sir.

27 THE COURT: Okay. Thank you. If you will both
28 be seated.

29 And, Mr. Jones, are you related to --

1 JUROR S. BROOKS JONES: (Indicated.)

2 THE COURT: I was going to say if you weren't,
3 somebody wasn't claiming one of you.

4 Now, how are you and Mr. Bridges related?

5 JUROR S. BROOKS JONES: Second cousins.

6 THE COURT: Second cousins.

7 JUROR S. BROOKS JONES: Yes, sir.

8 THE COURT: And if you were on the panel with
9 Mr. Bridges, could you judge the case independently of
10 him?

11 JUROR S. BROOKS JONES: Yes, sir.

12 THE COURT: And would you feel like you had to
13 go along with him to keep family peace or anything like
14 that?

15 JUROR S. BROOKS JONES: No, sir.

16 THE COURT: And Mr. Bridges, if you were on the
17 panel with Mr. Jones, would you be able to independently
18 judge the case from him?

19 JUROR MARVIN BRIDGES: Yes, sir.

20 THE COURT: And would you feel like you had to
21 agree with him just strictly because of y'all's family
22 ties or anything like that?

23 JUROR MARVIN BRIDGES: No.

24 THE COURT: Okay. Thank you.

25 Counsel, if you will approach again.

26 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
27 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
28 OUTSIDE THE HEARING OF THE PROSPECTIVE JURORS.)

29 THE COURT: We have got a few more now that I

1 can release. Then I am through with my questioning until
2 we get to the final voir dire where we individually -- I
3 mean separately. But I thought we might recess and
4 excuse these others at this time if that's...

5 MR. EVANS: All right, sir.

6 (THE BENCH CONFERENCE WAS CONCLUDED.)

7 THE COURT: Ladies and gentlemen, I'll let you
8 have another recess. If you will, just step outside in
9 the hall for maybe about ten minutes.

10 (THE PROSPECTIVE JURORS LEFT THE COURTROOM.)

11 (MR. EVANS, MR. HILL, MR. HOWIE, MR. HOPPER, MRS. STEINER
12 AND MR. CARTER APPROACHED THE BENCH FOR THE FOLLOWING BENCH
13 CONFERENCE.)

14 THE COURT: I think Number 11.

15 MR. HOWIE: Yes, sir.

16 THE COURT: I think she finally found the thing
17 to get her off. She has been trying quite hard. But she
18 said because of being related to former Sheriff Thornburg
19 she would give his testimony greater weight and it would
20 affect her.

21 Do y'all agree with that one?

22 MR. EVANS: Yes, sir.

23 MRS. STEINER: I, I wrote down that she said
24 she possibly would. Did she answer anything after that?

25 THE COURT: We can leave her on for a while
26 longer and individually question her.

27 MRS. STEINER: Yeah, I actually --

28 MR. EVANS: Let me put her back on.

29 THE COURT: She seemed like a prosecution

1 person.

2 MR. CARTER: You sure you want to keep her on?
3 She said she -- she practically ultimately said she
4 couldn't be fair. She said she has doubts.

5 We will strike her.

6 MRS. STEINER: She can go.

7 THE COURT: Do y'all agree on Number 11, Miss
8 Rodgers?

9 And let's see.

10 MR. EVANS: Sixteen.

11 THE COURT: Sixteen. Mr. Curry. Stacey Wright
12 is his niece.

13 MRS. STEINER: I mean I heard the same thing I
14 did with Miss Rodgers. There was a possibly there.

15 THE COURT: He said he would give her testimony
16 favor over somebody else.

17 MR. CARTER: That is what I thought he said
18 too.

19 MR. EVANS: That is what he said.

20 THE COURT: Y'all agree on Curry?

21 MR. EVANS: Yes, sir.

22 THE COURT: Sue Diane Austin. Number 56.

23 MR. EVANS: Yes, sir.

24 MRS. STEINER: Yeah. She, she knows Mr.
25 Collins.

26 THE COURT: Right.

27 Palmertree. Number 115.

28 MR. EVANS: Yes, sir.

29 MRS. STEINER: Polly Smith is 115.

1 THE COURT: Yeah. Polly Palmertree Smith.

2 MRS. STEINER: Oh, okay.

3 MR. EVANS: She said she would automatically
4 believe James Taylor Williams.

5 MRS. STEINER: Uncle -- aunt of James Taylor
6 Williams.

7 THE COURT: Yeah. 154.

8 MR. EVANS: We have 138 too.

9 THE COURT: Did I overlook somebody?

10 MR. EVANS: She was one that would believe
11 anything Nelson Forrest says.

12 THE COURT: Yeah. Nelson Forrest.

13 MRS. STEINER: Your Honor, I thought she said
14 she had doubts that she couldn't follow him.

15 MR. HOPPER: She said it would be a big
16 influence.

17 MR. EVANS: Yes, she did. She said he would be
18 a big influence on anything she did, and she wouldn't
19 want to take a chance of sitting because of it.

20 MRS. STEINER: That is one I ask that she can
21 stick around and be individually voir dired, Your Honor.

22 THE COURT: I will allow her to stay around.
23 We will ask her about that. There is no harm in that.

24 Then Number 154, Ms. Alexander. Alphonsos, is that
25 --

26 MRS. STEINER: Yes, sir.

27 THE COURT: Do y'all agree on that one?

28 MRS. STEINER: Yes, sir.

29 MR. EVANS: Yes, sir.

1 (THE BENCH CONFERENCE WAS CONCLUDED.)

2 (THE PROSPECTIVE JURORS RETURNED TO THE COURTROOM.)

3 THE COURT: Okay. There is a few more that
4 I'll be able to excuse at this time. So if your name is
5 called, you may go as well.

6 Melba Laster Rodgers. Charles Earl Curry. Sue
7 Diane Austin.

8 MRS. STEINER: What number is that?

9 THE COURT: Number 56.

10 Polly Lois Palmertree Smith, Number 115. And then
11 Miss Alexander, Number 154.

12 Ladies and gentlemen, for those of you that remain,
13 at this time we are going to recess for the day. I am
14 going to ask that you be back here at 9:00 in the
15 morning.

16 I'll ask that you do not discuss this case with
17 anyone or among yourselves over the recess. Also, when
18 you get back tomorrow, just come on in the courtroom and
19 kind of -- as you get back tomorrow, I am going to
20 probably move y'all in next to each other to fill up
21 these gaps that are -- that are there right now. But if
22 you will just all come back in the courtroom and have a
23 seat. And when you are all back, we will proceed at that
24 point.

25 You can't talk to any of these witnesses whose names
26 I've gone over with you. You can't talk to the attorneys
27 or anybody else involved in the case or go out and make
28 any independent investigation about the case.

29 Also, I don't want you to read any newspaper

1 articles about the case or listen to the radio or listen
2 to the internet or watching the internet or reading
3 anything that has happened that would discuss things that
4 have happened in court.

5 So with that, ladies and gentlemen, we will be in
6 recess now until 9:00 in the morning.

7 MRS. STEINER: Your Honor, I was going to say,
8 are they retaining their same numbers?

9 THE COURT: They are. Yes.

10 (THE PROSPECTIVE JURORS LEFT THE COURTROOM.)

11 THE BAILIFF: Your Honor, we have a juror
12 request he say something to you.

13 THE COURT: That will be fine. I mean we gotta
14 go on record. We will have everybody come up.

15 (JUROR NUMBER 121, MR. MICHAEL AUSTIN, APPROACHED THE
16 BENCH.)

17 THE COURT: What is your number?

18 JUROR MICHAEL AUSTIN: 121. I'm having a
19 grandchild tomorrow. I'm not trying to --

20 THE COURT: You've got a child -- grandchild
21 being born tomorrow.

22 JUROR MICHAEL AUSTIN: At 11:00 at Oxford.

23 MRS. STEINER: Congratulations.

24 THE COURT: If you will, step out a minute and
25 I will confer with counsel. And I will let you know
26 something.

27 (JUROR MICHAEL AUSTIN LEFT THE COURTROOM.)

28 THE COURT: What is y'all's thoughts on --

29 MR. CARTER: We don't object.

1 MRS. STEINER: No objection.

2 MR. EVANS: Your Honor, if this was something
3 that somebody was in serious medical condition, I
4 wouldn't have an objection. But just having, having a
5 grandchild, I just don't see that that is grounds to be
6 removed as a juror.

7 THE COURT: Bring him back in and tell him he
8 will have to come back.

9 (JUROR MICHAEL AUSTIN RETURNED TO THE COURTROOM.)

10 THE COURT: Right now you are going to have to
11 come back.

12 BAILIFF BROWNING: I've got two of the Davis
13 out there, husband and wife, the young man and wife.
14 They have came and informed me that -- they didn't speak
15 up because they didn't realize. They thought they might
16 have another chance to do it. But they both have got
17 classes that they have got to be at tomorrow.

18 THE COURT: They should have spoken up, because
19 it is too late now.

20 BAILIFF BROWNING: So do they need to be -- can
21 they come in and you tell them that?

22 THE COURT: No.

23 BAILIFF BROWNING: Just tell --

24 THE COURT: They are just going to have to be
25 here tomorrow.

26 BAILIFF BROWNING: To be here tomorrow. Okay.

27 (THE PROCEEDING ON THIS DATE WAS CONCLUDED.)

28

29

ROLE CALLED; BENCH CONFERENCE

(THE FOLLOWING PROCEEDINGS WERE HAD IN
OPEN COURT ON JUNE 8, 2010, WITH THE
COURT, THE COURT REPORTER, ALL COUNSEL,
THE DEFENDANT, THE CIRCUIT CLERK AND ALL
PROSPECTIVE JURORS PRESENT, TO-WIT:)

(THE ROLE WAS CALLED BY THE CLERK)

BY THE COURT: If the counsel will
approach.

(ALL COUNSEL APPROACHED THE BENCH FOR A
CONFERENCE HELD OUT OF THE HEARING OF THE
PROSPECTIVE JURORS:)

BY THE COURT: Okay. I've been told the
jury -- I've been told Juror 53 and 136 are
both here. One of them's just dragged in
about 30 minutes late, and I think No. 95 was
real late getting here, too. So 95 --

BY THE BAILIFF: No. 53 arrived.

BY THE COURT: Okay. It was 53, 95 and
136 were the ones that were extremely late
and 30 minutes late. And now 136 is still
not here. I'm not going to wait any longer
for her. I mean, in individual voir dire if
she does show up, then we -- you know, she
can be questioned about things that she may
have missed, and she may -- I mean, I'm --
she may have had some kind of emergency or
she may have misunderstood and thought she
was excused yesterday. I don't know what the
deal is, why she's not here.

ROLE CALLED; BENCH CONFERENCE

1 But I don't see -- and the clerk's
2 tried to call her and could not get her on
3 the phone. So I don't -- I mean, I'm not
4 going to sit here all day waiting for a juror
5 that may or may not show up. But as I say,
6 53 and 95, that were both extremely late, are
7 here. So I've just got one now that we're
8 waiting on. I'm just going to go ahead and
9 proceed without her.

10 (BENCH CONFERENCE CONCLUDED)

11 **BY MR. HILL:** He just walked in, Judge .

12 **BY THE BAILIFF:** Are you Mr. Allen?

13 **BY JUROR:** Yes.

14 **BY THE BAILIFF:** Okay. We have them all
15 here now.

16 **BY THE COURT:** Counsel, if you'll come
17 back.

18 (ALL COUNSEL APPROACH BENCH FOR A
19 CONFERENCE HELD OUT OF THE HEARING OF THE
20 PROSPECTIVE JURORS:)

21 **BY THE COURT:** I was mistaken. I was
22 saying she, and it was a he. I knew that. I
23 looked at my list a minute ago, and two of
24 them were females that were late and the
25 other one was male. But for whatever reason,
26 I was saying she instead of him, too. But
27 now they are all here, so we can proceed.

28 (BENCH CONFERENCE CONCLUDED)

29 **BY THE COURT:** Okay. Ladies and

VOIR DIRE - STATE

1 gentlemen, the Court's concluded its
2 questioning. And now I will tender the panel
3 and allow the State of Mississippi to begin
4 asking questions.

5 Mr. Evans, you may proceed.

6 **BY MR. EVANS:** Thank you, Your Honor.

7 Good morning, ladies and gentlemen.

8 **BY JURORS:** Good morning.

9 **BY MR. EVANS:**

10 **Q** There are a few things that I want to go
11 through that the judge didn't, and a few things that
12 I want to go just a little further into that he did.

13 Before we do that, I am Doug Evans, your
14 district attorney. I think some of y'all know me
15 and some may not. Clyde Hill, one of the
16 assistants, will be helping me; and Mike Howie,
17 another assistant, will be helping in the trial.

18 Now, voir dire is strictly just an attempt
19 to find out a little something about the jurors so
20 that we can make sure that we get a fair and
21 impartial jury, because the jury that sits on this
22 case needs to listen to only the evidence and the
23 witnesses that come forward in court. You need to
24 be able to disregard anything else that you may know
25 or you may heard -- have heard. Anything outside
26 the courtroom needs to be dropped at the door, and
27 you need to come in here with an open mind.

28 That's what we need. We need a jury that
29 will only listen to the evidence. Can each of you

VOIR DIRE - STATE

1 tell us you will do that? Yes, ma'am?

2 A I just don't think I can, you know, with
3 outside -- what -- (**Juror No. 106, Jennifer Swindoll**)

4 Q And what's your number?

5 A 106.

6 Q Okay. Thank you. Is there another one?

7 BY THE COURT: No. 136.

8 BY MR. EVANS:

9 Q Yes, sir?

10 A (**No. 136, Mr. Jimmy Allen, Jr.**) I don't
11 think I can, either.

12 Q And are both of y'all saying that because
13 of some outside influence, that you could not be
14 fair and impartial in this case --

15 A Yes, sir. (**No. 136**)

16 Q All right. No. 33. Mr. Crawford, you're
17 saying that you could not be fair and impartial in
18 this case?

19 A Yes, sir. (**No. 33, Jessie Crawford**)

20 Q Okay. And No. 34, Mr. Eskridge?

21 A (**No. 34, John Eskridge**) Yes, sir.

22 Q And you could not be fair and impartial in
23 this case, either?

24 A Right.

25 Q Thank you. All right. Was there anyone
26 else that I missed? No. 103, Ms. Jones?

27 A Yes. (**No. 103, Ms. Mary Ella Jones**)

28 Q And you say that you could not be fair and
29 impartial in this particular case because of some

VOIR DIRE - STATE

1 outside influence?

2 **A** Yes, sir.

3 **Q** Okay. Thank you, ma'am.

4 All right. I've heard different attorneys
5 refer to it in different ways, but it's kind of like
6 all of us have different schools or different ball
7 teams that we like. And for example, if it was a
8 baseball team that you had a relative playing on --
9 a little league baseball team -- you're probably
10 going to be pulling for that baseball team.

11 But what we're asking you to do is put
12 yourself in the place of the referee. We want you
13 to be fair. We want you not to lean toward either
14 side but to listen to the evidence and base your
15 decision strictly on the evidence. And that's --
16 that's what you're here for. That's what a trial is
17 all about.

18 The State of Mississippi has the burden of
19 proving the case. It's up to us to put on proof,
20 proof to you beyond a reasonable doubt that this
21 defendant is guilty. And that's what you're to look
22 at, the testimony that comes from the courtroom and
23 the evidence that the judge allows in this
24 courtroom.

25 It will be up to the judge to determine
26 what the law is in the case. That's always true.
27 But it will be up to the jury to determine what
28 witnesses are believable and base their decision
29 strictly on that.

VOIR DIRE - STATE

1 I know there were some of you the other
2 day that were talking about not being able to judge.
3 And at this point, we're not getting into what the
4 penalty is. But is there anyone still out here that
5 just feels like that they could not judge someone?

6 And basically, what we would get to -- if
7 we were to have a situation if that were true --
8 that we would have a juror or jurors that would have
9 the feeling, Well, I just don't think it's right for
10 me to judge someone, and we would go through a week
11 of trial and then that juror in the jury room throw
12 up their hands and say, I'm sorry, I just don't
13 think it's right for me to judge. So we wouldn't be
14 able to complete what we're here for. So is there
15 anyone here that even thinks that they could not
16 judge someone?

17 No. 41, Ms. Givens, you could not judge
18 someone?

19 **A** No, sir. (**Juror No. 41, Margaret Givens**)

20 **Q** On any case?

21 **A** No.

22 **BY MR. CARTER:** What's her number?

23 **BY MR. EVANS:** 41.

24 **BY MR. EVANS:**

25 **Q** Okay. And as I call you out, you can put
26 your numbers down if you'd like to. No. 65,
27 Ms. Woods? You feel that you could not judge anyone
28 on a case?

29 **A** No, sir. (**Juror No. 65, Juanita Woods**)

VOIR DIRE - STATE

1 **Q** Okay.

2 **BY MR. CARTER:** What's her number?

3 **BY MS. STEINER:** 65.

4 **BY MR. EVANS:**

5 **Q** No. 76, Mr. King. You feel that you could
6 not judge anyone?

7 **A** No, sir. I don't believe I could. **(Juror**
8 **No. 76, Richard King)**

9 **Q** All right. And y'all need to speak loud
10 enough, too, so that the court reporter can hear you
11 because she has to take down what everyone of us --

12 **A** I don't believe I could. **(Juror No. 76,**
13 **Richard King)**

14 **Q** Thank you, sir.

15 All right. No. 93, Ms. Pearson. You feel
16 that you could not judge anyone?

17 **A** No, sir. **(Juror No. 93, Marjorie**
18 **Pearson)**

19 **Q** And it wouldn't matter what the case is;
20 just on a criminal case, you don't think it's right
21 for you to judge. Is that what you're saying?

22 **A** No, sir.

23 **Q** No. 118, Mr. Golden. And you feel that
24 you cannot judge anyone?

25 **A** No, sir. **(Juror No. 118, Antonio Golden)**

26 **Q** No. 127, Mr. Campbell. And you also feel
27 that you could not judge anyone on any case?

28 **A** Yes, sir. **(Juror No. 127, Don Campbell)**

29 **Q** If you would, you need to answer out so

VOIR DIRE - STATE

1 that she can take it down.

2 Mr. Campbell, you did say yes, sir. Is
3 that correct?

4 **A** (Nodding head).

5 **BY THE COURT REPORTER:** Could you tell
6 them to stand, please, when they answer?

7 **BY MR. EVANS:**

8 **Q** Okay. The court reporter's asked that
9 y'all stand when you have an answer.

10 Okay. Yes, ma'am. What is your number,
11 please?

12 **A** 45. (**Juror No. 45, Edith Burnside**)

13 **Q** No. 45? Okay. Ms. Burnside. And you
14 also feel that you could not judge anyone?

15 **A** I can't. I don't feel like I can.

16 **Q** You just could not judge anyone; it
17 wouldn't matter what the case was?

18 **A** No, sir.

19 **Q** Okay. No. 128, Mr. Moore?

20 **A** Yes, sir. (**Juror No. 128, Herman Moore**)

21 **Q** You also feel that you could not judge
22 anyone?

23 **A** Yes, sir.

24 **Q** All right. Thank you. No. 136,
25 Mr. Allen. You also feel that you could not judge
26 anyone?

27 **A** Yes, sir. (**Juror No. 136, Jimmy Allen**)

28 **Q** And No. 147, Ms. Ringold?

29 **A** Okay. Do you mean death or -- (**Juror No.**

VOIR DIRE - STATE

1 **147, Maxine Ringold)**

2 **Q** No, ma'am. At this point, we're not
3 getting into the death penalty part. I'm just
4 asking if you were picked as a juror, there may be
5 testimony from both sides?

6 **A** Uh-huh.

7 **Q** And it would be up to the jury to
8 determine what happened. This isn't going to be
9 like a TV show where you're going to actually be
10 able to see the crime committed. So you, once
11 they're picked as jurors, will have to make a
12 decision of what happened. You'll have to weigh the
13 testimonies of the witnesses and make a decision.
14 And what I'm asking at this point are the ones that
15 just don't feel that they should judge anyone and
16 just could not make a decision of whether someone is
17 even guilty or not?

18 **A** I could judge somebody, but I don't want
19 no death penalty.

20 **Q** Okay. We'll get to that in a little bit.

21 **A** Okay.

22 **Q** Thank you, ma'am.

23 **A** Okay. **(Juror No. 147, Maxine Ringold)**

24 **Q** And nobody is questioning anybody's
25 beliefs. We have all have certain personal beliefs
26 and religious beliefs. But that's one that is real
27 important when it comes to a criminal case.

28 Now, the district attorney's office in
29 this state is made up of different districts. This

VOIR DIRE - STATE

1 district is the Fifth Circuit Court District. I've
2 got seven counties that we prosecute in, and
3 Montgomery County is one of those counties. And
4 what we do -- our job -- we take every felony case
5 that is presented to us by either law enforcement or
6 by victims, and we present those cases to the grand
7 jurors. And then if the case is indicted, we
8 prosecute them. It doesn't matter if it's a grand
9 larceny, a burglary, a murder. All felonies,
10 anything that can carry penitentiary time, we're
11 responsible for prosecuting.

12 And what we do, we put the cases together.
13 We get with the law enforcement officers, the
14 victims, the witnesses, and make a case to put
15 together to show to the jury that the person did
16 commit the crime. And that's what our
17 responsibilities are. Our responsibility as
18 prosecutor is to fairly and truly present the
19 evidence that's there. And that's -- that's what we
20 do as a job.

21 The judge has briefly told you about this
22 case. It is a capital murder case. It's a murder
23 case where back in 1996 -- it was July the 16th --
24 four people were murdered at Tardy Furniture. What
25 makes it a capital case is that money was taken
26 during the murders. If it were a murder -- just a
27 simple murder where nothing was taken -- it would be
28 bad, but it wouldn't be capital because of that.
29 For it to be capital, it has to be another element

VOIR DIRE - STATE

1 that's in the statute.

2 Do each of you understand that? Does
3 anyone -- well, let me stop that because we're not
4 going into the penalty at this point.

5 I know some of these questions may sound
6 kind of silly, but it seems that in our minds we
7 think we need to know more a little bit about the
8 jurors. And I know this question probably
9 everybody's going to answer question yes, but I
10 still need to ask it. How many of y'all know where
11 Tardy Furniture is located?

12 (JURORS RAISE HANDS)

13 **BY MR. EVANS:**

14 **Q** Thank you. And is there anybody here that
15 does not know where Tardy Furniture was located?

16 Okay. No. 2, Ms. Harris, No. 48, No. 78,
17 No. 135, and No. 138. All right. And of y'all, is
18 that -- where y'all -- were -- of the ones that I
19 just asked, were you living here in the city? Any
20 of you? All right.

21 **A** (By unidentified juror) What you talking
22 about?

23 **Q** I'm talking about as far as the ones that
24 don't know where Tardy is located.

25 **A** Oh, no. I'm sorry.

26 **Q** Okay. And some of these questions may be
27 kind of confusing. And I want to go over one fact
28 that the judge did. It's important, too, if you
29 think of things later, just raise your flag and let

VOIR DIRE - STATE

1 us know.

2 **A** Clarification, please. **(Juror No. 138,**
3 **Martha McKey)**

4 **Q** Ma'am?

5 **A** Clarification. Was the question, Did you
6 live here in 1996?

7 **Q** No. The question was a followup to the
8 ones that didn't know where Tardy Furniture was
9 located. I was just asking those that didn't know
10 where it was located if they were living here in
11 '96?

12 **A** And the answer is no.

13 **Q** How many of you had ever shopped at Tardy
14 Furniture?

15 (JURORS RAISE HANDS)

16 **BY MR. EVANS:**

17 **Q** Okay. Pretty good many. How many of you
18 had accounts with the store, charge accounts?

19 14. I'm sorry. 75. And wasn't there one
20 more? 45. And 62. All right. Of the ones of you
21 that had accounts there -- and I know -- I hate to
22 even ask some of these questions, but it is things
23 we need to know. Did Tardy Furniture ever have to
24 sue any of you for those accounts? Nobody? No. 45.

25 **A** Sir, can I say something on that? **(Juror**
26 **No. 45, Edith Burnside)**

27 **Q** Ma'am?

28 **A** Can I say something on that as to why I
29 was --

VOIR DIRE - STATE

1 **Q** Well, the question was just were you ever
2 sued.

3 **A** Okay.

4 **Q** Not going to get into what was owed or
5 anything else.

6 **A** Or whether it was paid off or anything?

7 **(Juror No. 14, Carolyn Wright)**

8 **BY MR. CARTER:** I object, Your Honor. She
9 ought to be able to ask her question or
10 whatever she has.

11 **BY MR. EVANS:** If it's in response to the
12 question.

13 **BY THE COURT:** If you'll stand up, ma'am,
14 because the court reporter's -- see, she's
15 typing everything that's spoken and she can
16 hear you better if you stand up.

17 **A** I had an account there, but I was not sued
18 by Ms. Bertha. It was later on when it was took
19 over by Mr. Frank and Roxanne. **(Juror No. 45,**
20 **Edith Burnside)**

21 **Q** I think I've got where it was sued by
22 Tardy Furniture; is that correct?

23 **A** (Nodding head).

24 **Q** And that was the question: Were you ever
25 sued by Tardy Furniture? All right.

26 And No. 14, Ms. Wright. I believe you
27 were, in fact, sued by Tardy Furniture. Is that
28 correct?

29 **A** Yes. But it was paid off. **(Juror No. 14,**

VOIR DIRE - STATE

1 Carolyn Wright)

2 BY THE COURT: Would you speak up? I
3 could not hear that.

4 A Yes, sir.

5 BY MR. EVANS:

6 Q You were sued, and there was a judgment
7 against you?

8 A Yes, sir.

9 Q And none of this is meant to embarrass
10 anybody. It's just questions that we need to ask.

11 All right. I want to go back through a
12 little bit about the ones of you that may have not
13 answered or that we didn't develop enough on the
14 relationships with the Defendant, Curtis Flowers,
15 and his family. I know a lot of you the other
16 day -- a lot of the ones that were here did answer.
17 There were a lot of relatives of his. Most of those
18 are not here now because they said that they could
19 not be fair and impartial.

20 Is there anyone else here as far as being
21 related to him or his family -- and just for --
22 briefly, to make sure that everybody understands,
23 his father is Archie Flowers. His mother is Lola
24 Campbell Flowers. He has one brother, Archie
25 Flowers, Jr. One sister, Angela Jones. Another
26 sister, Felicia -- I think it's Tyson. Another
27 sister, Prisilla Ward. And then another sister,
28 Sherita Baskin. I think that there's been testimony
29 already that they are related to Mr. Nelson Forrest,

VOIR DIRE - STATE

1 Ms. Hazel Jones and Johnnie Mae Woods.

2 Now, knowing that, is there anyone still
3 here that is related to any of those individuals?

4 Yes, ma'am. No. 53. And who are you
5 related to?

6 A Angela is my niece. (**Juror No. 53,**
7 **Flancie Jones**)

8 Q Who is your niece?

9 A Angela. And one you named is my
10 sister-in-law. Who did you say his aunt was?

11 Q Ms. Hazel Jones --

12 A Hazel Jones is my sister-in-law.

13 Q Hazel Jones is your sister-in-law?

14 A She's a Ward.

15 BY THE COURT: Ms. Jones, I couldn't hear
16 all -- you had said something about somebody
17 named Angela? And I did not get --

18 BY JUROR: Angela is my niece.

19 BY THE COURT: What's Angela's last name
20 now?

21 BY JUROR: She was a Ward, but she married
22 a Jones.

23 BY THE COURT: Okay. That's the
24 defendant's sister?

25 BY JUROR: I didn't know that was his
26 sister.

27 BY THE COURT: Okay. And that's your
28 niece?

29 BY JUROR: It's my nephew's wife.

VOIR DIRE - STATE

1 **BY THE COURT:** Okay. And then who was --
2 is that the only one -- I wasn't clear. Is
3 that the only one whose name you recognized
4 that he called?

5 **BY JUROR:** (Nodding head.)

6 **BY MR. EVANS:** She stated a Hazel Jones
7 also, which is a sister to, I think, Ms. Lola
8 Flowers.

9 **BY THE COURT:** Okay. And what was your
10 connection with Ms. Hazel Jones?

11 **BY JUROR:** She's my -- she's my husband's
12 brother's wife. **(Juror No. 53, Flancie Jones)**

13 **BY THE COURT:** Okay.

14 **BY MR. EVANS:**

15 **Q** How often do you see these?

16 **A** I don't.

17 **Q** You don't see them?

18 **A** (Shaking head).

19 **Q** Is there anything about those
20 relationships that would make it difficult for you
21 to be fair and impartial?

22 **A** No.

23 **Q** And I think you also said that you knew --
24 in addition to Angela, you knew Archie, Sr., Nelson
25 Forrest, Hazel Jones, Danny Joe Lott. Is there
26 anything about that that would affect you this case?

27 **A** No.

28 **Q** Okay. Thank you, ma'am.

29 Anyone else here other than Ms. Jones that

VOIR DIRE - STATE

1 now, after thinking about these connections,
2 realizes that they may be related to the defendant
3 or his family?

4 All right. I'm going to go a little bit
5 broader now. Anyone that did not answer when the
6 judge was going through all of the connections with
7 being friends of the family -- and I want to extend
8 that to the fact that I know the defendant's father,
9 Mr. Archie, sings in a gospel group. I think the
10 defendant sang with that group some. Is there
11 anybody here that is close friends with them because
12 of that singing group, because of school, because of
13 church or any other type of relationship that has
14 not answered already?

15 All right. Thank you. The Defendant,
16 Curtis Flowers, at the time this crime was committed
17 was living with a person by the name of Connie
18 Moore, who will probably be a witness in this case.
19 Are any of you related to Connie Moore? I know some
20 of you yesterday -- I think the only question was
21 asked was do you know her. But how many of you know
22 Connie Moore? All right. Did all of y'all answer
23 yesterday? Because I don't want to take the time to
24 go through it if everybody did. No. 28, you did
25 not? You did?

26 **A** (Nodding head).

27 **Q** No. 147?

28 **A** I answered. (**Juror No. 147, Maxine**
29 **Ringold**)

VOIR DIRE - STATE

1 Q All right. And I'll just -- I want to try
2 not to slow things up. I want to speed up as much
3 as I can. So I'll just ask each of y'all: Is there
4 anything about knowing her that would influence your
5 decision in this case in any way?

6 (JURORS SHAKE THEIR HEADS)

7 Q Yes, ma'am.

8 A I've done some soul searching on the
9 murder of my cousin in Kosciusko, Jeanette Nowell.
10 **(Juror No. 55, Christina Bartlett)**

11 Q Yes, ma'am.

12 A And I will have to say that I do lean
13 toward the victim's families because of the
14 suffering that that has caused. My mother and daddy
15 both died shortly thereafter.

16 Q And what we're going to be asking a jury
17 to do is disregard anything like that and base their
18 decision only on the evidence. Are you saying that
19 you could not do that?

20 A I don't think I could.

21 Q Okay. Thank you.

22 A I'm sorry.

23 Q The information we have is that the
24 Defendant and his family and Connie Moore have lived
25 in the areas around Silver Street, McNutt, Harper
26 and Cade. Have any of y'all ever lived in any of
27 those areas? No. 62? Yes, ma'am.

28 A Where --

29 **BY THE COURT:** If you'll please stand when

VOIR DIRE - STATE

1 you're responding.

2 **A** I live on -- used to live on Harper. (**Juror**
3 **No. 62, Diane Copper**)

4 **Q** On which street?

5 **A** Harper.

6 **Q** Okay.

7 **BY THE COURT:** And what street is that
8 again?

9 **A** Harper.

10 **BY THE COURT:** Harper. Okay.

11 **A** Yes, sir.

12 **BY MR. EVANS:**

13 **Q** How far away from the Flowers did you
14 live?

15 **A** Not very far.

16 **Q** Just a few houses?

17 **A** No. Probably about two blocks or so.

18 **Q** About two blocks. Would you see them very
19 often?

20 **A** Not too often.

21 **Q** Is there anything about being a neighbor
22 of theirs that would affect you in this particular
23 case?

24 **BY MR. CARTER:** Your Honor, I object. I
25 don't think that makes her a neighbor.

26 **BY MR. EVANS:** I think anybody could
27 understand that. You may answer.

28 **A** Of course, I don't live on that street.

29 **Q** But what I'm asking is there anything

VOIR DIRE - STATE

1 about the fact that you were a neighbor of theirs
2 that would affect you in this case?

3 **BY MR. CARTER:** Same objection.

4 **BY THE COURT:** Well, I think she can
5 classify neighbor however -- you know, the
6 State may classify somebody two blocks away
7 as a neighbor. Then out in the country, you
8 might consider somebody two miles away to be
9 your neighbor. So, you know -- but she can
10 answer, I think, based on the question.

11 **A** No. No it wouldn't be a problem.

12 **BY THE COURT REPORTER:** I'm sorry. Speak
13 up.

14 **A** No. It wouldn't be a problem.

15 **BY MR. EVANS:**

16 **Q** It wouldn't be a problem?

17 **A** No.

18 **Q** Do you still see the Flowers?

19 **A** Sometimes. I work at Wal-Mart, so
20 sometimes they come in there and -- you know,
21 shopping.

22 **Q** You work with Archie at Wal-Mart; is that
23 correct?

24 **A** Yes, sir. **(Juror No. 62, Diane Copper)**

25 **Q** And you also work with one of the
26 defendant's sisters?

27 **A** That's correct.

28 **Q** Which sister do you work with?

29 **A** Cora Flowers.

VOIR DIRE - STATE

1 Q Cora?

2 A Yes, sir.

3 Q How long did you work with Cora?

4 A I can't remember the exact -- probably
5 about a year or something like that.

6 Q Okay. Were y'all pretty close?

7 A It was more like a working relationship,
8 you know.

9 Q Did you ever visit with each other?

10 A No, sir.

11 Q Okay. But you did work with two of his
12 family members, and you lived within a couple of
13 blocks of the Flowers' residence. You do not think
14 that any of that would affect you?

15 A I don't think so.

16 Q But I need you to -- like the judge said,
17 we need you to be positive. Could that affect your
18 thinking in the case?

19 A It could.

20 Q Okay. Do you think that that may cause
21 you to lean toward the defendant in the case?

22 A Yes, sir, it's possible.

23 Q Okay. Thank you, ma'am.

24 A Can I mention something else?

25 Q Yes, ma'am.

26 A My husband used to work down there at
27 Tardy, too, but it was -- I don't remember what
28 year, but it was right before the incident happened.

29 Q What's your husband's name?

VOIR DIRE - STATE

1 **A** John Copper.

2 **Q** Okay.

3 **A** He just helped deliver.

4 **Q** Okay. Do you know about how long before?

5 **A** How long?

6 **Q** How long he worked there before the
7 murders?

8 **A** No.

9 **Q** Would it have been --

10 **A** Probably -- maybe late '80s or '90s,
11 early --

12 **Q** Okay. So it had been several years
13 before; is that right?

14 **A** Yes, sir.

15 **Q** But he did work for Mr. and Mrs. Tardy?

16 **A** Yes, sir. **(Juror No. 62, Diane Copper)**

17 **Q** All right. Thank you, ma'am.

18 And No. 45. Yes, ma'am?

19 **A** I live on the -- around on the next
20 street, from McNutt Street. **(Juror No. 45, Edith**
21 **Burnside)**

22 **Q** Okay. Which street was that? Which
23 direction?

24 **A** I been trying to think. It's been a long
25 time. I cannot remember. It was the project, and I
26 stayed over on the next street. McNutt was behind
27 me. I was in the front.

28 **Q** All right. When was that?

29 **A** It's been '96 when this happened? Right?

VOIR DIRE - STATE

1 Q Right.

2 A Okay. I was living there in '96.

3 Q Okay.

4 A On the next street.

5 Q Did you know Connie Moore?

6 A Just -- I know her -- we went to the same
7 beauty shop and stuff like that, but I never visit
8 her house or nothing like that.

9 Q All right. And you did know the
10 Defendant. I think you said that the Defendant
11 visited in your home?

12 A Yes. Him and one of his sisters have,
13 yes. **(Juror No. 45, Edith Burnside)**

14 Q Okay. Which sister was that?

15 A Prisilla Flowers.

16 Q So not only did they visit in your home,
17 but you said that he was real close with both of
18 your sons?

19 A They played ball and stuff together.

20 Q All right. And would that affect you?
21 Would you think about that if you were picked as a
22 juror? If you listened to the evidence and was
23 asked to decide his guilt or innocence, would the
24 fact that he's been to your home and he's close to
25 your family and his sister, too, would that affect
26 you?

27 A No, sir.

28 Q Okay. Thank you, ma'am. Do you have
29 something else?

VOIR DIRE - STATE

1 **A** Yes. I was going to say I been knowing
2 her, too, for a long time. **(Juror No. 41, Margaret**
3 **Givens)**

4 Q I'm sorry. I can't hear you.

5 **A** I been knowing her, too, Connie Moore,
6 because I used to stay in -- on Greenburg Street?

7 Q Okay.

8 BY MR. CARTER: What's your number?

9 BY JUROR: Margaret Givens. Oh, 41.

10 BY THE COURT REPORTER: You used to stay
11 where?

12 BY JUROR: On Greenburg Street.

13 BY MR. EVANS:

14 Q And were y'all friends?

15 **A** No. We weren't friends.

16 Q You just knew who she was?

17 **A** Sir?

18 Q You just knew who she was?

19 **A** Uh-huh. I just been knowing her for a
20 long time.

21 Q Okay. Is there anything about that --

22 A No.

23 Q Okay. Thank you, ma'am. I appreciate you
24 answering to that.

25 **A** Uh-huh.

26 Q Because it's lot of things -- you start
27 thinking back that far, it's hard to remember where
28 you were and what was going on sometimes.

29 Anyone else on that question? All right.

VOIR DIRE - STATE

1 I know everybody that the judge asked about having
2 family or friends that have been convicted of a
3 crime. Is there anyone here that did not answer
4 that question? Yes, ma'am. No. 1?

5 **A** After I thought about it, I do have a
6 couple of first cousins that are convicted felons,
7 but I have no association with them anymore. (**Juror**
8 **No. 1, Sandra Hamilton**)

9 **Q** Do you know what the charges were?

10 **A** They were drug charges.

11 **Q** Okay. Wasn't violent offenses?

12 **A** No, sir.

13 **Q** Is there anything about that that would
14 affect you in this case?

15 **A** No, sir.

16 **Q** You don't hold any ill will towards the
17 prosecution because they were convicted?

18 **A** No, sir. Like I say, the only time I see
19 these two is if we have a death in the family. They
20 may show up at the funeral. They may be
21 incarcerated now. I don't even know.

22 **Q** All right. Thank you, Ms. Hamilton. And
23 No. 41?

24 **A** Yeah. I have something. (**Juror No. 41,**
25 **Margaret Givens**)

26 **Q** I'm sorry. I still can't understand you.

27 **A** I got a son. He got charged with a
28 burglary.

29 **Q** When was that?

VOIR DIRE - STATE

1 **A** That was in this year.

2 **Q** Is that Robert?

3 **A** Sir?

4 **Q** What's his name?

5 **A** Reginald Lindsey.

6 **Q** Reginald Lindsey. Okay.

7 **BY THE COURT REPORTER:** Did you say he got
8 shot by a burglar?

9 **BY JUROR:** Unh-unh. I said he got charged
10 with burglary.

11 **BY MR. EVANS:**

12 **Q** And my office prosecuted him. Is there
13 anything about that that would affect you in this
14 particular case?

15 **A** Yeah, I think it will.

16 **Q** You think it would?

17 **A** Uh-huh.

18 **Q** Thank you, ma'am. All right. And I want
19 to go --

20 **BY THE COURT:** You've got another
21 number --

22 **BY MR. EVANS:**

23 **Q** I'm sorry. Yes, sir. No. 22?

24 **A** I had a second or third cousin that was
25 convicted of murder. (**Juror No. 22, Mr. Larry Wayne**
26 **Blaylock**)

27 **Q** And where was that?

28 **A** I believe it happened in Carroll County.

29 **Q** Okay. I know who you're talking about.

VOIR DIRE - STATE

1 Is there anything about that -- because my office
2 did handle that, too -- is there anything about that
3 that would affect you in this case?

4 **A** No, sir.

5 **Q** All right. Thank you, Mr. Blaylock.

6 All right. Other than the ones -- well,
7 even with the ones that have answered before, have
8 any of y'all ever been to a jail to visit an inmate?
9 Yes, ma'am. Number -- let me get on the second
10 sheet. No. 14, 1, 18, 41, 48, 50, 58, 62, 65, 68,
11 87, 92, 95, 96, 123, 135, 147, and 149. Is there
12 anything about that that would affect any of you in
13 this case? No. 2?

14 **A** I didn't -- I used to work at a jail
15 before I came to work here. (**Juror No. 2, Christy**
16 **Harris**)

17 **Q** Okay.

18 **A** Worked in Grenada.

19 **Q** But you weren't -- didn't go to visit
20 someone; you were working there?

21 **A** No.

22 **Q** Okay. Of the ones of you that had visited
23 someone in jail -- and the question is simply this:
24 Because of the fact that you may have had a friend
25 or a relative that was in jail that you went to see,
26 is there anything about that that would have caused
27 you to dislike the prosecution or to feel that
28 people should not be convicted of crimes? Anyone at
29 all? All right. Thank you.

VOIR DIRE - STATE

1 And I know probably all of you or most of
2 you feel that you know we have to have a criminal
3 justice system. We do have to try people that
4 commit crimes. Is there anyone here that feels that
5 we shouldn't? That people that commit crimes ought
6 to be able to just walk through? I know some of
7 these questions sound silly, but we need to ask
8 them.

9 Do all of you understand that at this
10 phase in the trial this defendant or any defendant,
11 no matter what the case, is presumed by law to be
12 innocent? And there's a good reason for that. The
13 burden of proof is on the State of Mississippi to
14 prove his guilt beyond a reasonable doubt. You
15 cannot come into court and rely on any outside
16 source. So since we have put on no proof at this
17 point, he is presumed to be completely innocent.
18 Does everybody agree with that principle?

19 All right. The opposite side of that is
20 that once we have proven to the jury beyond a
21 reasonable doubt with facts and evidence that he is
22 guilty, that presumption disappears, and it is no
23 longer there to protect him anymore. Does anyone
24 have any problem with that concept of the law?

25 The judge has briefly told you that the
26 burden of proof is on the State of Mississippi and
27 it is beyond a reasonable doubt. The courts will
28 not let us explain what reasonable doubt is. But
29 each of you can use your own common sense to

VOIR DIRE - STATE

1 determine what is reasonable.

2 Is there anyone here today that would
3 require us to prove this case or any other case to a
4 higher burden than that? Like, is there anybody
5 here that would say, Well, if there's any human
6 doubt possible, I couldn't convict. Because the
7 only way that that burden would be met is would be
8 if you actually witnessed a crime.

9 Is there anyone here that could not look
10 at the evidence and if we have proven it -- unless
11 there's any reasonable doubt there. It doesn't mean
12 that there couldn't be any doubt, but if it's
13 reasonable doubt is what we're looking at. Anyone
14 at all?

15 Now, I'm not going to go back into
16 everybody that knew these individuals, but I want to
17 ask if any of you are related to any of them. Stacy
18 Wright. Latarsha Blissett. Mary Ella Fleming.

19 Yes, ma'am. No. 148. You have to stand
20 up, please, ma'am, so we can take down what you say.

21 **A** She's my second or third cousin.

22 **Q** You say she's your second cousin?

23 **A** Third. She's my third cousin. (**Juror No.**
24 **148, Latoya Fleming**)

25 **Q** Third cousin? How often do you see her?

26 **A** When she comes in Wal-Mart. Just around
27 in the community.

28 **Q** All right. Speak up a little bit, please.

29 **A** Only around the community.

VOIR DIRE - STATE

1 Q Okay. All right. Is there anything -- I
2 expect that she will be a witness in this case. Is
3 there anything about her or any of the other family
4 members that may be witnesses that would affect you?

5 A No, sir.

6 Q Have you talked to any of them about this
7 case?

8 A No, sir.

9 Q Okay. Thank you. Anyone else? Bessie
10 Ruth Campbell. Nelson Forrest. This is just as far
11 as being related at this point. Necie Fleming.

12 A Who? **(Juror No. 148, Latoya Fleming)**

13 Q Necie. Are you related to her, also?

14 A Yes, sir.

15 Q And you're No. 148 for the record.

16 A Yes, sir.

17 Q Is there anything about that that would
18 affect you in this case?

19 A No, sir.

20 Q Okay. Thank you, ma'am. Danny Joe Lott?
21 Okay. No. 41. If y'all will excuse me. It takes a
22 minute to sort back through all of these.

23 But you've already said that in this
24 particular case, you couldn't be fair and impartial;
25 is that right?

26 A (Nodding head). **(Juror No. 41, Margaret**
27 **Givens)**

28 Q Okay. I'm going to try to avoid going
29 back through the ones of you that have said that.

VOIR DIRE - STATE

1 No. 136. How are you related to Danny Joe Lott?

2 A He's my second or third cousin. (**Juror**

3 **No. 136, Jimmy Allen**)

4 Q How often do you see him?

5 A Not often.

6 Q Can you give us some idea?

7 A It's been a while since I've seen him.

8 Q Stand up, please, so the court reporter --

9 I can hear you, but I don't think --

10 A It's been a while since I seen him.

11 Q Okay. Is there anything about you being
12 related to him if he's called as a witness in this
13 case that might affect you?

14 A No.

15 Q All right. And also, while you're up, I
16 noticed that you know Connie Moore?

17 A Yeah.

18 Q How do you know her?

19 A Just by seeing her around.

20 Q Okay. You don't consider yourself a
21 friend of hers?

22 A No.

23 Q All right. Archie Flowers, Jr. and
24 Archie?

25 A I know them. (**Juror No. 136, Jimmy Allen**)

26 Q How do you know them?

27 A Just seeing them around.

28 Q Okay. You ever go to any of their gospel
29 singings or anything like that?

VOIR DIRE - STATE

1 **A** No.

2 **Q** Is there anything about how you know them
3 that you think would influence how you would think
4 on the case?

5 **A** No.

6 **Q** Okay. And Robert Merritt. How do know
7 Robert Merritt?

8 **A** I been knowing him a while.

9 **Q** And again, anything about that that would
10 affect you?

11 **A** No.

12 **Q** Okay. Thank you. Is there anyone else on
13 Danny Joe Lott?

14 And I know some of y'all were on some
15 other panels. No. 6, Mr. Trotter, if you would
16 stand, please, sir.

17 I think Friday you said that you knew the
18 Defendant and his family, were friends with them and
19 worked at ADP with one of his sisters; is that
20 correct?

21 **A** OEM at Luvata. (**Juror No. 6, Glenn**
22 **Trotter**)

23 **Q** At Luvata? All right. And Luvata and ADP
24 are connected; is that correct?

25 **A** They're different. They make the same
26 product but just --

27 **Q** Well, they used to be the same --

28 **A** Used to be the same.

29 **Q** All right. I still call it Luvata. And

VOIR DIRE - STATE

1 which sister do you work with?

2 A I works with Prisilla Ward.

3 Q All right. And are y'all friends?

4 A Yes. **(Juror No. 6, Glenn Trotter)**

5 Q Okay. But you're basically friends with
6 the entire family?

7 A Right. I know just about all -- you know.

8 Q And I think from my notes back in 2007,
9 you said you were very close friends and you could
10 not be fair and impartial because of that?

11 A Right.

12 Q Is that still true?

13 A Yes.

14 Q All right. Thank you, sir.

15 No. 5, Ms. Griffin. I know you pretty
16 well know everybody around that's involved in it.
17 Is that strictly because of just being a teacher?

18 A Yes.

19 Q Is there anything -- **(Juror No. 5, Carol**
20 **Griffin)**

21 A And church.

22 Q Teacher and church. Is there anything,
23 other than that, that would affect you in this case
24 about knowing him and any of the defendant's family?

25 A Other -- nothing other than what I said a
26 while ago.

27 Q Okay. And I've got that down. You don't
28 feel like on this particular case you could be fair
29 and impartial?

VOIR DIRE - STATE

1 **A** I have doubts because of it.

2 **Q** Because of --

3 **A** Because of empathy towards the victim's
4 family.

5 **Q** All right. Thank you, ma'am.

6 No. 8, Mr. Robinson. I think the only
7 family member that you said you knew was Archie Jr;
8 was that right?

9 **A** Right. **(Juror No. 8, Alexander Robinson)**

10 **Q** How do you know him?

11 **A** I was -- go to Auto Zone.

12 **Q** To Auto Zone? Okay. So it's just a
13 working relationship, know where he works?

14 **A** Right.

15 **Q** Is there anything about that that would
16 affect you?

17 **A** No, sir.

18 **Q** And you could base your decision strictly
19 on the evidence?

20 **A** Right.

21 **Q** Thank you, sir. Okay. No. 17,
22 Ms. Chesteen?

23 **A** Yes, sir. **(Juror No. 17, Pamela Chesteen)**

24 **Q** You have stated that you knew Mr. and
25 Ms. Flowers and I think Nelson Forrest. Is there
26 anything about those relationships that would affect
27 you in this particular case?

28 **A** No. I've waited on them all at the bank
29 as my customers. Most of the Flowers' family.

VOIR DIRE - STATE

1 Q So it's just strictly -- like
2 Mr. Robinson, just a working relationship?

3 A Yeah.

4 Q All right. Thank you, ma'am.

5 Okay. No. 44, Ms. Cunningham. You work
6 with Sherita at ADP; is that right?

7 A Yes. **(Juror No. 44 Tashia Cunningham)**

8 Q And I -- as a matter of fact, I think
9 y'all work side by side there, don't you?

10 A No, sir.

11 Q You work the same line?

12 A We work the same line, but she did --

13 **BY THE COURT:** Who did you say, Mr. Evans?

14 **BY MR. EVANS:** Sherita.

15 **BY THE COURT:** Sherita.

16 **BY MR. EVANS:**

17 Q But you see her every day at work?

18 A Sometime, not all the time.

19 Q How would you not see her?

20 A She works at the front of the line, and I
21 work at the end of the line.

22 Q Okay. And y'all are friends, aren't you?

23 A No.

24 Q You're not friends?

25 A Just a working relationship.

26 Q Okay. How long have you worked with her?

27 A I've been there five years.

28 Q How long has she been there?

29 A I have no idea.

VOIR DIRE - STATE

1 Q Was she there when you got there?

2 A She was there on -- when I came, she was
3 on third shift when I started.

4 Q How long have y'all been working the same
5 shift?

6 A Probably about two or three years.

7 Q Okay. And let's see. I believe you
8 stated that you knew Mr. Nelson Forrest and Reverend
9 Lewis?

10 A Yes.

11 Q Is there anything about those
12 relationships that would affect you?

13 A No.

14 Q All right. As far as Sherita, if you were
15 picked as a juror on this case, do you feel that if
16 you found from the evidence that he was guilty and
17 voted guilty that you would owe her any explanation?

18 A No.

19 Q Okay. You don't feel that that would
20 affect you at all?

21 A No.

22 Q All right. Thank you, ma'am.

23 No. 50, Mr. Lester. And I think -- I'm
24 going to make sure I got my notes right. You said
25 that the knowledge you had of the different people
26 involved was from a working relationship, too; was
27 that correct?

28 A The ones involved, are you talking
29 about -- **(Juror No. 50, Bobby Lester)**

VOIR DIRE - STATE

1 Q Well, the possible witnesses?

2 A Yes.

3 Q Like --

4 A Yes.

5 Q Okay. Ms. Jones, Nelson Forrest?

6 A Yes.

7 Q Reverend Lewis?

8 A Yes. I work at the bank where Pam does,
9 and we see everyone in town.

10 Q Yes, sir. That's your only knowledge of
11 these people. Nothing about knowing who they are
12 that would affect you in this case?

13 A No, sir.

14 Q All right. Thank you, sir.

15 No. 53, Ms. Flancie Jones. All right.
16 You've stated that -- let me just ask you again:
17 What is the relationship? How are you related to
18 the defendant?

19 A To him? **(Juror No. 53, Flancie Jones)**

20 Q Right.

21 A The last time I was here, the Court told
22 me that he was my sister-in-law's sister's son. I
23 didn't even know that.

24 Q All right. But you are related to him?

25 A I -- some -- I'm -- by marriage.

26 Q All right. And I may have not gotten them
27 all because I think I ran out of room here. You
28 said that you knew Angela Flowers?

29 A Angela is married to my nephew.

VOIR DIRE - STATE

1 Q Okay. And what's your nephew's name?

2 A Mark Jones.

3 Q Mark Jones?

4 A (Nodding head). If we're talking about
5 the right Angela.

6 Q Okay. And you know Archie --

7 BY MR. CARTER: Your Honor, can we clarify
8 which Angela for the record?

9 BY THE COURT: Well, I don't know if we
10 can or not. I mean, she said --

11 BY MR. EVANS:

12 Q You know who Angela Flowers is, don't you?

13 A Is it Angela Ward? She was a Ward before
14 she married? (Juror No. 53, Flancie Jones)

15 Q (Nodding head).

16 A Uh-huh.

17 Q Okay. And you also know Archie, Sr; is
18 that correct?

19 A No.

20 Q I may have written that down wrong. You
21 know Connie Moore?

22 A I've heard people talk of her because I'm
23 really not from Winona here. I'm from Duck Hill,
24 and I went to Kilmichael schools. So a lot of
25 people here, I do not know.

26 Q But I think yesterday you said you did
27 know her?

28 A I think I might. Because I hear people
29 saying that she going to get married, you know, at

VOIR DIRE - STATE

1 the places I work? As far as knowing her, I don't
2 really know her. I just know her when I see her.

3 Q Nelson Forrest?

4 A I went to school with lot of Forrests. I
5 don't know which one it was.

6 Q Hazel Jones?

7 A Hazel is my sister-in-law.

8 Q Okay. All right. And Hazel Jones, I
9 believe, is the Defendant's aunt. So you're
10 connected with him in several ways; is that right?

11 A I guess. (**Juror No. 53, Flancie Jones**)

12 Q Now, knowing that, knowing that you are
13 related to him and these different connections,
14 would that affect you? Would you think about
15 that --

16 A It wouldn't affect me, because I have no
17 relationship with any of them.

18 BY MR. EVANS: All right. Thank you,
19 ma'am.

20 BY THE BAILIFF: Mr. Evans, we've got --
21 we need a jury break, if possible, please.

22 BY MR. EVANS: Okay. Is that all right,
23 Your Honor?

24 BY THE COURT: Ladies and gentlemen, we'll
25 recess for ten minutes. And I'll ask you,
26 like I have every time we recess, not to
27 discuss the case with anyone or among
28 yourselves.

29 (FOLLOWING A BRIEF RECESS, PROCEEDINGS

VOIR DIRE - STATE

1 CONTINUED IN OPEN COURT WITH ALL PARTIES
2 AND THE JURY PRESENT, TO-WIT:)

3 **BY THE COURT:** Court will come back to
4 order. You may proceed.

5 **BY MR. EVANS:** Thank you, Your Honor.
6 We're not missing anybody, are we?

7 (PAUSE)

8 **BY MR. EVANS:** Okay. No. 92, Ms. Crowley?

9 **BY THE BAILIFF:** Y'all please stand when
10 you....

11 **BY MR. EVANS:**

12 **Q** Ms. Crowley, I believe you stated that you
13 knew Archie Flowers, Sr.; is that correct?

14 **A** No, sir. (**Juror No. 92, Mary Crowley**)

15 **Q** You didn't answer that yesterday evening?

16 **A** Unh-unh.

17 **Q** So that's one reason we're going back
18 through this. It's hard to keep your notes straight
19 on who knows who, so I appreciate you answering
20 that.

21 Ms. Acy, No. 94. All right. Ms. Acy, I
22 think you've stated that you knew Archie, Sr. and
23 Hazel Jones; is that correct?

24 **A** Yes, sir. (**Juror No. 94, Melissa Acy**)

25 **Q** And how do you know them?

26 **A** I know Mr. Archie from Wal-Mart.

27 **Q** Okay.

28 **A** And I work for the Department of Human
29 Services here in Montgomery County for 12 years. I

VOIR DIRE - STATE

1 know Ms. Hazel.

2 Q Okay. So it's basically in a -- either
3 shopping or working relationship?

4 A Yes.

5 Q Anything about that would affect you in
6 this case?

7 A No.

8 Q Thank you, ma'am. All right. No. 95,
9 Mr. Crawford. I mean, Ms. Crawford. I'm sorry.

10 All right. Again, my notes are kind of
11 written over theirselves, so I'm trying to make sure
12 I know what I've got down here. You stated that you
13 knew the Defendant, Curtis Flowers.

14 A I don't know him. I just know him from
15 like hearing about the case. And when I was in
16 Vaiden to visit an inmate, I met him them. **(Juror**
17 **No. 95, Leslie Crawford)**

18 Q All right. You met with him when you were
19 at the jail in Vaiden?

20 A Uh-huh.

21 Q So you have talked to him down there?

22 A Like speaking and mingling.

23 Q Okay. And who were you visiting in the
24 jail when you were talking with him?

25 A Marcus Brown.

26 Q Marcus Brown? And what's your connection
27 with Marcus?

28 A That's my boyfriend.

29 Q And he's been convicted of an armed

VOIR DIRE - STATE

1 robbery; is that right?

2 A (Nodding head).

3 Q Here in this county?

4 A Yeah. Uh-huh.

5 Q How often did you see the defendant down
6 there?

7 A Every Friday. **(Juror No. 95, Leslie**
8 **Crawford)**

9 Q Every Friday? For how long a period of
10 time?

11 A I'd say about probably like a couple of
12 months, three months. Maybe two or three months.

13 Q So approximately, 12 different times you
14 would see the defendant and talk to him?

15 A Well, yeah. Not talk every time.
16 Probably speak.

17 Q Okay. Did you ever sit down with him or
18 stand up where he was and carry on a conversation
19 with him?

20 A No more than, Hey, how are you doing.

21 Q Okay. Did you say you were related to the
22 defendant's sister?

23 A No.

24 Q What did you say about his sister?

25 A I said I knew her.

26 Q And which sister was that?

27 A I just know all of them from --

28 Q You know all of them?

29 A Well, I -- yeah. **(Juror No. 95, Leslie**

VOIR DIRE - STATE

1 **Crawford)**

2 **Q** Did you pretty well grow up with them?

3 **A** No. They're older than I am.

4 **Q** They're older? How do you know them?

5 **A** Just from living in Winona.

6 **Q** Okay. And which ones do you know?

7 **A** I know Sherita, Prisilla -- well, those
8 two I know.

9 **Q** Have you ever worked with any of them?

10 **A** No, sir.

11 **Q** Okay. You consider them friends?

12 **A** No.

13 **Q** Is there anything about those facts, the
14 fact that you have talked some with the defendant
15 while you were visiting your boyfriend in jail, the
16 fact that you know who he is and know some of his
17 sisters, would any of that influence you in any way?

18 **A** I think it could.

19 **Q** You think it might?

20 **A** Uh-huh.

21 **Q** Thanks.

22 **BY THE COURT:** And what's your number
23 again?

24 **BY JUROR:** 95.

25 **BY THE COURT:** 95.

26 **BY MR. EVANS:**

27 **Q** Okay. No. 98, Mr. Robinson. I think the
28 only two that I had down that you knew were Reverend
29 Lewis and Nelson Forrest; was that right?

VOIR DIRE - STATE

1 **A** That's right. **(Juror No. 98, Willie**
2 **Robinson)**

3 **Q** Is there anything about that that would
4 affect you or you just know who they are?

5 **A** I just know who they are.

6 **Q** All right. Thank you, sir.

7 No. 110, Ms. Robinson.

8 **A** Yes. **(Juror No. 110, Mamie Martina**
9 **Robinson)**

10 **Q** If I've got this right, you've stated that
11 you knew Archie, Jr., Connie Moore, Cora Tyson,
12 Nelson Forrest, Reverend Lewis, Larry Smith and
13 Hazel Jones; is that correct?

14 **A** Correct.

15 **Q** Is there anything more than just knowing
16 who they are?

17 **A** No.

18 **Q** Anything about that that would influence
19 you in any way?

20 **A** No.

21 **Q** All right. Thank you, ma'am.

22 And I know in a small community, you know,
23 most people know each other. What we're trying to
24 get to is not who you know, but is there anything
25 about it that would affect you.

26 All right. No. 127, Mr. Campbell.
27 Mr. Campbell -- and I may have not written this
28 down, when the judge asked the other day about ones
29 that had relatives or friends convicted of a felony,

VOIR DIRE - STATE

1 did you answer?

2 **A** No. **(Juror No. 127, Don Campbell)**

3 **Q** But I think on your questionnaire you said
4 that you had a friend that was convicted of murder;
5 is that right?

6 **A** Yes.

7 **Q** Who was that friend?

8 **A** Kenneth Bibbs. **(Juror No. 127, Don**
9 **Campbell)**

10 **Q** And where is his conviction from?

11 **A** Virginia.

12 **Q** Virginia? Is he from here?

13 **A** He's from Winona.

14 **Q** Okay. That's how you knew him? And is
15 there anything about that -- the fact that this is a
16 murder case and you have a friend that was convicted
17 of murder -- that would affect you in any way?

18 **A** No.

19 **Q** Okay. And I think while you're up, you've
20 stated that you knew -- and correct me if I'm
21 wrong -- I've got Archie, Jr., Reverend Lewis and
22 Robert Merritt?

23 **A** Uh-huh.

24 **Q** Is there anything about that that would
25 affect you in any way?

26 **A** No, sir.

27 **Q** All right. You just know who they are?

28 **A** I just know them from -- I work in the
29 grocery store. I been for there for 17 years, Super

VOIR DIRE - STATE

1 Value.

2 Q And like several more, it's just a
3 business relationship. You see them and you know
4 who they are; is that right?

5 A Uh-huh.

6 Q All right. Thank you, sir. All right.
7 No. 128, Mr. Moore.

8 A Yes, sir. **(Juror No. 128, Herman Moore)**

9 Q I've got down that you know Connie Moore,
10 Archie, Sr., Archie, Jr., Reverend Lewis, Nelson
11 Forrest, Hazel Jones, Larry Smith and Ray Charles
12 Weems. Is that right?

13 A Yes, sir.

14 Q How do you know them?

15 A Well, I knew Archie Jr. from -- well, from
16 about the middle of the 70s. We used to do drugs
17 and things together. But as far as Forrest, I met
18 him through Jr. And Hazel, I remember her when she
19 used to work at the hospital. My sister-in-law
20 still work there. And Reverend Lewis, I went to
21 school with one of his younger brothers. And the
22 rest of them, I just know because of the family
23 relationship with them.

24 Q All right. It sounds like the closest one
25 would be Archie, Jr.; is that right?

26 A Right.

27 Q And you say you've known him since the
28 '70s, and y'all used to do things together?

29 A Yes.

VOIR DIRE - STATE

1 Q Now, knowing that that is his brother
2 that's on trial here today and y'all are friends, is
3 there anything about that that would affect you?

4 A No, sir.

5 Q It wouldn't enter into your decision at
6 all?

7 A No, sir. **(Juror No. 128, Herman Moore)**

8 Q All right. And I've got down -- let's
9 see. I think you said that you could not judge
10 anyone; is that right?

11 A Correct.

12 Q Okay. Thank you, sir. All right.
13 No. 147, Ms. Ringold. Goldy B. Ringold is
14 your son; is that right?

15 A Yes, sir. **(Juror No. 147, Maxine Ringold)**

16 Q And I know my office prosecuted him?

17 A Yes, sir.

18 Q Is there anything about that that would
19 affect you in this case?

20 A No, sir.

21 Q Okay. And I know there were several --
22 and again, I'm just going to ask if there's anything
23 about these relationships that would affect you. I
24 think you said you knew Archie Jr., Archie, Sr.,
25 Connie Moore, Reverend Lewis, Nelson Forrest and
26 Larry Smith; is that right?

27 A Yes, sir.

28 Q Is that just knowing who they are or is
29 there anything any closer than that?

VOIR DIRE - STATE

1 **A** Just knowing who they are. Archie used to
2 be a supervisor at AI.

3 **Q** And who did?

4 **A** Archie Flowers.

5 **Q** Okay. Was he your supervisor?

6 **A** Uh-huh.

7 **Q** Were y'all friends?

8 **A** We talked. **(Juror No. 147, Maxine**
9 **Ringold)**

10 **Q** All right. And again, you're the only one
11 that can answer this: Is there anything about that
12 that would make it difficult for you on this
13 particular case?

14 **A** No, sir.

15 **Q** Okay. Thank you, ma'am.

16 Okay. 148, Ms. Fleming. Okay. I've got
17 down that you know Connie Moore?

18 **A** Yes, sir. **(Juror No. 148, Latoya Fleming)**

19 **Q** Archie, Jr.?

20 **A** Yes, sir.

21 **Q** Sherita Baskin?

22 **A** Yes, sir.

23 **Q** Stacy Wright?

24 **A** Yes, sir.

25 **Q** Larry Smith?

26 **A** Yes, sir.

27 **Q** And Danny Joe Lott?

28 **A** Yes, sir.

29 **Q** Are you related to any of them?

VOIR DIRE - STATE

1 **A** No, sir.

2 **Q** Okay. Is there any close relationship
3 between you and any of them or do you just know who
4 they are?

5 **A** I know who they are.

6 **Q** Nothing closer than that?

7 **A** Sherita -- I used to babysit her children.

8 **Q** You used to babysit Sherita's children?

9 **A** Yes, sir. **(Juror No. 148, Latoya Fleming)**

10 **Q** And when was that?

11 **A** Maybe like seven or eight years ago.

12 **Q** Are you friends with Sherita?

13 **A** No, sir.

14 **Q** All right. Did you live close to them or
15 what was the connection?

16 **A** Yeah. We was neighbors.

17 **Q** You were neighbors?

18 **A** Yes, sir. We lived in the same apartment
19 complex.

20 **Q** And what apartment complex was that?

21 **A** Oakwood.

22 **Q** Okay. How long did you live next to them?

23 **A** Sir?

24 **Q** How long did you live in the same
25 apartment complex with them?

26 **A** Well, I still live over there. She moved
27 maybe, like, seven, eight years ago. Maybe longer.

28 **Q** All right. Did you know approximately how
29 long y'all lived in the same one?

VOIR DIRE - STATE

1 **A** I'd say maybe like four to five years.

2 **Q** Four to five years?

3 **A** (Nodding head). **(Juror No. 148, Latoya**
4 **Fleming)**

5 **Q** Did y'all ever visit each other?

6 **A** No, sir.

7 **Q** You just babysat her children?

8 **A** Yes, sir.

9 **Q** Is there anything about that that would
10 enter into your mind on this case?

11 **A** No, sir.

12 **Q** Even though she's his sister, that
13 wouldn't affect you?

14 **A** Sir? **(Juror No. 148, Latoya Fleming)**

15 **Q** Even though she is the defendant's sister,
16 that wouldn't affect you?

17 **A** No, sir.

18 **Q** All right. Thank you, ma'am.

19 **A** You're welcome.

20 **BY MR. EVANS:** Your Honor, may I have the
21 Court's indulgence for just a minute?

22 (PAUSE)

23 **BY MR. EVANS:** I tender the panel to the
24 Defense.

25 **BY THE COURT:** Mr. Carter, or Ms. Steiner,
26 I don't know which one.

27 **BY MR. CARTER:** Mr. Flowers is not guilty.
28 Mr. Flowers is innocent --

29 **BY MR. EVANS:** Your Honor, that is

VOIR DIRE - DEFENSE

1 improper. I object.

2 **BY MR. CARTER:** I haven't even properly
3 finished the question.

4 **BY THE COURT:** Let him finish his
5 question. I think I know what he was fixing
6 to say.

7 **BY MR. CARTER:** Just because we are here
8 and just because there's an indictment,
9 doesn't mean Mr. Flowers is guilty.

10 **BY MR. EVANS:** That we don't object to --

11 **BY MR. CARTER:** The Court has said that --

12 **BY MR. EVANS:** -- but I do object to the
13 comment he made to start with, Your Honor.

14 **BY THE COURT:** I'll sustain. The
15 objection is to the original comment, and now
16 I'll allow you to proceed.

17 **BY MR. CARTER:**

18 **Q** I want to make sure that no one thinks
19 that just because he's indicted, just because he's
20 being tried over and over that that means anything.

21 Now, I'm a defense attorney, and I defend
22 people, and I defend victims. And I don't apologize
23 for it. And anybody don't like it, I don't care.
24 My job is to represent Mr. Flowers, make sure his
25 rights are accorded, make sure he's not railroaded,
26 make sure he's not framed, to make sure that the
27 constitution is adhered to. That's what I do.

28 Mr. Evans prosecutes. But Mr. Evans' job
29 is not to just gain a conviction. Mr. Evans' job is

VOIR DIRE - DEFENSE

1 to seek justice. Can you understand that?

2 Now, I've heard a lot of things, and I
3 must tell you that I don't know where to begin after
4 hearing all of it. But let me just tell you
5 something. I know many of you are uncomfortable
6 being here. Now, it might surprise you that we are
7 uncomfortable, too. You may be surprised that we
8 don't want to be here.

9 Now, Mr. Evans and I had a conversation
10 this morning --

11 **BY MR. EVANS:** Your Honor, I object. This
12 is completely improper.

13 **BY THE COURT:** I agree. You need to start
14 asking questions.

15 **BY MR. CARTER:** Object to what?

16 **BY THE COURT:** You're making statements,
17 Mr. Carter. You're not asking questions.
18 The purpose of voir dire is to ask questions.

19 **BY MR. CARTER:** Well, I'm going to ask
20 some questions.

21 **BY THE COURT:** Okay. Well, proceed then.

22 **BY MR. CARTER:**

23 **Q** Now, there were some people who said they
24 had a problem with listening. But we've been here
25 going on the third day now, and we've been
26 listening. Now, those people who said they couldn't
27 listen -- and I want to make sure I'm right on this.

28 103. Could you stand, 103? Now you said
29 to Mr. Evans' question about whether or not you

VOIR DIRE - DEFENSE

1 could listen -- now you have been listening to us --
2 and I hate to single you out. But you have been
3 listening to the questions that the lawyers and
4 judge have been asking you the last few days. Is
5 that correct?

6 **A** Right. (**Juror No. 103, Mary Jones**)

7 **Q** And now, you don't have anything against
8 the -- the Tardys, do you?

9 **A** No, I don't.

10 **Q** You don't have anything against the
11 Stewarts, do you?

12 **A** No.

13 **Q** And you don't have anything against the
14 Goldens?

15 **A** No.

16 **Q** And you don't have anything against the
17 Rigbys?

18 **A** No.

19 **Q** Now, I understand you might be
20 uncomfortable sitting in judgment up here. But if
21 you were selected as a juror, would you be fair to
22 Mr. Flowers and to the Tardys and to the Rigbys and
23 to the Stewarts and to the Goldens? Would you be
24 fair to both sides?

25 **A** I guess I would. I'm not the kind of
26 person that have -- want to do it.

27 **Q** I'm sorry, ma'am?

28 **A** It's nothing wrong with it, but I didn't
29 want to do it.

VOIR DIRE - DEFENSE

1 Q Right. So you're saying you do not want
2 to sit in judgment of people?

3 A No.

4 Q And I understand that.

5 A Yeah.

6 Q But -- you have any children?

7 A No, I don't.

8 Q You work; is that correct?

9 A Right. **(Juror No. 103, Mary Jones)**

10 Q And we -- is it fair to say that, despite
11 being uncomfortable about doing various things that
12 we have to, nevertheless, react -- our lives are
13 filled with making decisions on a daily basis; is
14 that correct?

15 A Correct.

16 Q And although we might be uncomfortable
17 making some of them, we still have to make them;
18 would you agree with that? In other words, you're
19 telling me you're uncomfortable sitting on the jury,
20 but you're not telling me and you're not telling us
21 that you could not sit on this jury and be fair to
22 both sides?

23 A No, I ain't say I couldn't. I said I
24 didn't want to.

25 Q Didn't want to. Yes, ma'am. Thank you.

26 106. Ma'am, I'm sure we got a similar
27 situation. You're saying that you feel
28 uncomfortable sitting --

29 A It's not that I feel uncomfortable. I

VOIR DIRE - DEFENSE

1 just have the judgment in my head, and it wouldn't
2 be fair to both sides if I sat on the jury. (**Juror**
3 **No. 106, Jennifer Swindoll**)

4 **Q** Oh, okay. You've already formed an
5 opinion as to guilt or innocence?

6 **A** Correct.

7 **Q** And as a result of that, you're saying
8 that what you hear from the witness stand, the
9 evidence from the witnesses, which is what you're
10 supposed to make your decision based on, would be
11 trumped by what you already hear?

12 **A** Correct.

13 **Q** You couldn't put aside what you already --

14 **A** I couldn't put it aside. (**Juror No. 106,**
15 **Jennifer Swindoll**)

16 **Q** Okay. Thank you.

17 136. Sir, I first hear you saying that
18 you would be uncomfortable. Now, you don't have
19 anything against the Goldens?

20 **A** No, sir. (**Juror No. 136, Jimmy Allen**)

21 **Q** Anything against the Tardys?

22 **A** No, sir.

23 **Q** Anything against the Stewarts?

24 **A** No, sir.

25 **Q** Anything against the Rigbys?

26 **A** No, sir.

27 **Q** So although you don't really want to sit
28 in judgment of this case, if you were selected --
29 you don't have anything against Mr. Flowers, either,

VOIR DIRE - DEFENSE

1 do you?

2 **A** No, sir.

3 **Q** So if you were selected, you could
4 actually sit on the jury and be fair to both sides.

5 **A** I don't want to be on it.

6 **Q** You've already formed an opinion. And are
7 you telling me that no matter how many witnesses
8 come here -- now, you do know that what you heard
9 outside the court is not evidence; is that correct?

10 **A** Yeah. **(Juror No. 136, Jimmy Allen)**

11 **Q** So you're telling us that if you got
12 picked for this jury, you would not listen to and
13 give credence and meaning and value and respect to
14 what you heard from the witness stand, and you would
15 allow what you heard outside the court to --

16 **A** I might listen to some of it, but I really
17 don't want to form an opinion.

18 **Q** That's fine. There's nothing wrong with
19 you forming your own opinion. My question, though,
20 was despite that opinion that you have, could you
21 listen to witnesses from the witness stand who
22 actually know something about what happened, who
23 actually know the facts of the case and would you
24 allow those facts -- the facts of the case, not the
25 rumors outside of the court -- determine what your
26 decision would be?

27 **A** No. No.

28 **Q** So you're telling me that you would allow
29 what you heard outside of court --

VOIR DIRE - DEFENSE

1 **A** No, no, no.

2 **Q** Okay. I'm probably confusing you. I'm
3 going to slow down.

4 You don't have anything against either
5 side?

6 **A** I don't have anything against either side.

7 **Q** And you heard some things. You have an
8 opinion.

9 **A** Yeah. **(Juror No. 136, Jimmy Allen)**

10 **Q** With that in mind, if you got picked as a
11 juror, could you listen to the evidence from
12 witnesses from both sides and make a decision based
13 on the evidence you heard from the witness stand?

14 **A** I really don't want to judge nobody, to
15 tell you truth.

16 **Q** I know you're telling me that you don't
17 want to. And believe me, lots of people don't want
18 to. Maybe everybody. It wouldn't surprise me. But
19 irrespective of your feelings, if you were selected
20 as a juror, could you be fair to both sides?

21 **A** Yeah.

22 **Q** Thank you.

23 **A** I could.

24 **Q** Thank you.

25 No. 33. Sir, I take it you feel
26 uncomfortable. You're not that crazy about sitting
27 in judgment of other people. You don't like doing
28 it? **(Juror No. 33, Jessie Crawford)**

29 **A** No.

VOIR DIRE - DEFENSE

1 **Q** Okay. Lots of people don't like to do it.
2 You don't have anything against the Goldens, against
3 the Rigbys, against the Stewarts, against the
4 Tardys, do you? Or do you?

5 **A** No.

6 **Q** Okay. And you don't have anything against
7 Mr. Flowers; is that fair to say? Or do you?

8 **A** I don't have anything against him. I just
9 have -- my son have a kid by his sister.

10 **Q** Right. Now, if you got picked as a juror,
11 being that you don't have anything against the
12 victims -- the Tardys, the Goldens, the Rigbys, the
13 Stewarts -- and you don't have anything against
14 Mr. Flowers, could you sit and listen to the
15 testimony from the witness stand and be fair to both
16 sides?

17 **A** No, I don't think so. Because she's my
18 granddaughter, so I don't want to get family into
19 it, too.

20 **Q** So you're saying you would let the fact
21 that -- you say your daughter got a child by Mr.
22 Flowers -- tell me that again.

23 **A** Son.

24 **Q** Your son has a daughter by Mr. Flowers'
25 sister?

26 **A** Right.

27 **Q** And that aspect would override anything
28 you heard from the witness stand?

29 **A** Probably. **(Juror No. 33, Jessie Crawford)**

VOIR DIRE - DEFENSE

1 **Q** Probably. Can you be more definite and
2 say it would or it wouldn't?

3 **A** It would.

4 **Q** It would. Okay. Thank you.

5 No. 34. Sir, you said that -- I believe
6 that you have some doubts about whether you could --
7 well, you don't like sitting in judgment of other
8 people. Is that what you're saying?

9 **A** Right. **(Juror No. 34, John Eskridge)**

10 **Q** Correct me if I'm wrong. Now, you don't
11 have anything against the Goldens, do you?

12 **A** Nope.

13 **Q** You don't have anything against -- any ill
14 will towards the Tardys?

15 **A** Nope.

16 **Q** Or their children or relatives as far as
17 you know?

18 **A** Nope.

19 **Q** You don't have anything against the
20 Stewarts or their children or relatives as far as
21 you know?

22 **A** Nope.

23 **Q** And you don't have anything against the
24 Rigbys?

25 **A** Nope.

26 **Q** Or their children or relatives as far as
27 you know?

28 **A** Nope.

29 **Q** And I take it you don't have anything

VOIR DIRE - DEFENSE

1 against Mr. Flowers?

2 A Nope.

3 Q Now, and would you agree with me that life
4 causes us to do -- we have to do some things we're
5 uncomfortable with as we live our lives. Is that
6 fair to say?

7 A Uh-huh.

8 Q You ever been uncomfortable doing
9 anything?

10 A Yeah, it's fair to say. But it's sort
11 of -- you know people on that side and people on
12 that side. And it's hard to make a decision on it.

13 Q Right.

14 A On somebody. So if it's somebody I didn't
15 know, I could be -- more about it, you know. **(Juror**
16 **No. 34, John Eskridge)**

17 Q Okay. I understand that, sir. However,
18 despite your feeling, if you got picked on the jury
19 and if you were told that you're supposed to listen
20 to the testimony that comes from the witness
21 stands --

22 A Uh-huh.

23 Q -- right up there --

24 A Yes.

25 Q -- isn't it a fact that you could listen
26 to the testimony from the witnesses from both sides
27 and make a decision as to guilt or innocence based
28 totally on the testimony that comes from the witness
29 stand?

VOIR DIRE - DEFENSE

1 A Yeah, I could.

2 Q Thank you. No further questions.

3 No. 6. Now, sir, I believe you said you
4 were a friend of Sherita's and what -- as a result
5 of that, I think you probably said you couldn't be
6 fair.

7 A Right.

8 Q Now, you're -- you don't have anything
9 against the Tardys, against the Rigbys, against the
10 Stewarts?

11 A No, sir. **(Juror No. 6, Glenn Trotter)**

12 Q Against the Goldens?

13 A No, sir.

14 Q And you're not friends with anybody on
15 that side or are you? Are you friends with any
16 Rigbys, the Goldens or the Stewarts?

17 A Unh-unh. No, sir.

18 Q Or the Tardys?

19 A No, sir.

20 Q Now, despite the fact that -- you said you
21 worked with Sherita how long?

22 A Well, I worked -- well, I didn't work with
23 her. I worked with the other one. Priscilla.

24 Q You worked with Priscilla? I'm sorry.

25 A Right. Priscilla.

26 Q And did y'all ever work on a project
27 together?

28 A No, sir.

29 Q Now, if Sherita (sic) -- if you did work

VOIR DIRE - DEFENSE

1 on a project together and Sherita told you to do
2 something on your job that you knew was wrong, would
3 you do it different because she told you?

4 **A** No, sir, I wouldn't.

5 **Q** You would do what you know is correct.

6 **A** Right.

7 **Q** And the right way to do it?

8 **A** Right.

9 **Q** So you might know her and -- and that
10 cools in some kind of fashion. Isn't it a fact that
11 you still would use your own personal judgment in
12 making decisions?

13 **A** Yes, I would.

14 **Q** Thank you. So with that in mind -- with
15 that in mind, knowing that it's your personal
16 decision what your vote is, could you, in fact, be
17 fair to both sides, the prosecution and the defense?

18 **A** No, sir, I couldn't.

19 **Q** And why?

20 **A** Because it's really hard for me to judge
21 someone. **(Juror No. 6, Glenn Trotter)**

22 **Q** Right.

23 **A** You know, to make a decision as to which
24 one would be right.

25 **Q** Right. I understand that. It's hard for
26 lots of people.

27 **A** Right.

28 **Q** And it puts pressure on lots of people. I
29 can see that.

VOIR DIRE - DEFENSE

1 A Right.

2 Q But what I'm asking you, though, despite
3 the pressure --

4 A Uh-huh.

5 Q -- knowing that the decision would be your
6 decision and not anybody else's decision -- you
7 would be concerned about following the law?

8 A Right.

9 Q And following the instruction of the
10 Court?

11 A Right.

12 Q Is that correct?

13 A That's correct.

14 Q And if you were told that you had to make
15 a decision as to the guilt or innocence based on the
16 evidence that came from the witness stand and
17 nothing else, could you do that?

18 A I could.

19 Q Thank you.

20 No. 41. I apologize, ma'am. I can't
21 remember exactly what you said. But I believe you
22 said you're uncomfortable sitting in judgment of
23 other people. Is that what you said?

24 A Yes, sir. **(Juror No. 41, Margaret Givens)**

25 Q And again, that is a feeling that most of
26 us share. And you don't have anything against the
27 Tardys, do you?

28 A Unh-unh.

29 Q Or the Goldens?

VOIR DIRE - DEFENSE

1 **A** No, sir.

2 **Q** Or the Rigbys?

3 **A** No, sir.

4 **Q** Or the Stewarts?

5 **A** No.

6 **Q** And you don't have anything against
7 Mr. Flowers, do you?

8 **A** No.

9 **Q** With that being the case, if you got
10 picked as a juror, could you listen to the evidence
11 that comes from the witness stand, put aside
12 anything that you didn't hear from the witness stand
13 and be fair to both sides, Mr. Flowers and the State
14 of Mississippi or the victim?

15 **A** Yes, sir. Yes.

16 **Q** Thank you.

17 No. 76. Sir, the same thing. Let me just
18 say to you like I'm saying to everybody else. I can
19 see that sitting in judgment of other people is a
20 hard thing, especially in a criminal case. I don't
21 know many people who like doing it, but it takes
22 that in order for the proper system to work.

23 And you said you cannot judge anyone, or
24 you're uncomfortable judging anyone. And you do
25 agree with me that we have to make decisions as we
26 go through our life, and some are uncomfortable. So
27 what I'm asking you is, despite the fact that you
28 don't like doing this and you're uncomfortable doing
29 it, if you got picked as a juror in this case, could

VOIR DIRE - DEFENSE

1 you be fair to both sides or is there something
2 about one side that just won't allow you to do that?

3 A I wouldn't be fair to either side. (**Juror**
4 **No. 76, Richard King**)

5 Q Now, that's interesting.

6 A Especially Mr. Flowers.

7 Q Especially Mr. Flowers?

8 A Yes.

9 Q Thank you. So you're saying that you --
10 well, that's enough, actually. Thank you.

11 127. Sir, I believe you said you worked
12 at a certain store for how many years?

13 A 17 years. (**Juror No. 127, Don Campbell**)

14 Q 17 years. What do you do there?

15 A I'm the market manager.

16 Q Market manager. And you have to make
17 decisions; is that right? And are all of them
18 comfortable or happy decisions?

19 A Oh, no.

20 Q Some of them are difficult. Some of them
21 tear heart and soul, I would imagine. At least, it
22 hurts the feelings, I was told. Nevertheless, you
23 can do it. You can perform that job well enough to
24 stay there all those years. Is that correct?

25 A Yes.

26 Q Now, despite the fact -- you don't have
27 anything against the Tardys, the Goldens, the
28 Stewarts or the Rigbys?

29 A No. No, sir.

VOIR DIRE - DEFENSE

1 Q I mean, I can see -- I'll admit that
2 they've suffered amazing losses. I mean, that hurts
3 the heart. Makes you cry. I can see that. And you
4 don't have anything against Mr. Flowers, do you?

5 A No, sir. **(Juror No. 127, Don Campbell)**

6 Q Now, Mr. Evans told you in order for our
7 system to work, we have to get jurors and we have to
8 ask these questions. I don't even like asking these
9 questions, to know the truth about it. But with
10 that being the case and knowing that if you got
11 picked as a juror, all you would -- are being asked
12 to do is to sit and listen to the evidence as it
13 comes to the witness stand and be fair to both
14 sides. And you don't have any reason to not be fair
15 to either side, do you?

16 A No, sir.

17 Q With that being the case, could you sit as
18 a juror and listen to the evidence and make a
19 decision based on the evidence and the evidence
20 alone?

21 A Yes, I could.

22 Q Thank you. What number are you again,
23 sir?

24 A 127.

25 Q 128. How are you doing, sir. I believe
26 you said you were a friend of Archie's and some
27 other things. And you are saying that you are
28 uncomfortable sitting in judgment of other people.
29 Is that correct?

VOIR DIRE - DEFENSE

1 **A** Correct. **(Juror No. 128, Herman Moore)**

2 **Q** And what do you do, sir?

3 **A** Sir?

4 **Q** What do you do for a living?

5 **A** I work at Luvata in Grenada, Mississippi.

6 **Q** Okay. How long have you been there?

7 **A** 25 years.

8 **Q** That's a long time. Congratulations. As
9 a result of that job, haven't you had a certain
10 amount of stress, a certain amount of discomfort?

11 **A** Yes, sir.

12 **Q** Now, I know none of us like stress; none
13 of us like discomfort. We would choose the opposite
14 every time if we could, but that's not how life
15 works.

16 Now, you have anything against the Rigbys,
17 the Stewarts, the Goldens or the Tardys?

18 **A** No, sir.

19 **Q** And there's no reason you could want to
20 harm or hurt the feelings of their loved ones; is
21 that fair to say?

22 **A** Yes, sir. That's fair to say.

23 **Q** And is it also fair to say that you don't
24 have anything against Mr. Flowers?

25 **A** No. No, sir.

26 **Q** And you don't have any reason to want to
27 harm Mr. Flowers or their loved ones?

28 **A** No, sir.

29 **Q** With that being the case and despite the

VOIR DIRE - DEFENSE

1 fact that you are uncomfortable sitting in judgment
2 of other people, if you got selected as a juror,
3 couldn't you, based on your years' experience on the
4 job and maturity as an individual, sit and listen to
5 the evidence as it came from the witness stand?

6 **A** Sit and listen, yes, sir. (**Juror No. 128,**
7 **Herman Moore**)

8 **Q** And make a decision as to Mr. Flowers'
9 guilt or innocence or not guilty based totally on
10 the evidence as it comes from the witness stand?

11 **A** Yes, sir.

12 **Q** Thank you.

13 No. 65. Morning, ma'am. You said you feel
14 uncomfortable judging anyone?

15 **A** Yes. (**Juror No. 65, Juanita Woods**)

16 **Q** And again, I'll say that is common; it is
17 understood. What do you do for a living, ma'am?

18 **A** I work in dietary at the hospital.

19 **Q** Dietary at the hospital? How long you
20 been doing that?

21 **A** About ten years.

22 **Q** And you have to make decisions on a daily
23 basis, don't you?

24 **A** Uh-huh.

25 **Q** Do you have anything against the Goldens,
26 the Stewarts?

27 **A** No.

28 **Q** The Tardys or the Rigbys?

29 **A** No.

VOIR DIRE - DEFENSE

1 Q Do you have anything against Mr. Flowers?

2 A No.

3 Q And you don't have any reason to want to
4 harm the Flowers or the victims of this -- the
5 Stewarts, Rigbys?

6 A No.

7 Q Tardys or Goldens?

8 A No.

9 Q And all we ever ask is that people be
10 honest, which a lot of you certainly are, if not
11 all. And with that in mind, if you got picked as a
12 juror, could you listen to the testimony and make a
13 decision? And when I say testimony, I mean
14 witnesses coming in here who know something about
15 the case, not rumors which you hear on the street
16 but actual evidence -- could you sit and listen to
17 the evidence that comes from the witness stand and
18 make a decision as to Mr. Flowers' guilt or
19 innocence?

20 A I don't think so. **(Juror No. 65, Juanita**
21 **Woods)**

22 Q And why not?

23 A Because I'm still not comfortable with
24 that whole idea of having to -- someone just life I
25 got to have something to do with.

26 Q Right. Now, that calls me to say
27 something. So you're saying -- correct me if I'm
28 wrong. You know Mr. Flowers -- you know he's
29 charged with capital murder. Is that correct?

VOIR DIRE - DEFENSE

1 **A** (Nodding head).

2 **Q** And you know the possible punishment. Is
3 that correct?

4 **A** (Nodding head).

5 **Q** But do you also know -- and that is a
6 reason I tried to say this a few minutes ago -- the
7 law is that Mr. Flowers is not guilty?

8 **BY MR. EVANS:** Your Honor, I object to
9 that.

10 **BY MR. CARTER:** At this point.

11 **BY MR. EVANS:** The Court has already ruled
12 that that's improper, and I hate to have to
13 keep objecting to it. He's making improper
14 comments on the law.

15 **BY MR. CARTER:** Let me correct it, Your
16 Honor.

17 **BY THE COURT:** You may correct it.

18 **BY MR. CARTER:**

19 **Q** As Mr. Flowers stands now, without any
20 evidence being put on the witness stand, you do
21 agree that he's considered not guilty?

22 **A** Uh-huh. I understand. (**Juror No. 65,**
23 **Juanita Woods**)

24 **Q** Right? And do you understand that it
25 doesn't matter any rumors that you might have heard
26 about the case?

27 **A** Uh-huh.

28 **Q** And do you also understand that it does
29 not matter how -- what has happened before with

VOIR DIRE - DEFENSE

1 respect to trials. That what matters is this trial.

2 A Right.

3 Q So any notion or any facts that you might
4 think you know or any conclusion that you think you
5 might have arrived at as to guilt or innocence, can
6 you put that aside?

7 A No.

8 Q Okay. You cannot put that aside. And if
9 you got picked as a juror, you would consider what
10 you've heard outside the court and you would
11 possibly let what you heard outside of court preempt
12 or dominate what you hear inside court. Is that
13 correct?

14 A No. It's just how I feel with myself.
15 It's not about nothing that I heard or anything.
16 Nothing.

17 Q I'm trying to be clear. I'm really not
18 trying to fight with you. I just want to make sure
19 I understand. Now, you're saying that you're not
20 only uncomfortable sitting in judgment of
21 Mr. Flowers, what else are you saying?

22 A I'm saying that if I was chosen, I
23 couldn't do the job that they would be called for,
24 because I'm not -- I know that you're under oath and
25 everything, and you would have to go sit and listen
26 to everything. But it wouldn't be fair to the rest
27 of them, because I'm not comfortable with it and I
28 don't think I would -- I couldn't do it.

29 Q And when you say wouldn't be fair to the

VOIR DIRE - DEFENSE

1 rest of them, you're talking about your fellow
2 jurors?

3 A This ones that are in there, whatever
4 decision that they have, I couldn't agree with them.

5 Q I get the impression you're saying you
6 wouldn't deliberate with the rest of them?

7 A I couldn't. **(Juror No. 65, Juanita Woods)**

8 Q Okay. Thank you. What is your number,
9 again? Ma'am, what's your number again?

10 A 65.

11 Q No. 93. No. 93, I believe you said more
12 than once that you feel uncomfortable sitting in
13 judgment of another person?

14 A Yes, sir. **(Juror No. 93, Marjorie Pearson)**

15 Q And it's based on -- what you base it on?
16 Is it based on anything in particular? Is it
17 religion or --

18 A My faith as a Christian.

19 Q Faith as a Christian? So if you got
20 picked or selected as a juror, you would -- are you
21 saying you couldn't -- you couldn't deliberate; you
22 couldn't judge?

23 A Yes, sir.

24 Q Thank you. 118. No. 118? Okay. Sir,
25 what's your name, again, sir?

26 A Antonio Golden. **(Juror No. 118, Antonio**
27 **Golden)**

28 Q How old are you?

29 A 23.

VOIR DIRE - DEFENSE

1 Q Now -- and you're saying -- you said
2 earlier that you're uncomfortable, though, sitting
3 in judgment of other people?

4 A Right.

5 Q And what do you base -- is it based on
6 religion or what? Or just some personal thing you
7 have?

8 A Personal.

9 Q Are you in school?

10 A No.

11 Q Do you have a job?

12 A Yeah.

13 Q All right. You don't have anything
14 against the Tardys or the Goldenes or the Rigbys or
15 the Stewarts, do you?

16 A No.

17 Q You don't have anything against
18 Mr. Flowers, do you?

19 A No.

20 Q You don't have any reason to choose either
21 side over the other? **(Juror No. 118, Antonio**
22 **Golden)**

23 A No.

24 Q Now, despite the fact that you're
25 uncomfortable sitting in judgment of other people,
26 especially on a case like this with so much hanging
27 in the balance, if you got picked, could you be fair
28 to both sides?

29 A Yeah.

VOIR DIRE - DEFENSE

1 **Q** And you don't have any reason to pick one
2 side over the other at this point; right?

3 **A** No.

4 **Q** And therefore, if you got picked, you
5 would listen to the evidence that came from the
6 witness stand; is that correct?

7 **A** Correct.

8 **Q** And you would make whatever decision you
9 make based on the evidence. Is that correct?

10 **A** I already got an opinion made.

11 **Q** Okay. You already have an opinion.
12 That's fine. So despite that opinion you have, it's
13 not -- the opinion that you have is not based on
14 testimony that came from the witness stand; is that
15 correct?

16 **A** Correct.

17 **Q** It's based on something you heard outside
18 of court?

19 **A** No.

20 **Q** Based on something you heard in court?

21 **A** No.

22 **Q** Okay. So it's based on something you
23 heard outside of the courtroom?

24 **A** I just already have an opinion.

25 **Q** Right. I understand. You have an
26 opinion. But it's not -- but your opinion that you
27 have is not based on seeing and hearing any
28 witnesses from the witness stand. That's correct?

29 **A** Right.

VOIR DIRE - DEFENSE

1 **Q** So if you got picked as a juror and got to
2 see and hear witnesses from the witness stand tell
3 you what did happen, or did not happen, could you
4 listen to that and could you give their testimony
5 value and meaning and consideration and make a
6 decision based on the testimony you hear from the
7 witness stand?

8 **A** Yeah.

9 **Q** Thank you.

10 No. 45. Ma'am, like the others, I
11 understand that you're uncomfortable sitting in
12 judgment of other people. And again, a lot of us
13 are that way, if not all. You don't have anything
14 against the Goldens, the Rigbys, the Tardys or the
15 Stewarts, do you?

16 **A** No, sir. **(Juror No. 45, Edith Burnside)**

17 **Q** Or any of their relatives?

18 **A** No, sir.

19 **Q** And you don't have anything against
20 Mr. Flowers, do you?

21 **A** No, sir.

22 **Q** And I believe you said you know some of
23 his family members?

24 **A** Yes, sir.

25 **Q** However, if you got picked as a juror for
26 this case -- and only you know the answer to this --
27 and you were told you should make your decisions --
28 your verdict should be based on the evidence that
29 comes from the witness stand and not on anything you

VOIR DIRE - DEFENSE

1 heard outside the court or not based on any
2 relationships you had with anybody else, could you,
3 in fact, listen to the evidence as it comes from the
4 witness stand and make your decision based on the
5 evidence as it comes from the witness stand only?

6 **A** Yes, sir. (**Juror No. 45, Edith Burnside**)

7 **Q** Thank you.

8 No. 14. Now, do you have anything against
9 the Tardy family or her daughter or other children?

10 **A** No, sir. (**Juror No. 14, Carolyn Wright**)

11 **Q** And you don't have anything against the
12 Rigbys, the Goldens, or the Stewarts, do you?

13 **A** No, sir.

14 **Q** And despite the fact that you had an
15 account at Tardy at some point that I assume that
16 got worked out some kind of way, that -- that didn't
17 cause you to have any -- any dislike or any ill will
18 toward them; is that correct?

19 **A** No, sir.

20 **Q** If you got -- do you have any anything
21 against Mr. Flowers?

22 **A** No, sir.

23 **Q** Or his family?

24 **A** No, sir.

25 **Q** So if you got picked as a juror to serve
26 in this case, you would -- could you listen to the
27 testimony and evidence that comes from the witness
28 stand, and the witness stand only, and make a
29 decision as to Mr. Flowers' guilt or innocence?

VOIR DIRE - DEFENSE

1 **A** Yes, sir. **(Juror No. 14, Carolyn Wright)**

2 **Q** Thank you. No. 75. Let me know if I'm
3 wrong, but did you say you had an account with the
4 Tardys at some point?

5 **A** Yes, I did. **(Juror No. 75, Linda Martin)**

6 **Q** And did you likewise say that they -- you
7 didn't say you had been sued, did you?

8 **A** No, I didn't.

9 **Q** Thank you. I'm sorry.
10 No. 45. You didn't say you had been sued
11 by Tardy, did you?

12 **A** I did. **(Juror No. 45, Edith Burnside)**

13 **Q** Okay. Could you stand? Even though you
14 got sued, did that cause you to have any ill will or
15 malice toward Tardy Furniture or the Tardy children
16 or family members?

17 **A** No. I worked for them, so no. No.

18 **Q** I'm sorry. You worked for them at some
19 point, and you don't have anything against them or
20 the Stewart or the Rigbys or anybody else?

21 **A** No, sir.

22 **Q** You could be fair to both sides?

23 **A** Yes, sir.

24 **Q** Thank you.

25 And No. 62. Ma'am, you had an account
26 with the Tardys -- the Tardy Furniture at some
27 point; is that correct?

28 **A** Yes. Well, it was more like on my
29 husband -- he was the one that had got some

VOIR DIRE - DEFENSE

1 furniture from them, so it was in his account.

2 Well, in his name. (**Juror No. 62, Diane Copper**)

3 Q Your husband, you say?

4 A Yeah.

5 Q Okay. Now, you -- you or your husband
6 didn't get sued, did you?

7 A No, we didn't.

8 Q Thank you.

9 No. 62. Ma'am, you said -- could you
10 stand again? You said that you -- now, you lived
11 near the Flowers at some point. Well, I don't know
12 if I want to say near, but you lived --

13 A Not very far from -- not too far from
14 where they lived. (**Juror No. 62, Diane Copper**)

15 Q All right. They didn't live next door to
16 you, did they?

17 A No.

18 Q And your husband used to work at Tardy's?

19 A Yes.

20 Q Okay. You could be fair to both sides, is
21 that correct, despite that?

22 A Yes, sir.

23 Q Thank you.

24 No. 95. Ma'am, you testified that you had
25 a loved one in the jail that Mr. Flowers was in at
26 some point, and you spoke to him on a few occasions.

27 A Yes, sir. (**Juror No. 95, Leslie Crawford**)

28 Q Now, did you say that the fact that you --
29 you spoke to him a couple of times and got

VOIR DIRE - DEFENSE

1 acquainted with him generally that -- what did you
2 say in terms of whether you could be fair to both
3 sides? Did you say you could or couldn't?

4 **A** I didn't say that would affect my opinion
5 or that would make me not be fair. Me knowing his
6 sister would. Me knowing his sister.

7 **Q** Knowing his sister?

8 **A** (Nodding head).

9 **Q** And now you think you knowing his sister,
10 you say, you think will stop you from being fair?

11 **A** (Nodding head).

12 **Q** What are you saying? You're saying that
13 you would -- you couldn't be fair to the State of
14 Mississippi and to the -- well, strike that. You
15 don't have anything against the Tardys, against the
16 Stewarts, against the Rigbys or the Goldens, do you?

17 **A** No, sir. **(Juror No. 95, Leslie Crawford)**

18 **Q** And you know Mr. Flowers' sister. And are
19 you telling us that if you got picked on the jury,
20 having nothing against the victims or their
21 relatives, that the friendship you have with Sherita
22 would cause you to not be fair to the victims?

23 **A** And his family. I wouldn't feel right
24 sending him to prison.

25 **Q** Now, we don't know -- I understand what
26 you're saying --

27 **A** I mean, I'm just telling you --

28 **Q** We don't know what the verdict is going to
29 be, and I don't want you to assume that it's going

VOIR DIRE - DEFENSE

1 to be guilty. So don't make an assumption about
2 what the verdict is, if you can.

3 What I want to know, though, is can you,
4 despite being friends with Sherita, sit as a juror
5 and listen to the testimony that comes from the
6 witness stand and with an open mind and with
7 fairness and make your decision based on nothing but
8 the testimony that comes from the witness stand?

9 A Honestly, no.

10 Q Don't think you can. Thank you.

11 Ms. Hamilton, Juror No. 1. Do you know
12 Ms. Tardy?

13 A No, sir. **(Juror No. 1, Sandra Hamilton)**

14 Q Never met her?

15 A No, sir.

16 Q Do you know Roxanne Ballard?

17 A No, sir.

18 Q Never met her. Do you know any of the
19 Stewarts?

20 A No, sir.

21 Q Never met any of them? Do you know any of
22 the Goldens?

23 A No, sir.

24 Q Do you know any of the Flowers?

25 A No, sir.

26 Q Have you lived here your whole life or --

27 A No, sir. I've lived in Montgomery County
28 since November of '05.

29 Q And where did you live before then?

VOIR DIRE - DEFENSE

1 **A** Grenada.

2 **Q** And without telling me what you heard, do
3 you recall about when you heard about this case?

4 **A** Probably about the time it hit the news
5 that it was going to be tried again, so just in
6 recent weeks.

7 **BY THE COURT:** Mr. Carter, I've already
8 advised that we're going to ask each
9 individual juror about this case
10 individually, so I will --

11 **BY MR. CARTER:** I'll pass on, Your Honor.
12 Nothing else about that. Thank you.

13 **BY MR. CARTER:**

14 **Q** Ms. O'Quinn.

15 **A** Yes, sir. **(Juror No. 3, Susan O'Quinn)**

16 **Q** Do you know -- did you know Ms. Tardy?

17 **A** No, sir.

18 **Q** Roxanne Ballard?

19 **A** No, sir.

20 **Q** Frank -- I think her husband?

21 **A** No, sir.

22 **Q** And you didn't know any of the Stewarts?

23 **A** No, sir.

24 **Q** None of the Goldens?

25 **A** No, sir.

26 **Q** Do you know the Flowers?

27 **A** No, sir.

28 **Q** Have you been living in Montgomery County
29 for a while?

VOIR DIRE - DEFENSE

1 **A** I've lived here four years.

2 **Q** Four years?

3 **A** Four years. Four years.

4 **Q** Where did you live before then?

5 **A** Ripley, Mississippi.

6 **Q** Did you hear about this case before you
7 actually moved here?

8 **BY THE COURT:** Mr. Carter, I've already
9 told you that I was going to get into that
10 individually with each juror about knowledge
11 of the case. Now, I don't know how I can
12 make that any clearer.

13 **BY MR. CARTER:** Well, Your Honor, does
14 knowledge mean facts or just facts she heard?
15 All I was asking was she heard it before she
16 got to town.

17 **BY THE COURT:** We will get into that -- we
18 will question --

19 **BY MR. CARTER:** Well, I apologize, Your
20 Honor. I didn't consider it to be knowledge.

21 **BY THE COURT:** Apology accepted,
22 Mr. Carter. I understand you were confused
23 about it.

24 If I sustain an objection, I'm not
25 holding that against the lawyer, ladies and
26 gentlemen, so please make sure -- I mean, you
27 know, I was just -- if Mr. Carter didn't
28 understand what I had said earlier and he
29 does now, so you may move on.

VOIR DIRE - DEFENSE

1 **BY MR. CARTER:**

2 **Q** Have a seat, ma'am. No further questions.

3 Ms. Griffin, you said you -- correct me if
4 I'm wrong -- you know the Rigbys. I believe you
5 know BoBo. You went to church with Ms. Bertha, I
6 believe you said?

7 **A** (Nodding head). **(Juror No. 5, Carol**
8 **Griffin)**

9 **Q** In fact, you lived across the street from
10 Roxanne Ballard, I believe.

11 **A** No.

12 **Q** Did you ever live across the street from
13 her?

14 **A** No.

15 **Q** Now, how long have you been going to
16 church with -- how long did you attend church with
17 Ms. Bertha?

18 **A** Gosh. We came to Winona in 1970, so it
19 must have been close to then. From then on.

20 **Q** Several years?

21 **A** (Nodding head). 1970.

22 **Q** Okay. And you don't go to church with her
23 daughter, do you?

24 **A** Roxanne. Same church. And her husband.

25 **Q** And her husband. And do y'all have events
26 at your church other than regular services, programs
27 and so on?

28 **A** We do. **(Juror No. 5, Carol Griffin)**

29 **Q** And do you see them at various programs at

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT # : 2003-0071-CR

VOIR DIRE - DEFENSE

1 the church?

2 **A** Well, there's such an age difference in
3 our children and so forth. We're usually not at a
4 lot of the same things.

5 **Q** Do you occasionally see them at programs
6 at your church?

7 **A** Sometimes.

8 **Q** Now, you're telling us or are you telling
9 us -- correct me if I'm wrong and straighten me out
10 when I need to be -- are you saying that despite the
11 fact that you'd known Ms. Bertha for a long time --
12 would you consider her a friend?

13 **A** I did. We were on the administrative
14 counsel together. She was very -- yes.

15 **Q** Okay. But despite the fact that
16 Ms. Bertha was your friend and likely Roxanne and
17 her husband are friends, and possibly even children,
18 that you could put all of that aside and that won't
19 matter to you if you got picked as a juror and that
20 you would sit and listen to the evidence that comes
21 from the witness stand and the evidence only --
22 well, I've asked too many questions. I'm sorry.
23 Can you say that you wouldn't let the relationship
24 affect you in any kind of way?

25 **A** Well, it ties in to what I said a little
26 while ago about having a recent murder in my own
27 family. And I do honestly -- I honestly have
28 sympathies toward victims' families, and I mentio
29 that a while ago. And that's an honest answer.

VOIR DIRE - DEFENSE

1 **(Juror No. 5, Carol Griffin)**

2 Q Thank you.

3 No. 12, Ms. Johnson. And correct me if
4 I'm wrong, Ms. Johnson, but I believe you said --
5 did you say you were cousins with David Johnson?

6 A My husband -- I'm not from here. My
7 husband is third cousins -- maybe? -- with David.

8 **(Juror No. 12, Janelle Johnson)**

9 Q And his brother. Okay. And I believe you
10 said you know the Rigbys?

11 A No, I don't.

12 Q You didn't say that? Okay. Do you know
13 the Stewarts?

14 A No. I didn't move here till late 2001,
15 early 2002.

16 Q Okay. Thank you. That's all. Okay.

17 No. 17. Correct me if I'm wrong,
18 Ms. Chesteen, did you say you were friends with
19 Roxanne?

20 A In high school, we were friends. **(Juror**
21 **No. 17, Pamela Chesteen)**

22 Q And I believe you said you visited in
23 Roxanne's house?

24 A I did some.

25 Q And I believe you said you know some of
26 the Flowers?

27 A (Nodding head).

28 Q You know the Goldens?

29 A (Nodding head).

VOIR DIRE - DEFENSE

1 **Q** And I believe you said you would try your
2 best to be fair. Well, let me ask you this -- now
3 correct me if I'm wrong now, because I have a sense
4 of friendship that I don't want to appropriate to
5 you my means of friendship, so correct me if I'm
6 wrong.

7 Now, I would have a hard time finding
8 against my friend. Are you telling us that despite
9 the fact that Roxanne is your friend and having lost
10 her mother and other wonderful people, for all I
11 know, in such a horrible way, that you could sit in
12 judgment of Mr. Flowers and not let that affect you?

13 **A** I can tell you that I hurt for all the
14 families, every one of them. Honestly.

15 **Q** I believe you.

16 **A** And I do believe I could sit and listen
17 and have an open mind.

18 **Q** But can you tell me that friendship with
19 Roxanne won't play any role at all, absolutely won't
20 play a role?

21 **A** No, I can't say that. **(Juror No. 17,**
22 **Pamela Chesteen)**

23 **Q** Can't say that. Thank you.

24 **BY THE COURT:** Are you saying no, you
25 can't say --

26 **BY JUROR:** No, I'm saying no, that I don't
27 believe it would have a role.

28 **BY MR. CARTER:**

29 **Q** I'm sorry. Could you stand up? I'm sort

VOIR DIRE - DEFENSE

1 of confused there. You said -- you're saying -- or
2 are you saying that despite -- how old were you when
3 your friendship with Roxanne started? Do you know?

4 A I don't know. Probably 15 or 16.

5 Q And that friendship is -- remain the same
6 or -- what would be fair to say?

7 A I don't talk to Roxanne. Only when I see
8 her somewhere, I speak to her.

9 Q Okay. But you still consider her your
10 friend?

11 A Surely.

12 Q Still your friend? And your final answer
13 was that despite the friendship, that you could sit
14 in judgment of this case, and the friendship with
15 Roxanne won't play any role whatsoever?

16 A That's right.

17 Q All right.

18 No. 18, Ms. Laney. You said you had
19 bought furniture from Tardy. Is that fair?

20 A Yes, sir. **(Juror No. 18, Lillie Mae**
21 **Laney)**

22 Q And as a result of buying furniture from
23 there, you got to know Mr. Tardy?

24 A That was probably around -- in 1979 or
25 '80.

26 Q Okay.

27 A And I purchased furniture. And I view
28 them as the customer.

29 Q Ms. Tardy and Mr. Tardy?

VOIR DIRE - DEFENSE

1 A Well, yes, sir.

2 Q Okay. Do you know Roxanne?

3 A No, sir. I know her picture, you know,
4 but I don't know her personally.

5 Q Okay. Now, did -- do you consider -- did
6 you consider Ms. Tardy a friend or just a
7 business --

8 A Business.

9 Q Okay. And you also said, you know, I
10 believe, Mr. Jack Matthews; is that correct?

11 A Yes, sir. He is the director at the -- of
12 security at my hospital, and I'm a director of
13 surgical services. So we're -- that's how I know
14 him. Professional.

15 Q Okay. And as a result of both of you
16 being -- work at the same place, how often did you
17 come in contact with him?

18 A Monthly. Department head meetings.
19 That's -- you know -- **(Juror No. 18, Lillie Mae**
20 **Laney)**

21 Q No more regular than that? You don't see
22 him or --

23 A Unless I need something. Unless, you
24 know, I need a beeper on somebody or something like
25 that, and I'll call and one of his -- he or one of
26 his associates will acquire a beeper for an employee
27 or something like that.

28 Q Okay. So is it fair to say that y'all
29 don't visit in each other's homes?

VOIR DIRE - DEFENSE

1 A No, sir.

2 Q So it's just a work relationship?

3 A Work relationship.

4 Q Thank you. No. 22, Mr. Blaylock?

5 A Yes, sir. **(Juror No. 22, Larry Blaylock)**

6 Q I believe you said you graduated with
7 Roxanne?

8 A Yes, sir.

9 Q You know Ms. Tardy. And I assume you knew
10 Mr. Tardy or didn't you?

11 A I didn't know Mr. Tardy.

12 Q And you know John Johnson?

13 A Yes.

14 Q How long have you known him?

15 A Most of my life.

16 Q Okay. Are you friends?

17 A With John, I am. Yes.

18 Q Did you know him when he was chief of
19 police here?

20 A Yes, sir.

21 Q And did you know him before then? How
22 long have you known him? Do you any -- just a rough
23 estimate.

24 A 30, 40 years. **(Juror No. 22, Larry**
25 **Blaylock)**

26 Q Oh, okay. Do y'all hunt, fish or do
27 anything like that together?

28 A No, sir.

29 Q How often y'all see each other?

VOIR DIRE - DEFENSE

1 **A** Not often. We used to when they had the
2 cafe open -- Ms. Necie's Cafe in Winona. I used to
3 eat breakfast in there. He would come in there
4 sometime and eat.

5 **Q** And -- so are you telling us that if you
6 got picked as a juror, your friendship with John
7 wouldn't -- wouldn't pull you any particular way
8 toward the State of Mississippi, and you wouldn't
9 give his testimony any more weight than you would
10 anybody else's?

11 **A** No, sir.

12 **Q** Because you know him?

13 **A** No, sir. **(Juror No. 22, Larry Blaylock)**

14 **Q** You could be fair to both sides?

15 **A** Yes, sir.

16 **Q** Thank you.

17 No. 29, Mr. Waller. Correct me if I'm
18 wrong, but I believe you said yesterday you know
19 Bennie and Carmen?

20 **A** Right. **(Juror No. 29, Harold Waller)**

21 **Q** Do you know any other members of their
22 family?

23 **A** I know the two boys.

24 **Q** Okay. Whose boys?

25 **A** Bennie's boys.

26 **Q** Okay.

27 **A** They went to school with my daughter.

28 **Q** Went to school with your daughter? Did
29 their children ever visit your house or -- their

VOIR DIRE - DEFENSE

1 children ever visit your house that you recall?

2 A No.

3 Q And your children ever visit their house
4 that you know of?

5 A No.

6 Q And is this just -- is knowing them just
7 a -- is there friendships, too?

8 A Well, Carmen and I served on the school
9 board, I think -- she was on the school board, and I
10 was on the school board. I think we served at the
11 same time.

12 Q How long ago would that have been? For
13 like a couple of years?

14 A Oh, it would have been back -- my daughter
15 graduated in '94, so it would have been prior to
16 that.

17 Q Y'all became friends?

18 A Well, I mean, we just -- kind of
19 acquaintances. (**Juror No. 29, Harold Waller**)

20 Q Okay. Now, despite the relationship with
21 her, are you telling us that you know for a fact and
22 you are 100 percent sure that you could put that
23 aside and sit in judgment of Mr. Flowers and listen
24 to the testimony from the witness stand and not let
25 your having worked with her for a good many years
26 have any affect whatsoever on your decision and
27 deliberation?

28 A Yes, sir, I can be fair.

29 Q Have you formed an opinion as to

VOIR DIRE - DEFENSE

1 Mr. Flowers' guilt or innocence?

2 A No, sir.

3 Q Thank you. No. 40. Are you in school
4 or --

5 A I am. (Juror No. 40, Charles Lloyd
6 Davis)

7 Q What kind of school?

8 A I'm taking a bachelor's degree course
9 online through the University of Mississippi Medical
10 School.

11 Q Okay. Do you -- has this trial interfered
12 with your school?

13 A Some, but I have made arrangements last
14 night to take continuing ed sessions.

15 Q So you don't have a problem with being
16 here now -- or do you?

17 A No.

18 Q Is this going to cause you to -- is this
19 going to mess up your schooling in some kind of way,
20 cause you to fail or not study or not be prepared?
21 Is it going to have some kind of negative affect on
22 your school?

23 A I can't answer that. I actually -- I
24 intend to let the teachers know, and it will just be
25 depending up to them. But I don't expect it would,
26 but it might.

27 Q And if you got picked and if you stayed,
28 you had to be here, could you give your undivided
29 attention to the case --

VOIR DIRE - DEFENSE

1 **A** Yes, sir.

2 **Q** -- and not be sitting here worried about
3 school --

4 **A** Yes, sir.

5 **Q** -- or your future?

6 **A** Yes, sir. **(Juror No. 40, Charles Lloyd**
7 **Davis)**

8 **Q** Okay. No. 50, Mr. Lester. You said that
9 you had been friends with Bennie for years. Correct
10 me if I'm wrong on anything --

11 **A** Correct. **(Juror No. 50, Bobby Lester)**

12 **Q** -- because I don't mean to attribute
13 anything that shouldn't be attributed to you. And I
14 believe you said your wife taught the Stewarts --
15 wasn't it Bobo, maybe?

16 **A** Yes, sir.

17 **Q** And you said you had formed an opinion.
18 You don't have to tell me what it is. And I believe
19 you said you've known Bertha all her life?

20 **A** No.

21 **Q** How long had you known?

22 **A** I knew her for several years.

23 **Q** Knew her for several years?

24 **A** Yes. I knew Roxanne most all my life.

25 **Q** Okay. That's where I messed up. Okay.
26 Now, do you live near Roxanne?

27 **A** No, sir.

28 **Q** Do you ever visit her?

29 **A** No, sir.

VOIR DIRE - DEFENSE

1 Q She ever visit you?

2 A No, sir. My daughter and her son just
3 graduated together.

4 Q Okay. Were they friends?

5 A Yes.

6 Q Now, do you understand that the State of
7 Mississippi has to prove Mr. Flowers guilty, and
8 Mr. Flowers doesn't have to prove anything
9 whatsoever?

10 A Yes, sir.

11 Q Do you also understand that he doesn't
12 have to testify if he doesn't want to, but that he
13 might?

14 A Yes, sir. **(Juror No. 50, Bobby Lester)**

15 Q And you are telling us that despite your
16 relationship with the various people, that you're
17 absolutely sure that you could be fair to
18 Mr. Flowers?

19 A Yes, sir.

20 Q And if the evidence showed Mr. Flowers was
21 not guilty, you could vote not guilty?

22 A Yes, sir, I could.

23 Q And you wouldn't have any problem
24 whatsoever facing the Stewarts or Roxanne or anyone
25 else afterwards?

26 A No, sir.

27 Q Now let me ask you one other question:
28 How long have you known Mr. Johnson? I assume
29 that's John Johnson.

VOIR DIRE - DEFENSE

1 **A** I've known of him several years. I'm a
2 loan officer at the bank, and he's one of my
3 customers. I made him a few loans over the years.

4 **Q** Did you know him as a police officer or
5 chief -- chief of police?

6 **A** I did not know him back then. I knew when
7 he was. I mean, I did not know him personally. I
8 knew that he was the police chief.

9 **Q** Okay. Did you consider him a friend?

10 **A** Casual friend, yes, sir.

11 **Q** Thank you.

12 **BY THE COURT:** Mr. Carter, I think we'll
13 recess now for lunch, and we'll resume --
14 ladies and gentlemen, I'll ask you during
15 this recess, please do not discuss this case
16 with anyone or among yourselves. If you see
17 any lawyers or parties involved in the case,
18 they're going to walk by you and not speak to
19 you. They're not doing that to offend you.
20 They're just following the court rules in
21 that. If you will be back at one o'clock,
22 and we'll resume at that time.

23 (THAT COURT RECESSED FOR THE NOON HOUR)

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1 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
2 AND THE DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS
3 WERE AS FOLLOWS:)

4 (THE PROSPECTIVE JURORS WERE PRESENT.)

5 THE COURT: Good afternoon.

6 Mr. Carter, you may proceed.

7 MR. CARTER: Number 51.

8 JUROR BURRELL HUGGINS: Me?

9 MR. CARTER: Mr. Huggins.

10 JUROR BURRELL HUGGINS: Yeah.

11 MR. CARTER: Mr. Huggins, you said you know
12 John Johnson.

13 JUROR BURRELL HUGGINS: Know who?

14 MR. CARTER: I thought it was John Johnson.

15 JUROR BURRELL HUGGINS: I don't think so.

16 MR. CARTER: Do you know a David Johnson?

17 JUROR BURRELL HUGGINS: Well, yeah. I know of
18 him.

19 MR. CARTER: Know of him. You say you know of
20 David but you don't know of John.

21 JUROR BURRELL HUGGINS: Well, I have heard the
22 name.

23 MR. CARTER: Okay. Did you -- so you are not
24 friends with either one.

25 JUROR BURRELL HUGGINS: No.

26 MR. CARTER: Okay.

27 JUROR BURRELL HUGGINS: I work -- I work away
28 from here. I don't hardly know a lot of people. A lot
29 of people know me, but I don't know them.

1 MR. CARTER: Okay.

2 JUROR BURRELL HUGGINS: I make a living
3 somewhere else.

4 MR. CARTER: Okay. Drive trucks?

5 JUROR BURRELL HUGGINS: Sir.

6 MR. CARTER: What do you do? Do you drive?
7 What do you?

8 JUROR BURRELL HUGGINS: Work construction.
9 Pipe welder.

10 MR. CARTER: Okay. And you said you know Miss
11 Tardy, Bertha Tardy. You knew her.

12 JUROR BURRELL HUGGINS: Like I said, I know of
13 them.

14 MR. CARTER: What do you mean by know of Miss
15 Bertha Tardy?

16 JUROR BURRELL HUGGINS: I have heard the name
17 before.

18 MR. CARTER: Did you ever meet her?

19 JUROR BURRELL HUGGINS: No, not really.

20 MR. CARTER: Did you ever buy any furniture
21 from her store?

22 JUROR BURRELL HUGGINS: Do what now?

23 MR. CARTER: Did you ever buy any furniture
24 from Tardy Furniture store?

25 JUROR BURRELL HUGGINS: Nope. I haven't. Sure
26 haven't.

27 MR. CARTER: And how long have you lived in
28 Winona?

29 JUROR BURRELL HUGGINS: How long have I lived

1 here? Forty-two years.

2 MR. CARTER: Okay.

3 JUROR BURRELL HUGGINS: But like I said, I've
4 been away from home 40-something years working
5 construction.

6 MR. CARTER: Okay. How much time do you spend,
7 say, per year in Montgomery County?

8 JUROR BURRELL HUGGINS: How much time in a
9 year?

10 MR. CARTER: Per year do you --

11 JUROR BURRELL HUGGINS: A weekend every now and
12 then through the -- through the whole year. Maybe come
13 home for a weekend, maybe three days. Gone again.

14 MR. CARTER: So you spend most of your time
15 outside of --

16 JUROR BURRELL HUGGINS: That's true.

17 MR. CARTER: Okay.

18 JUROR BURRELL HUGGINS: I didn't even know none
19 of these people until after what occurred occurred. I
20 heard the name afterwards.

21 MR. CARTER: Okay.

22 JUROR BURRELL HUGGINS: It's just that easy,
23 simple.

24 MR. CARTER: Okay. Thank you.

25 JUROR BURRELL HUGGINS: All right.

26 MR. CARTER: Mr. Box. Miss Box, how long have
27 you known Miss Bertha? How long did you know her before
28 this terrible thing happened?

29 JUROR PATRICIA BOX: I used to live across the

1 street from her.

2 MR. CARTER: Used to live across the street
3 from her. Okay. For how long were y'all neighbors?
4 What period of time?

5 JUROR PATRICIA BOX: From '85 till she moved
6 off. I don't really remember when.

7 MR. CARTER: Do you know Roxanne, as well as
8 her husband?

9 JUROR PATRICIA BOX: (Nodded.)

10 MR. CARTER: Do you consider them friends?

11 JUROR PATRICIA BOX: I mean I know them. I
12 don't really hang out with them or anything.

13 MR. CARTER: Ever visit their house?

14 JUROR PATRICIA BOX: No.

15 MR. CARTER: Did you ever visit the store, the
16 furniture store?

17 JUROR PATRICIA BOX: Maybe a long time ago.

18 MR. CARTER: Okay. Do you run across Roxanne
19 from time to time?

20 JUROR PATRICIA BOX: Um-hum. I work at the
21 school. So her kids are in school there.

22 MR. CARTER: Do you see her often?

23 JUROR PATRICIA BOX: Just occasionally.

24 MR. CARTER: And you also know -- which Johnson
25 do you know? Is it David or John or...

26 JUROR PATRICIA BOX: John. I mean I know who
27 David is.

28 MR. CARTER: How long have you known John?

29 JUROR PATRICIA BOX: I don't really know how

1 many years. I used to live next door, just right up --
2 right down from him.

3 MR. CARTER: And how long were you a neighbor?

4 JUROR PATRICIA BOX: A couple of years.

5 MR. CARTER: Do you know if he was the chief
6 then? Was he chief --

7 JUROR PATRICIA BOX: No.

8 MR. CARTER: -- of police at that time?

9 JUROR PATRICIA BOX: No. No.

10 MR. CARTER: So despite -- you also knew, knew
11 Bobo.

12 JUROR PATRICIA BOX: Um-hum.

13 MR. CARTER: How well did you know him?

14 JUROR PATRICIA BOX: Just I knew him from
15 school. He was in school.

16 MR. CARTER: Knew him from school?

17 JUROR PATRICIA BOX: (Nodded.)

18 MR. CARTER: And your testimony, despite the
19 fact that you know at least who -- did you know Mr. Rigby
20 also? I'm sorry. Did you know Miss Rigby also?

21 JUROR PATRICIA BOX: I, I didn't know her
22 personally. No, sir.

23 MR. CARTER: Did you know Mr. Golden?

24 JUROR PATRICIA BOX: No, sir.

25 MR. CARTER: So your testimony is despite
26 knowing the Stewarts or at least Bobo, and Miss Bertha,
27 that that wouldn't have any affect at all --

28 JUROR PATRICIA BOX: No.

29 MR. CARTER: -- on your deliberations and your

1 listening to the evidence if you got picked as a juror.
2 And you could listen to the evidence from the witness
3 stand and make a decision totally based on what you heard
4 from the witness stand and not be weighted down by any
5 other factors.

6 JUROR PATRICIA BOX: I could.

7 MR. CARTER: Thank you.

8 Number 59. Miss Nail. Miss Nail, correct me if I'm
9 wrong, but you said that your mother was friends with
10 Miss Tardy. Is that what you said?

11 JUROR JULIA NAIL: At one time, yes.

12 MR. CARTER: Okay. And as a result of that,
13 did you come to visit Miss Tardy, and did she come to
14 visit you?

15 JUROR JULIA NAIL: No.

16 MR. CARTER: Okay. And you didn't know any
17 other victims in there.

18 JUROR JULIA NAIL: No, sir.

19 MR. CARTER: Thank you.

20 Mr. Amason. Number 67. Correct me if I'm wrong,
21 but I believe you said you know David and John.

22 JUROR TIMOTHY AMASON: Yes, sir.

23 MR. CARTER: And your wife is their cousin, I
24 believe.

25 JUROR TIMOTHY AMASON: Yes, I believe it is.

26 MR. CARTER: And you go to church with Roxanne.

27 JUROR TIMOTHY AMASON: I do. Her and Frank.

28 MR. CARTER: How long have y'all been church
29 members?

1 JUROR TIMOTHY AMASON: About '98, I guess, is
2 when I started.

3 MR. CARTER: Okay. Twelve years or so.

4 JUROR TIMOTHY AMASON: Right.

5 MR. CARTER: Okay. You know her husband?

6 JUROR TIMOTHY AMASON: Um-hum.

7 MR. CARTER: Do you consider them friends?

8 JUROR TIMOTHY AMASON: Yeah. Consider
9 everybody at the church my friend.

10 MR. CARTER: Well, everybody at the church is
11 your friend you said.

12 JUROR TIMOTHY AMASON: Pretty much.

13 MR. CARTER: You ever go to their house?

14 JUROR TIMOTHY AMASON: Just occasionally. As I
15 stated before, I've got two sons that are close to the
16 same age as her sons, and they are friends. I pick them
17 up there, or they may stay at my house, or my kids may
18 stay at their house.

19 MR. CARTER: Okay. So you're friends and
20 you're friends with everybody in your church. So do you
21 also occasionally visit everybody else's home in your
22 church?

23 JUROR TIMOTHY AMASON: Not everybody. No.

24 MR. CARTER: So in fact, Roxanne and Frank are
25 actually closer friends to you than other people in your
26 church.

27 JUROR TIMOTHY AMASON: Only because I go there
28 maybe to pick up my sons or something. I have never
29 eaten supper there or anything like that, nor either at

1 my house.

2 MR. CARTER: Have they visited your house?

3 JUROR TIMOTHY AMASON: Probably to pick up one
4 of the kids, probably.

5 MR. CARTER: What's the name of this church?

6 JUROR TIMOTHY AMASON: Moore Memorial Methodist
7 Church.

8 MR. CARTER: And you didn't know any of the
9 other victims; is that correct?

10 JUROR TIMOTHY AMASON: (Shook head.) No, sir.
11 I'm sorry.

12 MR. CARTER: And your testimony is that despite
13 being friends with Roxanne and Frank, despite your
14 children being friends, despite visiting each other's
15 homes, that, that doesn't matter. And if you got picked
16 as a juror, that wouldn't play any role or be any
17 consideration whatsoever going on in your mind.

18 JUROR TIMOTHY AMASON: No, sir.

19 MR. CARTER: Do you know Mr. Flowers?

20 JUROR TIMOTHY AMASON: Mr. Flowers.

21 MR. CARTER: Curtis Flowers.

22 JUROR TIMOTHY AMASON: I think I know his
23 brother some.

24 MR. CARTER: Which one you know?

25 JUROR TIMOTHY AMASON: Archie. It's by -- I
26 think his -- Archie's umpired some at the field, baseball
27 field. My son plays ball out there.

28 MR. CARTER: You ever visit his house?

29 JUROR TIMOTHY AMASON: Oh, no.

1 MR. CARTER: You ever picked up his son?

2 JUROR TIMOTHY AMASON: No.

3 MR. CARTER: He ever picked up yours?

4 JUROR TIMOTHY AMASON: Who is this? Archie?

5 MR. CARTER: You talking about Archie, Jr. or
6 Archie, Sr.?

7 JUROR TIMOTHY AMASON: I'm sorry. Archie, Jr.

8 MR. CARTER: Have you ever visit his house?

9 JUROR TIMOTHY AMASON: No, sir.

10 MR. CARTER: He ever visit yours?

11 JUROR TIMOTHY AMASON: No, sir.

12 MR. CARTER: Thank you.

13 Mr. Carpenter.

14 JUROR BILLY CARPENTER: Yes, sir.

15 MR. CARTER: Now, you said you knew Bobo. And
16 I believe you said, correct me if I'm wrong, that he was
17 always around. It was you and maybe some older brothers.

18 JUROR BILLY CARPENTER: I spent a lot of time
19 at the baseball field. And I coached little league
20 baseball for about eight years or six, six or eight
21 years. I don't know exactly how many. And Bobo was
22 always at the baseball field. That is how I knew Bobo.

23 MR. CARTER: Okay. Did you know any other of
24 his family members?

25 JUROR BILLY CARPENTER: Yes. His Aunt Edie.
26 We used to hang around when I was in high school.

27 MR. CARTER: Okay. Now --

28 JUROR BILLY CARPENTER: And I know Randy. I
29 have known Randy for a long time.

1 MR. CARTER: And how is Randy related to him?

2 JUROR BILLY CARPENTER: Sir.

3 MR. CARTER: Who is Randy? You said --

4 JUROR BILLY CARPENTER: Mr. Stewart.

5 MR. CARTER: -- you know -- you said you have
6 known Randy for a long time.

7 JUROR BILLY CARPENTER: Mr. Stewart. Randy.
8 Isn't that Bobo's daddy?

9 MR. CARTER: I don't really know. I don't
10 know.

11 JUROR BILLY CARPENTER: Okay.

12 MR. CARTER: Okay.

13 JUROR BILLY CARPENTER: It is.

14 MR. CARTER: If you say it is, that is fine
15 with me. I don't really know. Okay. And, and you
16 shopped at Tardy's Furniture, I believe you said. Or did
17 you say?

18 JUROR BILLY CARPENTER: No, sir, I didn't say
19 that.

20 MR. CARTER: Did you know Miss Bertha?

21 JUROR BILLY CARPENTER: No. Just, just the
22 name is all.

23 MR. CARTER: Okay. So having been around Mr.
24 Stewart a lot, were you fond of him?

25 JUROR BILLY CARPENTER: He is a good kid.

26 MR. CARTER: Star baseball player I heard. Is
27 that correct?

28 JUROR BILLY CARPENTER: Yes, sir. Excellent
29 baseball player.

1 MR. CARTER: Right. And you had a lot of
2 affection for him, didn't you?

3 JUROR BILLY CARPENTER: Everybody liked Bobo.

4 MR. CARTER: Including you. Is that fair to
5 say?

6 JUROR BILLY CARPENTER: I mean -- like I said,
7 I was just around him. Yeah, I liked him.

8 MR. CARTER: Now, despite -- did you personally
9 coach him?

10 JUROR BILLY CARPENTER: No, sir.

11 MR. CARTER: Okay. So the fact that you knew
12 him, he was always around, is well liked by everybody,
13 excellent baseball player, baseball star is your
14 testimony, that despite all of that, if you got picked as
15 a juror, sit in judgment of Mr. Flowers, you could put
16 all of that aside, that it wouldn't weigh in any way, it
17 wouldn't affect you in any way, that you could treat it
18 as if it didn't exist.

19 JUROR BILLY CARPENTER: That's right.

20 MR. CARTER: Thank you.

21 Mr. Colbert. Miss Colbert. I'm sorry. Julian
22 Colbert. Miss Colbert, correct me if I'm wrong, you said
23 that you know Roxanne, and you knew her through her
24 mother. Okay. Did you --

25 JUROR JULIAN COLBERT: I knew Miss Tardy mostly
26 through Roxanne, because we were near the same age and in
27 school together. So I knew Miss Tardy mostly through
28 Roxanne.

29 MR. CARTER: Okay. Were y'all -- were you and

1 Roxanne in the same class?

2 JUROR JULIAN COLBERT: No. She is a year
3 younger than I am.

4 MR. CARTER: Did y'all go off to college
5 together as well?

6 JUROR JULIAN COLBERT: No, we did not.

7 MR. CARTER: And you taught some of the Golden
8 children. Did you say that?

9 JUROR JULIAN COLBERT: Yes, sir, I did.

10 MR. CARTER: Okay. And you know Mrs. Rigby, as
11 well.

12 JUROR JULIAN COLBERT: That's right.

13 MR. CARTER: Knew Bobo.

14 JUROR JULIAN COLBERT: Knew -- that's right.

15 MR. CARTER: And you knew his brother.

16 JUROR JULIAN COLBERT: When you have been in
17 the school business for as long as I have, you know a lot
18 of people.

19 MR. CARTER: Yes, ma'am. Did you get to know
20 Mr. Flowers?

21 JUROR JULIAN COLBERT: I did not know him
22 personally, but I know of him and know members of his
23 family to recognize them.

24 MR. CARTER: Okay. And your testimony is
25 despite knowing all of this, that none of this would have
26 any effect whatsoever on you if you got selected as a
27 juror and you would make your testimony -- you would make
28 your decision based only on the testimony that comes from
29 the witness stand. And this other extraneous or

1 ancillary information won't have any effect at all on
2 you.

3 JUROR JULIAN COLBERT: I can base everything
4 totally on what I heard in the courtroom.

5 MR. CARTER: Yes, ma'am. Thank you.

6 Linda Martin. Number 75. Miss Martin, correct me
7 if I'm wrong, you said you know Miss Bertha through the
8 church.

9 JUROR LINDA MARTIN: Yes.

10 MR. CARTER: And do you go to church with
11 Roxanne and Frank?

12 JUROR LINDA MARTIN: I changed churches later.

13 MR. CARTER: You changed churches. Okay. And
14 I believe you said you shopped at Tardy at some point.

15 JUROR LINDA MARTIN: Yes, sir.

16 MR. CARTER: And are you telling us that, that
17 having known Miss Bertha and having shopped there at
18 Tardy's wouldn't have any effect whatsoever on your
19 ability to listen and to fairly judge Mr. Flowers --

20 JUROR LINDA MARTIN: No.

21 MR. CARTER: -- if you were selected as a
22 juror?

23 JUROR LINDA MARTIN: No.

24 MR. CARTER: And your decision would be based
25 totally on the testimony that comes within the confines
26 of the courtroom.

27 JUROR LINDA MARTIN: Yes.

28 MR. CARTER: Thank you.

29 Number 80. Miss Brenda Simmons. Miss Simmons,

1 correct me if I'm wrong, but you said you know Lola but
2 not Curtis. You work with Curtis' aunt. You know
3 Bertha. You knew Bertha. Knew Carmen.

4 JUROR BRENDA SIMMONS: No, sir.

5 MR. CARTER: So you know -- who, who do you
6 know in the Rigby family?

7 JUROR BRENDA SIMMONS: Bennie was our music
8 director.

9 MR. CARTER: And you knew Bobo or somebody in
10 his family through the --

11 JUROR BRENDA SIMMONS: Yes, sir. His older
12 brother, Dale, went to school with my son.

13 MR. CARTER: Yes, ma'am. And your testimony is
14 that despite knowing these people, this, this knowledge
15 won't have any -- this knowledge and relationship won't
16 have any affect whatsoever on your deliberations, that
17 you can sit in judgment of Mr. Flowers and listen to the
18 evidence and make your decision based on nothing but the
19 evidence.

20 JUROR BRENDA SIMMONS: That is correct.

21 MR. CARTER: Thank you.

22 Mr. Hamilton. 91. Mr. Hamilton, correct me if I'm
23 wrong, you said that you knew Mr. Golden, Robert Golden;
24 is that correct?

25 JUROR JIMMY HAMILTON: Yes, it is.

26 MR. CARTER: And his kids went to school --
27 your kids went to school with Bobo Stewart, I believe; is
28 that correct?

29 JUROR JIMMY HAMILTON: That's correct.

1 MR. CARTER: And do you know any other victims?
2 Did you know Miss --

3 JUROR JIMMY HAMILTON: Not really.

4 MR. CARTER: -- Rigby, Miss Bertha or Mr.
5 Stewart?

6 JUROR JIMMY HAMILTON: I moved here when I was
7 21. I'm not a home boy. I don't really know a lot of
8 folks. All I've done is work all my life.

9 MR. CARTER: Okay. And just how long have you
10 been here?

11 JUROR JIMMY HAMILTON: Since 1975.

12 MR. CARTER: Okay. And you can be fair to both
13 sides.

14 JUROR JIMMY HAMILTON: Yes.

15 MR. CARTER: And you won't let anything --
16 whatever knowledge you had of Mr. Golden cloud your
17 judgment or cause you to allow that in some kind of way
18 to aid you in your decision if you got picked as a juror.

19 JUROR JIMMY HAMILTON: I have to look at myself
20 every morning in the mirror, and I believe in telling the
21 truth and living the truth.

22 MR. CARTER: All right. That's good. That is
23 what we want. Thank you.

24 Number 94. Miss Acy. Miss Acy, correct me if I'm
25 wrong, you said you know Carmen or knew Carmen and other
26 family members. Is that what you said?

27 JUROR MELISSA ACY: Yes, sir.

28 MR. CARTER: And that you knew Bertha. You
29 shopped at Tardy's.

1 JUROR MELISSA ACY: Yes, sir.

2 MR. CARTER: And there is no doubt that you can
3 be fair to both sides.

4 JUROR MELISSA ACY: Yes, sir.

5 MR. CARTER: Thank you.

6 Number 107. Mr. Golding. Mr. Golding, correct me
7 if I'm wrong, but I wrote down that you said you knew --
8 did you say you knew Miss Rigby or Mr. Rigby?

9 JUROR WILLIAM GOLDING: Mr. Rigby.

10 MR. CARTER: Did you say through his music at
11 church or just --

12 JUROR WILLIAM GOLDING: Yes. Through -- he was
13 the minister of music there at church.

14 MR. CARTER: And how long have you been at that
15 church?

16 JUROR WILLIAM GOLDING: About 28 years, I
17 think.

18 MR. CARTER: Okay. How long has he been
19 minister of music?

20 JUROR WILLIAM GOLDING: He is not now. I don't
21 know. I don't know how many years he served, about two
22 or three years.

23 MR. CARTER: Did you know him before then,
24 before he became minister of music at the church?

25 JUROR WILLIAM GOLDING: No, I didn't.

26 MR. CARTER: Have you had any relationship or
27 contact with him since then?

28 JUROR WILLIAM GOLDING: Just meet him on the
29 street.

1 MR. CARTER: Okay. Were you in the choir?

2 JUROR WILLIAM GOLDING: No.

3 MR. CARTER: Did you play an instrument in the
4 band?

5 JUROR WILLIAM GOLDING: No.

6 MS. STEINER: Okay. And how would you phrase
7 the relationship you had with him as him being minister
8 of music at church?

9 JUROR WILLIAM GOLDING: A friend.

10 MR. CARTER: A friend. Did you ever visit his
11 home?

12 JUROR WILLIAM GOLDING: No.

13 MR. CARTER: Did he ever visit yours?

14 JUROR WILLIAM GOLDING: I don't think he ever
15 did.

16 MR. CARTER: Y'all don't belong to any clubs or
17 organizations together, do you?

18 JUROR WILLIAM GOLDING: No.

19 MR. CARTER: Haven't been fishing and hunting,
20 have you?

21 JUROR WILLIAM GOLDING: No.

22 MR. CARTER: Okay. Thank you. No further
23 questions.

24 Okay. Mr. Surrell. Surrell.

25 JUROR MATTHEW SURRELL: Surrell.

26 MR. CARTER: Now, correct me if I'm wrong, you
27 knew Bobo. In fact, y'all played baseball together.

28 JUROR MATTHEW SURRELL: That's correct.

29 MR. CARTER: Y'all played in high school

1 together.

2 JUROR MATTHEW SURRELL: We did.

3 MR. CARTER: Were y'all in the same class?

4 JUROR MATTHEW SURRELL: We were.

5 MR. CARTER: Okay. Was he -- was he a friend?

6 JUROR MATTHEW SURRELL: Absolutely.

7 MR. CARTER: Was he your best friend?

8 JUROR MATTHEW SURRELL: Very close.

9 MR. CARTER: Okay. His loss had a profound
10 effect on you, didn't it?

11 JUROR MATTHEW SURRELL: It did.

12 MR. CARTER: Star baseball player, wasn't he?
13 That is what I heard.

14 JUROR MATTHEW SURRELL: He was.

15 MR. CARTER: So you're telling us -- correct me
16 if I'm wrong. Are you telling us that despite the fact
17 that Bobo was a good friend, a best friend, however you
18 want to, I guess, classify it, that his great loss to you
19 won't cause you to be unfair to Mr. Flowers if you got to
20 sit in judgment of Mr. Flowers?

21 JUROR MATTHEW SURRELL: That's true.

22 MR. CARTER: And you are telling us that you
23 could put aside the relationship and losing your best
24 friend and, and not let that play any role whatsoever in
25 your deliberations.

26 JUROR MATTHEW SURRELL: Absolutely.

27 MR. CARTER: Do you know Mr. Flowers?

28 JUROR MATTHEW SURRELL: I do not.

29 MR. CARTER: Okay. And have you formed an

1 opinion as to his guilt or innocence?

2 JUROR MATTHEW SURRELL: I have formed an
3 opinion.

4 MR. CARTER: You have. Okay.

5 JUROR MATTHEW SURRELL: But my mind can be
6 changed based on the facts.

7 MR. CARTER: What would he have to prove?

8 JUROR MATTHEW SURRELL: Mr. Flowers?

9 MR. CARTER: Yes, sir.

10 JUROR MATTHEW SURRELL: Nothing.

11 MR. CARTER: Thank you.

12 Number 11. (sic) Brooks Jones.

13 JUROR S. BROOKS JONES: Yes, sir.

14 MR. CARTER: Mr. Jones, you said you knew Miss
15 Rigby. You knew Bobo. And I believe you said you were
16 neighbors to Bobo; is that correct?

17 JUROR S. BROOKS JONES: When he was a small
18 child, yes, sir.

19 MR. CARTER: When he was a small child. And I
20 assume you knew his parents.

21 JUROR S. BROOKS JONES: Yes, sir.

22 MR. CARTER: Did you know other family members
23 and relatives of his?

24 JUROR S. BROOKS JONES: I know most of his
25 family.

26 MR. CARTER: Okay.

27 JUROR S. BROOKS JONES: Most of the Stewarts
28 and most of the Loftons.

29 MR. CARTER: Did you have any children around

1 Bobo's age?

2 JUROR S. BROOKS JONES: No, I didn't. I had a
3 nephew that was about his age. Used to play with him.
4 They would play in my yard sometimes, play in his yard.

5 MR. CARTER: So you grew to be fond of Bobo, I
6 assume.

7 JUROR S. BROOKS JONES: Yeah, fond.

8 MR. CARTER: From what I hear he was a very
9 likable person. And you are telling us that despite his
10 affability, likability, star qualities as a baseball
11 player and likable human being, that -- star human being,
12 based on what I heard, that you could sit in judgment of
13 Mr. Flowers, a person accused of harming him and not let
14 that play any factor or role whatsoever in listening to
15 the evidence and rendering a decision as to Mr. Flowers'
16 guilt or innocence.

17 JUROR S. BROOKS JONES: That is correct.

18 MR. CARTER: Okay. Thank you.

19 119. Alisha King. Miss King, correct me if I'm
20 wrong, but I wrote down that you knew Carmen. How long
21 did you know her?

22 JUROR ALISHA KING: I just knew her through my
23 parents.

24 MR. CARTER: Through your parents.

25 JUROR ALISHA KING: When I was a small child.

26 MR. CARTER: So your parents and she were
27 friends.

28 JUROR ALISHA KING: I wouldn't say friends. I
29 mean my mom knew who she was when she saw her.

1 MR. CARTER: Did she ever come visit your
2 house?

3 JUROR ALISHA KING: Not that I can recall.

4 MR. CARTER: Did y'all visit hers?

5 JUROR ALISHA KING: No, sir.

6 MR. CARTER: And I think you said you knew her
7 two sons.

8 JUROR ALISHA KING: We went to school together.
9 They were a lot older than I was.

10 MR. CARTER: Were you classmates with them?

11 JUROR ALISHA KING: No, sir.

12 MR. CARTER: Were they older or younger?

13 JUROR ALISHA KING: Older.

14 MR. CARTER: And you also knew Mr. Stewart.

15 JUROR ALISHA KING: He was a year ahead of me.

16 MR. CARTER: Okay. Were you friends with him?

17 JUROR ALISHA KING: No, sir.

18 MR. CARTER: So the fact that you knew these
19 people, would that have any affect whatsoever on your
20 ability to sit and listen to the evidence and render a
21 decision?

22 JUROR ALISHA KING: No, sir.

23 MR. CARTER: And you can be -- you're sure you
24 could be fair to Mr. Flowers.

25 JUROR ALISHA KING: Um-hum.

26 MR. CARTER: Okay. Thank you.

27 Number 121. Mr. Austin. Mr. Austin, I believe you
28 said you knew Carmen through the school; is that correct?

29 JUROR MICHAEL AUSTIN: That's not correct.

1 MR. CARTER: What did you say?

2 JUROR MICHAEL AUSTIN: I didn't know Carmen. I
3 just knew Carmen from being at the baseball field.

4 MR. CARTER: From being at the baseball field.

5 JUROR MICHAEL AUSTIN: Yes, sir.

6 MR. CARTER: And correct me on this as well, if
7 it needs correcting, you said that you had a child at
8 school with Bobo.

9 JUROR MICHAEL AUSTIN: I did say that. Yes.

10 MR. CARTER: And you also said you were friends
11 with Frank and Roxanne.

12 JUROR MICHAEL AUSTIN: Right.

13 MR. CARTER: Okay. Did you also make some
14 effort or -- do you want to be here? Did you make some
15 effort to leave?

16 JUROR MICHAEL AUSTIN: I am having a grandchild
17 born today.

18 MR. CARTER: And you would like to be there
19 when that happened.

20 JUROR MICHAEL AUSTIN: Well, it's too late now.

21 MR. CARTER: So you still haven't seen the
22 child.

23 JUROR MICHAEL AUSTIN: No, sir.

24 MR. CARTER: Now, how is not being there to see
25 your grandchild affecting you?

26 JUROR MICHAEL AUSTIN: It's not.

27 MR. CARTER: Okay.

28 JUROR MICHAEL AUSTIN: I'll see it soon.

29 MR. CARTER: Okay. So if you are picked as a

1 juror, you would be willing and able to stay here and not
2 be distracted by that or anything else and listen to the
3 evidence that comes forth from the witness stand and be
4 fair to Mr. Flowers.

5 JUROR MICHAEL AUSTIN: I will.

6 MR. CARTER: Thank you.

7 Miss Britt. Miss Britt, correct me if I'm wrong.
8 You said that you, you knew Miss Bertha, went to school
9 with Roxanne and sing with Benji.

10 JUROR MARTHA BRITT: I didn't know Miss Tardy.
11 I just knew her when I saw her.

12 MR. CARTER: Okay. Did you --

13 JUROR MARTHA BRITT: I do know Roxanne.

14 MR. CARTER: Did you shop at the store?

15 JUROR MARTHA BRITT: I'm sorry.

16 MR. CARTER: Did you shop at Tardy's Furniture
17 store?

18 JUROR MARTHA BRITT: I bought a bedroom suit
19 from Tardy's after, after the murder but I...

20 MR. CARTER: After the incident down at
21 Tardy's.

22 JUROR MARTHA BRITT: Yes, sir.

23 MR. CARTER: Now, sing -- do you still sing
24 with Bennie?

25 JUROR MARTHA BRITT: Yes, I do.

26 MR. CARTER: How long you been doing that?

27 JUROR MARTHA BRITT: About seven years.

28 MR. CARTER: Seven years. Is he -- is he the
29 choir director?

1 JUROR MARTHA BRITT: Well, he was the choir
2 director at my church. And I sang. He sang. We started
3 singing together. We formed a little group. There was
4 three of us. And then it was just the two of us that
5 sing together now.

6 MR. CARTER: Y'all still go to church together?

7 JUROR MARTHA BRITT: We do not go to the same
8 church. No.

9 MR. CARTER: How often do y'all see each other
10 and put on these performances?

11 JUROR MARTHA BRITT: Here lately it's just been
12 every couple of months or so. It hasn't been anything
13 frequent lately.

14 MR. CARTER: Do you know his other family
15 members?

16 JUROR MARTHA BRITT: Yes, I do.

17 MR. CARTER: You consider yourself to be close
18 to them.

19 JUROR MARTHA BRITT: I consider myself a
20 friend, yes.

21 MR. CARTER: All right. You ever been to their
22 house?

23 JUROR MARTHA BRITT: Yes, I have.

24 MR. CARTER: They been to yours?

25 JUROR MARTHA BRITT: Yes, they have.

26 MR. CARTER: Y'all ever broke bread together,
27 eaten together?

28 JUROR MARTHA BRITT: Well, yes, sir.

29 MR. CARTER: And are you telling us that

1 despite this good friendship, this close relationship and
2 being aware of his great loss that you could put all that
3 aside and sit in judgment of the person who is accused of
4 bringing pain to bear to him and be fair to Mr. Flowers
5 and not allow that relationship to affect you in any kind
6 of way whatsoever?

7 JUROR MARTHA BRITT: I believe that I could.
8 I'm human, but I believe that I'm, I'm intelligent enough
9 and able to do that thing. Yes.

10 MR. CARTER: Right. So I take that to say that
11 you are telling me that you would try your best. Is that
12 fair to say?

13 JUROR MARTHA BRITT: I believe that I could.

14 MR. CARTER: Okay. You believe that you could,
15 and you know that that relationship with him won't have
16 no effect whatsoever.

17 JUROR MARTHA BRITT: It doesn't -- I mean he
18 doesn't run my life for me. I make my own decisions.
19 And you know, I do what I think is right. And I have to
20 live by what I think is right.

21 MR. CARTER: I understand, and I accept it.
22 However --

23 JUROR MARTHA BRITT: I'm not saying it would be
24 an easy thing to do. But you know, if I were given the
25 evidence and the evidence proved that there was no guilt,
26 then I would have to go on the side with no guilt.

27 MR. CARTER: What if the evidence showed he was
28 innocent?

29 THE COURT: That is what she just said.

1 JUROR MARTHA BRITT: If the evidence showed
2 that he was not guilty, I could find him not guilty.

3 MR. CARTER: Okay. Thank you. I apologize.
4 Thank you.

5 JUROR MARTHA BRITT: Uh-huh.

6 MR. CARTER: Now, I need you to tell me, I'm
7 going to call out some names of some witnesses, and I
8 need you all to tell me whether or not you are related in
9 any way to any of these people. Sam Jones, Jr. Johnny
10 Hargrove.

11 Number 95. Number 96.

12 Wait a minute. Could you hold your numbers up
13 again?

14 95. 121.

15 JUROR CAROL GRIFFIN: This everybody who
16 knew...

17 BAILIFF: You need to ask your question again,
18 Mr. Carter.

19 MR. CARTER: Okay. Can you tell me whether you
20 are a relative of Johnny Hargrove? If you are, raise
21 your cards.

22 Okay. I guess I did confuse people on that.

23 Number 95. 147. 136.

24 And did I see Number 121?

25 JUROR MICHAEL AUSTIN: I'm not a relative, but
26 I'm on the City Board of Alderman that oversees Chief
27 Hargrove and the police department.

28 MR. CARTER: Yes, sir. And as a result of
29 that, you know Chief Hargrove pretty well, I assume.

1 JUROR MICHAEL AUSTIN: Pretty well.

2 MR. CARTER: And would the fact that you know
3 him cloud your opinion of him and cause you to give his
4 testimony greater value or meaning, consideration than
5 you would anybody else's?

6 JUROR MICHAEL AUSTIN: No, sir.

7 MR. CARTER: Okay. Now, you other people who
8 said you were kin to chief.

9 Number 95, would you stand? I believe you already
10 said you couldn't be fair on something else.

11 JUROR LESLIE CRAWFORD: Yes, sir.

12 MR. CARTER: Is that correct? Okay. You can
13 have a seat.

14 Number 147. What relationship? Is he your cousin
15 or what?

16 JUROR MAXINE RINGOLD: He's a cousin. But I
17 don't know if he's second or third.

18 MR. CARTER: Okay. Is there anything about
19 that relationship, Number 41 (sic) -- is there anything
20 about the relationship that would cause you to give his
21 testimony greater credence and value --

22 JUROR MAXINE RINGOLD: No, sir.

23 MR. CARTER: -- respect, credibility, than
24 anybody else?

25 JUROR MAXINE RINGOLD: No.

26 MR. CARTER: Thank you.

27 Number 136. How are you related?

28 JUROR JIMMY ALLEN, JR.: Cousin.

29 MR. CARTER: Cousin. Okay. Thank you.

1 Number 41, how are you related?

2 JUROR MARGARET GIVENS: Cousin.

3 MR. CARTER: Thank you.

4 Anybody -- Dr. Steven Haynes was a doctor that --
5 down in Jackson. Anybody kin to him?

6 Barry Eskridge. Barry Eskridge have any relatives?

7 Melissa Schoene who, I think, lives in Atlanta
8 somewhere.

9 James Edward Kennedy. Catherine Snow. Clemmie
10 Fleming. Bill Thornburg.

11 THE COURT: You've got --

12 MR. CARTER: Oh, sorry. Was that Clemmie
13 Fleming?

14 JUROR LATOYA FLEMING: Yes, sir.

15 MR. CARTER: What is your number again? 130?

16 JUROR LATOYA FLEMING: Sir.

17 MR. CARTER: What is your number?

18 JUROR LATOYA FLEMING: 148.

19 MR. CARTER: Okay. Is there anything about
20 your being kin to her that would cause you to give her
21 testimony greater weight and favor than you would anybody
22 else's?

23 JUROR LATOYA FLEMING: No, sir.

24 MR. CARTER: Thank you.

25 Bill Thornburg. Anybody relative of Jack Matthews?
26 David Balash. Joe Edward Andrews. Elaine Gholston.

27 JUROR CAROLYN WRIGHT: She is not related to
28 me, but her husband is my first cousin.

29 MR. CARTER: Is it fair to say that that

1 relationship wouldn't cause you to be unfair to Mr.
2 Flowers? Or would that relationship affect you and cause
3 you to give her testimony more credibility and
4 believability than you would anybody else's?

5 JUROR CAROLYN WRIGHT: No, sir.

6 MR. CARTER: Mary Ella Fleming.

7 JUROR LATOYA FLEMING: Excuse me.

8 MR. CARTER: Is there anything --

9 THE BAILIFF: You've got a number.

10 MR. CARTER: Excuse me.

11 BAILIFF: I said you had a number.

12 MR. CARTER: What is the other number?

13 JUROR LATOYA FLEMING: 148.

14 MR. CARTER: Is there anything about that
15 relationship that would cause you to give her testimony
16 more believability --

17 JUROR LATOYA FLEMING: No, sir.

18 MR. CARTER: -- than anybody else's?

19 Anybody kin to Sharon Bailey? Patricia Hallmon.
20 Sullivan Odom. Doyle Simpson. Doyle Simpson got any
21 cousins, any relatives? Edward Lee McChristian. Odell
22 Hallmon. Anybody kin to Charles Porky Collins? Beneva
23 Henry. Anybody relative to or kin to Roxanne Ballard?
24 Jerry Dale Bridges.

25 Okay. That would be Number 18 and 132.

26 Number 18, how are you related?

27 JUROR LILLIE LANEY: Step first cousin.

28 MR. CARTER: Step first cousin. And were y'all
29 close?

1 JUROR LILLIE LANEY: He and my brother are
2 close.

3 MR. CARTER: He and your brother are close.

4 JUROR LILLIE LANEY: Friends.

5 MR. CARTER: And do you have good feelings
6 about him?

7 JUROR LILLIE LANEY: He is a good guy.

8 MR. CARTER: Good guy. Okay. Would the fact
9 that he is a good guy and he is your step first cousin
10 and you know him, and I assume -- how long have you known
11 him?

12 JUROR LILLIE LANEY: Probably about 57 years.
13 That would be his age.

14 MR. CARTER: Okay. And the fact that you have
15 known him for a long time and if he testified, you sat as
16 a juror, would you give his testimony greater weight than
17 you would anybody else's?

18 JUROR LILLIE LANEY: No, sir. No, sir.

19 MR. CARTER: And Number 132, how are you
20 related?

21 JUROR MARVIN BRIDGES: Third cousin.

22 MR. CARTER: Third cousin. You consider
23 yourself close to him?

24 JUROR MARVIN BRIDGES: I know him very well. I
25 know him well. Yes.

26 MR. CARTER: Is he a cousin and a friend?

27 JUROR MARVIN BRIDGES: Yes, sir.

28 MR. CARTER: Okay. And if he testified and you
29 sat as a juror, would you give his weight -- his

1 testimony more weight than you would anybody else's?

2 JUROR MARVIN BRIDGES: No, sir.

3 MR. CARTER: Thank you.

4 Anybody kin to Randy Keenum? Randy Stewart. Willie
5 Golden. Kathy Permenter. Brian Rigby. Bennie Rigby.
6 John Johnson.

7 JUROR LARRY BLAYLOCK: I could be.

8 MR. CARTER: And what do you mean by that, sir?

9 JUROR LARRY BLAYLOCK: My uncle by marriage,
10 his daddy was his brother.

11 MR. CARTER: Did you get to know him well?

12 JUROR LARRY BLAYLOCK: John?

13 MR. CARTER: Yeah. Do y'all talk?

14 JUROR LARRY BLAYLOCK: Not often. But I mean I
15 know him. They lived in the same neighborhood we did.
16 I -- you know, same neighborhood.

17 MR. CARTER: You consider him a friend.

18 JUROR LARRY BLAYLOCK: Yes.

19 MR. CARTER: Is there anything about that
20 relationship that would cause you to give his testimony
21 more credibility than anybody else's?

22 JUROR LARRY BLAYLOCK: No, sir.

23 MR. CARTER: Horace Wayne Miller.

24 Oh, sorry. Are we still on --

25 JUROR JANELLE JOHNSON: John.

26 MR. CARTER: Okay. Number 12.

27 JUROR JANELLE JOHNSON: My husband is a second
28 or third cousin of his.

29 MR. CARTER: Okay. Anything about that

1 relationship that would cause you to give greater weight
2 to his testimony than you would anybody else's?

3 JUROR JANELLE JOHNSON: (Shook head.)

4 MR. CARTER: What was the other number? Number
5 18.

6 JUROR LILLIE LANEY: John's first -- his
7 ex-wife is my first cousin.

8 MR. CARTER: Okay.

9 JUROR LILLIE LANEY: Ex-wife.

10 MR. CARTER: Does that cause you to have a lot
11 of contact with him?

12 JUROR LILLIE LANEY: No, sir.

13 MR. CARTER: Do you see him from time to time
14 occasionally?

15 JUROR LILLIE LANEY: Only out in public.

16 MR. CARTER: Okay. Is there anything about him
17 or about that relationship that would cause you to give
18 his testimony more credibility than you would anybody
19 else's?

20 JUROR LILLIE LANEY: No, sir.

21 MR. CARTER: Number 67.

22 JUROR TIMOTHY AMASON: It's my wife's second or
23 third cousin.

24 MR. CARTER: How well do you know him
25 personally?

26 JUROR TIMOTHY AMASON: Don't.

27 MR. CARTER: Does he come visit you?

28 JUROR TIMOTHY AMASON: No.

29 MR. CARTER: Do you visit him?

1 JUROR TIMOTHY AMASON: No.

2 MR. CARTER: Okay. Is there anything about him
3 being kin to your wife that would cause you to give his
4 testimony more believability, credibility than you would
5 anybody else's?

6 JUROR TIMOTHY AMASON: No.

7 MR. CARTER: Horace Wayne Miller. Sarah
8 Barrentine.

9 Now, ladies and gentlemen, we talked about how a
10 verdict has to be based on the evidence. Listen to the
11 evidence and deliberate on the evidence.

12 Now, I want to make sure and can you assure me that
13 whatever decision you render will be based on the
14 evidence and the facts and not on opinions or sentiment
15 or desires or expectations that are not evidence and
16 don't come from the witness stand. Can you assure me?
17 Anybody can tell me otherwise?

18 Now, despite the fact that in 1996, July 16, a
19 terrible thing happened here, do you agree with me and do
20 you understand that your job is not to come here and
21 deliver a verdict for the victims' family? Your job is
22 to come here and listen to the evidence. Listen to the
23 facts from the witness stand and make a decision based on
24 listening to the evidence and the facts. Are you with me
25 on that? Anybody disagree?

26 Now, do we have anybody here who is -- I know there
27 are people who are uncomfortable being here. And I can
28 tell you that you are not -- I will say it again. You
29 are not the only one uncomfortable. I wish I could be

1 with my grandkids instead but, but I'm here.

2 But what I want to know is whether or not we have
3 anybody who's afraid, actually scared to serve as a --
4 and I want you to understand something.

5 One moment, Your Honor.

6 Ladies and gentlemen, do you understand that what we
7 expect you to do is listen and answer questions
8 truthfully and honestly? That is all we expect. And as
9 long as you do that, you shouldn't have any unnecessary
10 fears. Can you -- can you accept that? Do you
11 understand that? Anybody got a problem with that?

12 Now, if you get picked, you are gonna have occasion
13 to listen to the case and to go back and to deliberate
14 with several other people. And I want you to understand
15 that your deliberations are your deliberations, not
16 somebody else's deliberations. I want you to understand.

17 Do you understand when I say you don't have to go
18 back there and let somebody else tell you what to think,
19 tell you what to feel, tell you how to view the evidence?
20 That is your individual decision although you are back
21 there with more than one person. Everybody understands
22 that?

23 And ladies and gentlemen, we all play a role in
24 these cases. Mr. Evans and his staff play a role, just
25 like I and my staff play a role. Mr. Evans is the
26 prosecutor. He represents the State of Mississippi. I'm
27 a defense attorney. I represent the defendant. And if
28 you haven't been told, I think the judge is going to tell
29 you at some point that - and he can correct me if I'm

1 wrong - his job is to rule on objections, hear the case,
2 maintain order, and make sure that the law is given to
3 you, that you follow the law. The judge is a neutral
4 hearer of this case. He doesn't care who wins, wins. He
5 is not on either side. Do you understand that?
6 Everybody understand that?

7 Is that correct, Your Honor?

8 THE COURT: That's correct, Mr. Carter.

9 MR. CARTER: Now, let me talk to you about
10 something else. How many of you have -- I have been in
11 malls, out in parks and have thought for sure and
12 wondered seriously whether I have seen my deceased
13 brother. I saw somebody that looked just like him and
14 wanted to walk up to him and touch him and talk to him.
15 But the closer I got, the more I realized that wasn't my
16 brother.

17 How many of us have seen -- how many of you have
18 seen children run up to somebody and thought for sure
19 that they recognize somebody and found out it wasn't the
20 person they thought? I mean I would be surprised if I'm
21 the only one that had these kinds of experiences.

22 Ladies and gentlemen, anyone believes that our
23 memory is like a video recorder, that it can record an
24 incident accurately and that you can go back and play it
25 and at any moment that you will get the same facts over
26 and over and over?

27 Wouldn't you agree with me that if you study for a
28 test, if you had an examination, that it's better for you
29 to take the examination shortly after you have studied

1 for the exam? Would all of you agree with that? Would
2 you also agree that if you waited six months -- if you
3 studied today and waited six months, didn't study any
4 more, didn't reread your notes, that it is unlikely that
5 you will remember what you read six months ago? Anybody
6 have a problem with that? Doesn't that make sense?
7 Isn't that our experiences? Anybody got a different
8 experience?

9 Now, so our memory is not perfect. And, in fact, it
10 is very imperfect. And it's more imperfect as time
11 passes. Is that fair to say? Anybody, anybody disagrees
12 with that? Based on your common sense. That is all I'm
13 talking about.

14 Now, I'm going to admit something else, because I'm
15 being honest. And I want you to be honest with me. I
16 remember as a little boy in 1969 when we integrated the
17 schools in Noxapater, Mississippi, where I lived at the
18 time. I doubt any of y'all have heard of it.

19 And I went to school. And I met lots of people.
20 Lots of people met me. And I remember telling my parents
21 I met a friend. And it was a white guy, a young white
22 boy just like me. They asked me to describe him. And
23 I'm ashamed of this. Do you know I couldn't even
24 describe him? I'm going to tell you why.

25 MR. EVANS: Your Honor, I object. He can ask
26 questions.

27 MR. CARTER: I am going to ask a question.

28 THE COURT: You can't tell them why. You just
29 ask questions and --

1 MR. CARTER: Your Honor, I'm trying to --

2 MR. EVANS: Which is improper.

3 MR. CARTER: I'm trying to make them understand
4 and see what I'm talking about.

5 You know why? To, to give a description, would you
6 agree with me, that you gotta be able to see details? If
7 you don't see detail, if you see somebody just for a
8 glimpse or a short period of time and you had to describe
9 them, wouldn't you agree with me that you might not be
10 able to give a good description? And that if you look at
11 a person for long period of time, longer period of time,
12 and you had a chance to focus on them for a longer period
13 of time --

14 MR. HILL: Your Honor, I, I object. I think
15 this is asking them to draw a conclusion when they
16 have -- when they have heard no evidence upon which to
17 make some conclusion.

18 MR. CARTER: That is not --

19 MR. HILL: I think that is an improper voir
20 dire question.

21 THE COURT: I sustain the objection.

22 MR. CARTER: One moment.

23 Ladies and gentlemen, based on your common sense and
24 your common experience, hasn't it been your experience
25 that the longer you have observed something, that the
26 better look you've gotten at something, the better you
27 are able to give detail about what you saw? Anybody
28 would object to that? Anybody would disagree with that
29 based on your experiences, your common experiences? And

1 based on that, then I take it you agree with me based on
2 your silence.

3 And ladies and gentlemen, would you also agree that
4 it is easier based on your common experience, that it is
5 easier to see things and to give a description of things
6 when you are able to focus on those things and you don't
7 have distractions coming from other directions? For
8 instance, would you agree with me that it is easier to
9 see an object and describe an object if you are standing
10 still looking at that object?

11 MR. EVANS: Your Honor, this is completely
12 inappropriate.

13 THE COURT: I'll sustain the objection.

14 Mr. Carter, I mean your -- that is going way beyond
15 any scope of proper voir dire.

16 MR. CARTER: Your Honor, the experiences and
17 common sense -- common sense of these jurors is vital and
18 plays a role into their deliberations. And since it is
19 essential, we have to be able to gauge those things.
20 Then I don't know how I'm going to be able to voir dire
21 and ask questions and gauge those things and make a
22 selection if I can't ask the questions about it.

23 THE COURT: Well, I sustained the objection.
24 So you can move on.

25 MR. CARTER: One moment.

26 Ladies and gentlemen, don't you agree with me - and
27 Mr. Evans has told you this, and I believe the Court has
28 told you - that the State of Mississippi has to prove
29 that Mr. Flowers is guilty? And you accept that. Do you

1 also and can you also accept the fact that Mr. Flowers
2 doesn't have a duty to prove he didn't do it, didn't
3 commit this crime?

4 And would you agree with me that to shift the burden
5 to Mr. Flowers and to cause Mr. Flowers to prove his
6 innocence is, is wrong? Would you agree with me that
7 that is wrong? Anybody disagrees with that? So I take
8 it by your silence everyone agrees.

9 Ladies and gentlemen, would you agree with me that
10 if a witness says one thing on one occasion and another
11 thing on another occasion, that it makes it hard and
12 difficult to know what to believe? Anybody got a --

13 MR. HILL: Your Honor.

14 MR. CARTER: -- different take on that?

15 MR. HILL: I object. That is asking them to
16 form an opinion or reach a conclusion or committing them
17 to a certain proposition if they don't have any evidence.

18 THE COURT: I will sustain the objection. I
19 don't think that has any bearing on anything concerning
20 voir dire. That is argument to make during closing or...

21 MR. CARTER: Thank you, Your Honor.

22 Now I have another question. And I want you to
23 think about this and be honest about it. I want to know
24 if we have anyone, any prospective juror who couldn't
25 find Mr. Flowers not guilty no matter the facts, no
26 matter the facts? Only you know the answer to this. Do
27 we have anyone who's already formed an opinion and have
28 decided Mr. Flowers is guilty and is not going to change
29 your mind no matter what? No matter the facts?

1 Thank you.

2 THE COURT: We will take a 10-minute recess,
3 ladies and gentlemen.

4 (THE PROSPECTIVE JURORS LEFT THE COURTROOM.)

5 (A BREAK WAS TAKEN.)

6 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
7 AND THE DEFENDANT WERE PRESENT. PROCEEDINGS CONTINUED AS
8 FOLLOWS:)

9 THE COURT: Mr. Carter, you may resume.

10 MR. CARTER: May we approach, Your Honor?

11 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
12 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
13 OUTSIDE THE HEARING OF THE PROSPECTIVE JURORS.)

14 MR. CARTER: Your Honor, I just wanted to put
15 on the record that part of our theory of the case is that
16 eyewitness identification is not perfect. Memory is not
17 perfect. In fact, it's imperfect. And that's why I
18 thought since it's theory that I had to be able to ask
19 some questions in the area. I realize that I couldn't be
20 asking, asking scientific questions that calls for -- I
21 was asking questions that went to common sense and common
22 experiences. That is the only reason I was trying to
23 talk about that.

24 And I'm just -- I just am questioning whether I
25 should - I am going to do exactly what the Court says -
26 whether I should be forbidden to do this.

27 THE COURT: You are making -- everything you
28 are doing, you are making statements of fact. And you
29 are making statements of fact like it is fact and then

Voir Dire Examination by Mr. Carter

1 asking the jury if they agree with what you are saying is
2 the fact. And, and I don't think that is appropriate.
3 If you want to ask them something like will you use your
4 common sense and honest judgment in listening to the
5 evidence, then I think that is appropriate.

6 But I mean, you know, people are not required and do
7 not check their common sense at the door when they come
8 into the jury box. And certainly you can ask them if
9 they will, you know, use their life experiences and their
10 common sense to listen to the evidence and deliberate on
11 a verdict. And I think that is appropriate. But I don't
12 think it is appropriate to, you know, preface every
13 question by making a statement that you consider to be a
14 statement of fact.

15 MR. CARTER: Well, Your Honor, I was actually
16 trying to do exactly what you suggested, but I probably
17 did it in a different approach than, you, you -- than you
18 know is allowable or believe is allowable but thank you.

19 One other thing. Your Honor, there are some --
20 about four jurors who are sitting there talking to each
21 other. I could barely ask my questions. And I have to
22 be real honest, I was tempted to question them. I don't
23 want to do that, because I don't want to --

24 THE COURT: I will just admonish everybody that
25 they don't need to be talking while questions are being
26 asked.

27 MR. CARTER: And can I just --

28 MS. STEINER: Your Honor, in light of your
29 caution about not talking, I was thinking that perhaps --

1 certainly, the jurors on the first pew on the left have
2 been talking with each other. Would you prefer we do
3 that in open court or can we call them in during
4 individual voir dire?

5 THE COURT: If there is some question, I think
6 we need to, rather than single somebody out in front of
7 everybody.

8 MS. STEINER: Okay. Then I --

9 MR. EVANS: There is nothing wrong with the
10 jurors talking to each other.

11 THE COURT: Well, I agree. There is nothing
12 wrong with them talking to each other. I thought you
13 were saying they were talking to each other during the --

14 MS. STEINER: They are.

15 THE COURT: -- while everybody else is talking.

16 MS. STEINER: Yes, Your Honor. And we would
17 reserve the right to identify for the Court. I guess
18 everybody is going to come in for individual voir dire on
19 what they have --

20 THE COURT: Knowledge of the case and the death
21 penalty.

22 MS. STEINER: So we will be talking to
23 everybody individually at some point any way. We reserve
24 the right to ask those questions individually.

25 (THE BENCH CONFERENCE WAS CONCLUDED.)

26 THE COURT: I want to ask everybody on the
27 panel, don't be carrying on any conversations with each
28 other while questions are being asked or somebody else is
29 responding. I know you might think you can whisper to

1 each other while somebody else is giving a response, but
2 the court reporter has got to take down everything that
3 is said in the courtroom. And it can be very distracting
4 if murmuring is going on among anybody. So I will ask
5 that if you are not responding to a question that was
6 asked, that you do not be talking at all to anybody or
7 whispering to anybody or talking at all.

8 And with that, you may proceed.

9 MR. CARTER: Thank you, Your Honor.

10 Number 51. Mr. Huggins.

11 JUROR BURRELL HUGGINS: Yeah.

12 MR. CARTER: Do you have a fixed opinion, an
13 unalterable, unchanging opinion that Mr. Flowers is
14 guilty?

15 JUROR BURRELL HUGGINS: I do not know. I
16 hadn't heard the evidence. Like I said, I work away from
17 here. I don't know any of them.

18 MR. CARTER: Thank you. Thank you.

19 JUROR BURRELL HUGGINS: I wouldn't even know
20 Mr. Flowers until I seen him here.

21 MR. CARTER: May we approach again, Your Honor?
22 I apologize.

23 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER AND MR.
24 CARTER APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE
25 HAD OUTSIDE THE HEARING OF THE PROSPECTIVE JURORS.)

26 MR. CARTER: I just want to make sure that I'm
27 not doing anything wrong. I want to go ahead. I
28 anticipate asking some questions about the past trial
29 involving this case. And I don't know that there has

1 been some kind of ruling that is saying I can't do that.

2 THE COURT: I think that might be something
3 that would be better to get into individually. I mean
4 you could certainly --

5 MR. CARTER: Okay. I'll do it individually
6 then.

7 THE COURT: -- taint the jury pool if you
8 start.

9 MR. CARTER: I won't do it then.

10 (THE BENCH CONFERENCE WAS CONCLUDED.)

11 MR. CARTER: Ladies and gentlemen, I know that
12 several of you have relatives who are police officers.
13 And I just want to make sure that there is no bias in
14 favor of a police officer. And my question is will you
15 give the police officer's testimony meaning, value and
16 credibility just like you would any other juror and that
17 you won't give their testimony more value and weight and
18 effect just because they are police officers?

19 Do we have anyone who would, in fact, consider a
20 police officer's testimony more honorable and valuable
21 than another person who may testify in a way that is
22 different and that contrast the police officer's
23 testimony?

24 So by your silence, I take it that you mean you
25 won't give police officer's testimony more than you would
26 anybody else's just because they are police officers.

27 And I hate to even ask this question, because I
28 can't imagine it. Any, any of you dislike me, got a
29 problem with me? I mean as nice as I am, I can't imagine

1 you not, but you never know. I mean anybody blames me
2 for this case? Blames my office? Anybody dislike my
3 co-counsel, Miss Steiner? Dislike my mitigation
4 specialist Miss Curie, Miss Leah Hubbard, my brilliant
5 students, all of them are brilliant, Catherine and
6 Kaitlyn.

7 So I take it you all like me, adore me and you won't
8 hold anything against me against Mr. Flowers based on
9 whatever perception you have towards me. Is that fair to
10 say?

11 Number 1.

12 JUROR SANDRA HAMILTON: That is fair. Yes,
13 sir.

14 MR. CARTER: Number five.

15 JUROR CAROL GRIFFIN: Miss Curie did pay me a
16 visit one time.

17 MR. CARTER: Right.

18 JUROR CAROL GRIFFIN: I do know her though.

19 MR. CARTER: And y'all didn't talk about the
20 facts of the case, did you?

21 JUROR CAROL GRIFFIN: No, sir.

22 MR. CARTER: Thank you.

23 JUROR CAROL GRIFFIN: Well, we talked about the
24 defendant.

25 MR. CARTER: Now, during the trial we will
26 likely have some witnesses that come from out of town.
27 And anyone has a bias towards people who come from
28 outside of town? And if a person from Winona and from
29 Montgomery County testify one way and somebody from

1 outside of town testify just the opposite, would you
2 automatically believe the local person and not believe
3 the, the person outside of Winona? Anybody feel that
4 way, outsiders are bad?

5 Now, I tell people that I don't like snakes. And I
6 don't -- I have heard about some good snakes, some pet
7 snakes or some snakes at the zoo that I suppose are good.
8 But I don't like any of them.

9 Now, I ask this question to lead into your feelings
10 towards Mr. Flowers. Do we have anyone here who hates,
11 despises Curtis Flowers as a result of this case, as a
12 result of something prior to this case, as a result of
13 something after this case that has nothing to do with the
14 case? And you are just waiting on -- you can't be fair
15 to him. And, in fact, you are just waiting on an
16 opportunity to extract some kind of pain to him. Anybody
17 has those, those notions, those desires, those
18 inclinations? Thank you.

19 Would you agree with me that it's, it's wrong and
20 irresponsible to convict a person if it's not proven
21 beyond a reasonable doubt by the prosecutor that the
22 person committed the crime?

23 I think I'm finished, Your Honor. Let me check.

24 Your Honor, at this point I reserve any other
25 questions I have to when we do the individual voir dire.
26 Thank you.

27 THE COURT: Ladies and gentlemen of the jury,
28 what we are going to do now is we are going to -- there
29 is a couple of matters that I want to ask each one of you

1 outside the presence of the other jurors. So I am going
2 to have you step outside, and then we will call you in
3 one-by-one and ask you a couple of questions.

4 And please, just be patient. I don't know how long
5 that will take. But if you will, just stand outside the
6 courtroom.

7 Are there any chairs out there?

8 BAILIFF WHITFIELD: There is some out front,
9 sir.

10 THE COURT: Okay. If you will just have a seat
11 out there or stand.

12 Now, you can't talk about the case with anyone or
13 among yourselves. And if you will, just keep your fans
14 or your numbers with you so while you are standing out
15 there that will kind of let everybody know you are a
16 juror. And they are not to speak to you.

17 (THE PROSPECTIVE JURORS LEFT THE COURTROOM.)

18 THE COURT: I think there were, at least, a few
19 that probably could be excused for cause at this point.

20 I know Number 5, Miss Griffin has stated that she
21 had a relative that was murdered down in Attala County,
22 and she would have great sympathy for the victim. And I
23 mean I can keep her around. We can ask her something
24 individually if you want me to.

25 MR. CARTER: I think she is pretty much -- she
26 is gone unless the other side...

27 MR. EVANS: I think she is going to be real
28 similar to a lot of the other folks that flat said they
29 could not be -- could not judge anyone and said later

1 they could be fair. I think it's kind of the same category.

2 THE COURT: Why don't we just stick around
3 then? We can just -- I mean it's not going to take long.
4 And we can clear anything up and have it clear in the
5 record. And so we will just --

6 MR. CARTER: Your Honor, can I say, just for
7 the record, that this particular one did, in fact, say
8 that she couldn't be fair for thinking about her dead
9 relatives. She did not equivocate. She did not change
10 her mind upon being asked some question. And to say that
11 she is in the same category as those other people is
12 just -- is untruthful.

13 THE COURT: Well, we can clear it up with her
14 and the others. And you know, this is certainly --
15 depending on what she says -- there were several that I
16 was not clear, like Mr. Trotter. At first he said it
17 would affect him. Then he -- and I -- so there is
18 about -- I don't know. There are several of them that I
19 wasn't clear totally on what they were saying. And it's
20 not going to take an extremely long time, I don't think,
21 to just ask each one of them individually if something
22 arose like that.

23 Bring Number 1 in first, Miss Hamilton.

24 MRS. STEINER: Your Honor, before we commence
25 individual voir dire.

26 Your Honor, I believe the individual voir dire, as I
27 understand, is going to go into both publicity and death
28 penalty.

29 THE COURT: Right.

1 MRS. STEINER: And before we commence, I would
2 like to renew some motions we had previously made with
3 respect to barring, seeking or imposition of the death
4 penalty, which would preclude the need for that.

5 The first motion I would like to renew is the
6 motion - I think it was re-renewed in April - that was
7 filed in September of 2008 just prior to fourth trial in
8 this matter to preclude the prosecution from seeking
9 imposition of the death penalty in this matter largely on
10 the basis of the documented history through -- in, in the
11 courts.

12 The first three trials of racial discrimination, as
13 set forth in that motion, which was considered by the
14 Court previously and today, the experience of the means
15 in the areas which the State is inquiring, practicing
16 prosecutorially as cross-examining African-American
17 jurors, particularly the ones whom have been identified
18 as having had civil disputes with Mrs. Tardy's business.

19 THE COURT: What does that have to do with the
20 death penalty?

21 MRS. STEINER: And this is part and parcel --

22 THE COURT: What does that have to do with the
23 death penalty?

24 MRS. STEINER: Yes, Your Honor. This is part
25 and parcel of the misconduct that in the 2008 motion we
26 had cited as a basis to preclude the death qualification,
27 which we anticipate they will continue in the same vein.

28 And on that basis, we would move on grounds set
29 forth in the 2008 motion and as carried out that there's

1 a long discussion in that motion of ways in which
2 discrimination has been occurring. And I think the way
3 that the State has been handling its voir dire to date,
4 that has continued, and that at the very least the death
5 penalty should be precluded.

6 We would also renew the motion that inherently
7 given -- what's set forth in juror questionnaires, I
8 believe that there will continue to be a racially
9 discriminatory effect, as there was in the last four
10 trials, in terms of reducing the proportion of
11 African-American jurors statistically, significantly in
12 this juror pool.

13 THE COURT: Now, have you got any Supreme Court
14 opinions or opinions from any court anywhere in this
15 country that supports your motion?

16 MRS. STEINER: Your Honor, I have what the
17 Supreme Court has not addressed. In *Lockhart versus*
18 *McCree* it was held that simply the mere existence --
19 Witherspooning jurors in and of itself was not unlawful,
20 but it does acknowledge the whole line of cases, the
21 *Peters, Duran, Taylor, Castaneda* cases, that if there is
22 a demonstrable effect from which a purpose for deliberate
23 exclusion can be inferred.

24 And it is our position, as it was when this motion
25 entitled Motion to Preclude Death Qualification of Jurors
26 or in the Alternative to Preclude the Imposition of the
27 Death Penalty, that was called up filed and ruled on in
28 September of 2008, that we believe that the pattern that
29 has continued here does demonstrate the kind of

1 deliberate -- an inference of deliberate discrimination
2 that makes it unlawful under the *Peters, Duran,*
3 *Castaneda, Batson* and *Powers* precedence that the Supreme
4 Court has decided.

5 And we would also cite to the Sixth Amendment, the
6 *Statunus* (phonetic) versus United States, and the --
7 cited in that motion. It simply says that a reading of
8 the original language of the constitution does not
9 support death qualification of jurors notwithstanding the
10 *Witherspoon* decision.

11 Allow me to renew from the -- before the fifth
12 trial, the third motion that was made at that time,
13 Motion to Bar the Death Penalty Based on Prosecutor
14 Vindictiveness and Misconduct. The fact is, Your Honor,
15 that in 2007 the prosecutor opted to proceed with the
16 trial in this manner not seeking the death penalty. The
17 --

18 THE COURT: Well, didn't that happen after
19 y'all had come up with a last-minute witness that you
20 sprung on the State that was going to testify about
21 whether there was -- about witness identification? And
22 didn't after y'all agree not to seek that witness, didn't
23 at that time the State then agree not to seek the death
24 penalty? I, I read that in a transcript.

25 MRS. STEINER: Yes, Your Honor.

26 THE COURT: So, so that is the reason why it
27 was not done. They didn't seek the death penalty in '07,
28 it was my understanding, because of y'all's springing a
29 witness at the last minute and them not having time to

1 research or to find a rebuttal witness. And so Mr.
2 deGruy agreed not to seek that in exchange for the State
3 not seeking the death penalty. Is that not what
4 happened?

5 MRS. STEINER: If the Court please, I wasn't
6 the person there. There was an agreement to withdraw. I
7 think a motion in limine had been made by --

8 THE COURT: Well, I know I read a transcript
9 where Mr. deGruy said if the State was not seeking the
10 death penalty, he would not seek that witness,
11 identification witness.

12 MRS. STEINER: Yes, Your Honor.

13 THE COURT: So is that not the reason, what
14 happened, why it was dropped?

15 MRS. STEINER: That was one factor, and we have
16 that witness --

17 THE COURT: Either way, y'all sought again to
18 have that witness. And so the State is seeking the death
19 penalty at that time. So --

20 MRS. STEINER: Your Honor has ruled that the
21 State's motion in limine is well taken. We have renewed
22 our request to have the eyewitness i.d. witness. The
23 State objected to it.

24 THE COURT: But you were alleging misconduct
25 for seeking it in -- and I mean dropping it in '07 and
26 seeking it again in '08. And I was just asking what that
27 misconduct was. Where is there misconduct?

28 MRS. STEINER: Your Honor, the misconduct has
29 to do with apparently having coached a, an expert

1 witness, Miss Schoene, with respect to the divergent
2 testimony --

3 MR. EVANS: Your Honor, I object to that.

4 MRS. STEINER: -- 2008 --

5 COURT REPORTER: Judge, they are talking at the
6 same time.

7 MR. EVANS: That is a misstatement of the facts
8 and the law. And she knows it, and it is inappropriate.

9 THE COURT: I, I have read -- you know, I heard
10 the last trial, and I read the 2007 trial. And I do not
11 agree with your characterization. There was a photo of
12 somebody's car that was several years old. And she
13 glanced at it and said it looked -- but as far as from
14 what I read in the '07 transcript, there was not ever any
15 dispute that that was the car of -- I'm trying to think
16 of his name. So to say --

17 MR. CARTER: Doyle Simpson.

18 THE COURT: Yeah. Doyle Simpson. So to say
19 that there was some coaching or misconduct, I think
20 totally -- so if that is the only reason that you can
21 come up with why there was prosecutorial misconduct that
22 would preclude the seeking of the death penalty this
23 time, then, you know, I can overrule your motion right
24 now.

25 MRS. STEINER: Your Honor, there was also a
26 *Pearce versus South Carolina* theory of vindictiveness in
27 the sense of coming back and seeking a more severe
28 penalty, because of the success of the defendant. And
29 that was under the fact that there -- that had, had been

1 reversed because of the knowing use of false testimony.
2 That it would have --

3 THE COURT: Well --

4 MRS. STEINER: -- resulted in -- Pearce would
5 have barred it.

6 THE COURT: Well, it is impossible -- you know,
7 again, it was such an immaterial matter in the '07 trial,
8 the color of that car, that, you know, I can't say for
9 sure -- but well, I don't see any possibility that it
10 would have been reversed for that reason.

11 But you are saying because it might have been
12 reversed, there might have been prosecutorial misconduct.
13 And you know, it's just not -- the law is just not on
14 your side on what you are saying, and the facts are not
15 either.

16 MRS. STEINER: Thank you, Your Honor. I take
17 it you are overruling the motion again.

18 THE COURT: I am overruling on the idea of
19 prosecutorial misconduct that would preclude them from
20 seeking the death penalty, because there has been no
21 showing that there was any prosecutorial misconduct. And
22 again, the reason why they didn't seek the '07 death
23 penalty then was because of an agreement between your
24 office and them that if you didn't seek to have this
25 expert on identification, they would not seek the death
26 penalty. That was clear from the record back then.

27 Also, I don't agree with your characterization that
28 the State has made discriminatory questions today
29 about -- during the jury selection. The State asked

1 everybody that was on the panel if they had ever been
2 sued by Tardy Furniture company. That did not single out
3 a person that was black, a person that was white.

4 They first asked if there was people that had charge
5 accounts there. There were a number of white people and
6 black that said they did. And then they asked if anybody
7 had ever been sued. You know, I think it was two or
8 three black jurors that said they had been. But that was
9 not anything that was suggestively racist or racial in
10 any way. So I do not see that their questioning today
11 has had anything dealing with race.

12 This case is not about black and white. It is right
13 or wrong and guilt or innocence is what this case is
14 about. And as I say, up to this point, I have not seen
15 any issue that would indicate that there is anything
16 discriminatory about any question that they have asked.

17 Also, the case law at this point in this state is
18 clear that, you know, you can exclude people under
19 *Witherspoon* if they say they cannot consider under any
20 circumstance the death penalty. If it disproportionally
21 results in one group of people being excluded because of
22 that, that is the law. And I'm sworn to uphold the laws
23 of the State of Mississippi, and I do my dead level best
24 to follow the precedents that have been set by the
25 Supreme Court of Mississippi and the Supreme Court of the
26 United States. And based on that, I do not see any merit
27 to your motion. So it is denied.

28 MRS. STEINER: Thank you, Your Honor.

29 I would renew the Motion to Bar Any Retrial Under

1 the Double Jeopardy Clause that we made on April 4 -- on
2 April 20. And I would also renew the Supplemental Motion
3 to Preclude Death Penalty Procedures that was heard on
4 April 20, 2010, just prior to this, since we are about to
5 go into death qualifications.

6 And finally, Your Honor, I would note that to the
7 extent that there has been intimidation in conduct, the
8 State, for instance, has filed a motion in the public
9 record stating that the fifth trial was declared a
10 mistrial, quote, because of juror perjury. As your
11 Court's own order reflects, it was declared a mistrial
12 because there was no agreement from the jury.

13 THE COURT: Well, let me ask you this. How is
14 that prejudicing Mr. Flowers if the State filed that in a
15 motion? Because at this point, none of those jurors have
16 read that court file so --

17 MRS. STEINER: We don't know that they haven't,
18 Your Honor. That was filed --

19 THE COURT: Well, we will ask. We will be
20 asking the jurors in a few minutes specific facts about
21 the case. So I would assume if any of them read that in
22 the court file, they will speak up and truthfully tell us
23 that.

24 MRS. STEINER: And, Your Honor, it's already
25 taken its toll. At least one of the jurors being
26 qualified, who came up after the -- on June 4, talked
27 very specifically about didn't -- was afraid of being
28 arrested if he didn't say something. I think at least
29 that juror was long gone. He was excused after that

1 colloquy. I cannot say that this has not --

2 THE COURT: I don't recall he said he was
3 afraid of being arrested. He came up and said that in
4 one of the previous trials his wife had been struck for
5 cause for some reason, and I think that was the Flowers
6 III case. And he was married to somebody. It seems like
7 you are kind of arguing that, you know, the jurors are --
8 you are upset because they are telling the truth.

9 MRS. STEINER: No, Your Honor.

10 THE COURT: Because, you know, you are
11 seemingly saying well, since somebody got charged with
12 perjury in the past, you know, it makes them less likely
13 to now.

14 MRS. STEINER: No, Your Honor, I am very
15 grateful, Your Honor, that the jurors are telling the
16 truth. I am, however, concerned that the prosecutorial
17 conduct that has resulted in even one juror coming
18 forward saying I don't -- I'm afraid I'll be -- I don't
19 want to be arrested by not saying something is the
20 product of the kind of representation by the prosecutor.

21 MR. EVANS: Your Honor, if she is going to
22 accuse me of prosecutorial misconduct, I would like for
23 her to put in the record what prosecutorial misconduct is
24 there and for the Court to rule on it. This is getting
25 ridiculous. I am tired of this. I think it is getting
26 very close to being qualified for a bar complaint.

27 THE COURT: I don't see anything the State has
28 done and I -- you know, you have got a right to zealously
29 represent your client, but you don't have the right to

1 conduct character assassination. That is exactly what
2 you are doing at this point, Mrs. Steiner. You are
3 accusing the prosecutor of misconduct when this juror
4 that came forward Friday did not have any prompting on
5 anybody's part to come forward and state what he stated.

6 MRS. STEINER: Your Honor.

7 THE COURT: And you had the right to question
8 him if you had chosen to do so on Friday. He was excused
9 for cause, but it's no -- there is nothing that would
10 indicate that the State did one thing to cause him to be
11 excused.

12 MRS. STEINER: Your Honor, I don't -- Mr. Curry
13 was questioned at length by both parties subsequently. I
14 think there was a second juror who Mr. -- I think Mr.
15 Carter voir dired. I cannot -- I don't have in front of
16 me the name of the individual, but it was in addition to
17 Mr. Curry. I think Mr. Curry expressed some doubts also.
18 But I -- that is my motion.

19 THE COURT: Well, you are making reckless
20 charges that have absolutely no factual basis. So I will
21 deny those motions, and we will proceed now with
22 individual questioning of the jury panel.

23 If you will get Miss Hamilton first.

24 (JUROR NUMBER 1, SANDRA HAMILTON, ENTERED THE COURTROOM.)

25 THE COURT: If you will, come forward and have
26 a seat here, Miss Hamilton.

27 JUROR SANDRA HAMILTON: Yes, sir.

28 THE COURT: If you will, have a seat.

29 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

1 You just happened to be first.

2 JUROR SANDRA HAMILTON: Okay.

3 THE COURT: But we are going to be dealing with
4 everybody that is on the panel. There is a couple of
5 questions that we wanted to ask outside the presence of
6 these -- of the other jurors.

7 I want to know if you have any knowledge of the
8 case, if you have heard any facts about the case or
9 anything like that.

10 JUROR SANDRA HAMILTON: All that I've heard is
11 one of my co-worker's husband's was friends of the
12 Stewart boy. And so I have heard some of the - of
13 course, it is just hearsay - some of the things that she
14 has had to say about it.

15 THE COURT: And has that caused you to form an
16 opinion as to the guilt or innocence of Mr. Flowers?

17 JUROR SANDRA HAMILTON: No, sir.

18 THE COURT: And would you lay aside anything
19 you might possibly have heard outside the courtroom and
20 base your decision only on the evidence presented here in
21 court?

22 JUROR SANDRA HAMILTON: Yes, sir.

23 THE COURT: And this is a case where if the
24 jury found Mr. Flowers guilty, then they would be
25 proceeding to decide whether he should be sentenced to
26 death. If the facts allow -- if the facts justified it
27 and the law allowed it, could you consider imposing the
28 death penalty?

29 JUROR SANDRA HAMILTON: Yes, sir.

1 THE COURT: Also, if he is not -- if the jury
2 found that he should not be sentenced to death, he would
3 be sentenced to life in prison without parole. So would
4 that be an option that you would also keep open mind and
5 have available to you?

6 JUROR SANDRA HAMILTON: Yes, sir.

7 THE COURT: Okay. Thank you.

8 You can step down.

9 If you will, have Miss Harris come in now.

10 MRS. STEINER: Your Honor, are we going to have

11 --

12 THE COURT: Well, if there is something -- I
13 didn't know that there was anything that I --

14 Miss Hamilton, apparently they had a question or two
15 about something.

16 MR. CARTER: Your Honor, can we just find out
17 what the process is so we won't be confused?

18 THE COURT: If you will, have a seat, Miss
19 Hamilton.

20 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

21 You can ask questions, and then we will discuss any
22 process, if you have some questions for her.

23 MR. CARTER: Your Honor, I know that she was
24 about to leave. So was that to mean that we are going to
25 call her back at some point?

26 THE COURT: No. If you have got any questions,
27 the time to ask it is now.

28 MR. CARTER: Miss Hamilton.

29 JUROR SANDRA HAMILTON: Yes, sir.

1 MR. CARTER: In a capital murder case, you get
2 to the second phase. There are two phases of a trial.
3 The first phase -- and you may already know this. If you
4 do, you can just tell me. The first phase is a question
5 of guilt or not guilty. If the person is found guilty,
6 then you go to a second phase. And you go into whether
7 to vote for death or life without possibility of parole.

8 The State of Mississippi puts on aggravation, and we
9 put on what, what is called mitigation. And mitigation
10 can be anything about the person's background, life
11 history, circumstances of a crime or -- we attempt to
12 tell you who the defendant is before you render a
13 decision.

14 Now, in, in -- so we never get to the second phase
15 unless you've already found Mr. Flowers guilty. If you
16 find Mr. Flowers guilty, and we get to the second phase,
17 and if you found him guilty of deliberately,
18 intentionally and without a mistake, and he is not insane
19 or is not in self-defense, what is your opinion as to the
20 appropriateness of the death penalty under those
21 circumstances?

22 MR. EVANS: Your Honor, I don't think that is
23 an appropriate question.

24 THE COURT: That is not an appropriate
25 question, Mr. Carter.

26 MR. CARTER: Your Honor, the -- that question
27 is appropriate. It --

28 THE COURT: Well, I am ruling it is not.

29 MR. CARTER: -- pursuant to -- do you mind if,

1 if --

2 THE COURT: I have ruled, and I do not want
3 anymore argument from you.

4 MR. CARTER: I'm --

5 THE COURT: I have made my ruling.

6 MR. CARTER: I'm not arguing, Your Honor. I
7 just -- I cannot ask questions?

8 THE COURT: Not that question.

9 I think the Court asked the only question that is
10 appropriate to be asked under the circumstances, but I
11 thought you had something else that you wanted to bring
12 up. And if you do, that's an appropriate question, ask
13 it.

14 MR. CARTER: Your Honor, just for the record,
15 we take the position that the Fourth, Fifth, Sixth,
16 Eighth and Fourteenth Amendment allows me to ask -- to
17 ask this particular question. Of course, I am going to
18 do exactly what the Court says and, and not ask the
19 question.

20 And we also take the position that in addition to
21 that, the Constitution of Mississippi, we argue, allows
22 me to answer that question -- ask that question.

23 And Miss, Miss Hamilton.

24 One moment, Your Honor.

25 Would you -- could you listen to the evidence from
26 the witness stand, both sides, the mitigation and
27 aggravation, and treat both sides equally and give
28 mitigation, the facts we put on, equal consideration that
29 you would give to the State putting on aggravation?

1 JUROR SANDRA HAMILTON: Yes, sir.

2 MR. EVANS: Your Honor, that, that is improper.
3 It is up to her to decide what weight to give them. Now,
4 he can ask if she will consider them. I have no
5 objection.

6 MR. CARTER: I will restate it, Your Honor.

7 THE COURT: Okay.

8 MR. CARTER: Miss Hamilton.

9 JUROR SANDRA HAMILTON: Yes, sir.

10 MR. CARTER: Are you able to listen to
11 aggravation and mitigation and consider both options
12 equally without -- are you able to consider both options
13 equally?

14 JUROR SANDRA HAMILTON: Both options meaning
15 the death penalty or life in prison?

16 MR. CARTER: Right.

17 JUROR SANDRA HAMILTON: Yes, sir.

18 MR. CARTER: And do you understand that the
19 State of Mississippi allows both options, and it is your
20 individual decision, nobody can tell you which way to
21 vote?

22 JUROR SANDRA HAMILTON: Yes, sir.

23 MR. CARTER: That it is your individual
24 decision. Do you understand that?

25 JUROR SANDRA HAMILTON: Yes, sir.

26 MR. CARTER: One moment, Your Honor.

27 MRS. STEINER: Your Honor, we have prepared on
28 publicity that I would handle voir dire so...

29 THE COURT: Well, one of you is going to handle

1 voir dire as to all witnesses.

2 MRS. STEINER: All right.

3 THE COURT: You are not going to get up and
4 down. It is not appropriate to have more than one lawyer
5 asking questions. And so one of you can ask the
6 questions.

7 MRS. STEINER: Of each witness or...

8 THE COURT: If you want to ask of one witness
9 and Mr. Carter the next witness, that is fine. But we
10 are not -- you know.

11 MRS. STEINER: If I may confer with Mr. Carter.

12 MR. CARTER: Miss Hamilton.

13 JUROR SANDRA HAMILTON: Yes, sir.

14 MR. CARTER: I admit I had a problem hearing
15 you, because people were moving papers back and forth.
16 But correct me if I'm wrong, you said you heard a
17 co-worker, some co-workers talking about this case, did
18 you say?

19 JUROR SANDRA HAMILTON: One coworker.

20 MR. CARTER: Who is that coworker?

21 JUROR SANDRA HAMILTON: Her name is Amanda
22 Johnson. Oh, I'm sorry. She is Amanda Ware now. She
23 recently got married.

24 MR. CARTER: And what is it that you heard her
25 say?

26 JUROR SANDRA HAMILTON: What I heard her say is
27 her husband, Derrick Ware, was friends of Mr. Stewart,
28 childhood friends, and that he was just having a real
29 difficult time with things, with the trials coming back

1 up again. And he was just real upset over it.

2 And basically, you know, that's, that's all she
3 said. She just had concerns for her husband with the
4 emotional trauma that he was going through with all of
5 this being brought up again.

6 MR. CARTER: Now, I also noticed that during
7 voir dire it seems that you, Number 2, Number 3 and
8 Number 5 were having quite a bit of conversation as I
9 tried to voir dire the jury. Is that the facts?

10 JUROR SANDRA HAMILTON: Excuse me. Could you
11 repeat that, please?

12 MR. CARTER: I noticed that during the period
13 of time I was doing voir dire that you seemed to be
14 having quite a bit of conversations with Juror Number 2,
15 Juror Number 3 and Juror Number 5. Do you know those
16 people?

17 JUROR SANDRA HAMILTON: No, sir. Didn't know
18 them at all until we came into the courtroom Friday.

19 MR. CARTER: Okay. And what were you talking
20 to them about?

21 JUROR SANDRA HAMILTON: Nothing in particular.
22 I mean I don't recall. I mean we may have made comments
23 about something that was said. I really -- I do not
24 recall anything in particular.

25 MR. CARTER: So you are conceding that memories
26 are imperfect and very fleeting. Is that what you are
27 doing?

28 JUROR SANDRA HAMILTON: I mean I don't remember
29 exactly what we said. No, sir.

1 MR. CARTER: Okay.

2 JUROR SANDRA HAMILTON: I mean we may have made
3 some comments about some things that some of the other
4 potential jurors had said, but I don't remember anything
5 in particular.

6 MR. CARTER: And did you not make the comment
7 that, to Juror Number 2 or another juror, that that is
8 not how you are supposed to answer the question? Do you
9 deny saying that?

10 JUROR SANDRA HAMILTON: That I said that is not
11 how you are supposed to answer the question? Is that
12 what you are asking me?

13 MR. CARTER: Yes. Do you -- yes.

14 JUROR SANDRA HAMILTON: I don't recall saying
15 that. I'm not saying that I didn't say that, but I don't
16 recall those exact words. No, sir.

17 MR. CARTER: Okay.

18 JUROR SANDRA HAMILTON: I mean if you could
19 refresh my memory over what was being asked at that time
20 I may remember.

21 MR. CARTER: I don't know that I can refresh
22 your memory. Thank you.

23 MR. EVANS: Very briefly, Your Honor.
24 Miss Hamilton.

25 JUROR SANDRA HAMILTON: Yes, sir.

26 MR. EVANS: You're telling us that you can be
27 fair and impartial to both sides and base your judgment
28 of guilt and sentence on what you hear in court; is that
29 correct?

1 JUROR SANDRA HAMILTON: Yes, sir, that is
2 correct.

3 MR. EVANS: Nothing further, Your Honor.

4 THE COURT: Thank you. And you can step out.
5 If you will bring Miss Harris in next.

6 (JUROR NUMBER 2, CHRISTY HARRIS, ENTERED THE COURTROOM.)

7 THE COURT: If you will, come up and have a
8 seat.

9 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

10 THE COURT: Miss Harris, I want to know if you
11 have heard anything about the case, have any knowledge
12 about the case or know anything about the investigation
13 of the case or anything about the case.

14 JUROR CHRISTY HARRIS: Basically all I know is
15 that this is maybe, like, the sixth trial. That is all I
16 know basically.

17 THE COURT: And how, how do you -- how did you
18 learn that information?

19 JUROR CHRISTY HARRIS: Just from working up
20 here in the courthouse.

21 THE COURT: And have you read any newspapers or
22 seen anything really about the case written or has --

23 JUROR CHRISTY HARRIS: No, sir.

24 THE COURT: Has anything you have heard, seen
25 or know about the case caused you to form any opinion as
26 to the guilt or innocence of Mr. Flowers?

27 JUROR CHRISTY HARRIS: No, sir.

28 THE COURT: And would you lay anything you
29 might have heard aside and just base your decision only

1 on the evidence presented here in this courtroom?

2 JUROR CHRISTY HARRIS: Yes, sir.

3 THE COURT: And now, if the jury finds Mr.
4 Flowers guilty, then there would be a second phase of the
5 trial. That would be called a sentencing phase. The
6 State is seeking the death penalty in this case. If the
7 facts justified it and the law allowed it, could you
8 consider that as a sentencing option?

9 JUROR CHRISTY HARRIS: No, sir.

10 THE COURT: So you could not under any
11 circumstances consider the death penalty.

12 JUROR CHRISTY HARRIS: Not with my religious
13 beliefs.

14 THE COURT: So you have got a religious belief
15 where you just -- now, I believe your questionnaire that
16 you answered had a different answer than that. I believe
17 on your questionnaire you said that you strongly favored
18 the death penalty.

19 JUROR CHRISTY HARRIS: I believe in it, but I
20 just don't want to be the one to rule on that.

21 THE COURT: You said on your questionnaire that
22 you could consider it and so you kind of after thinking
23 about it changed your mind.

24 JUROR CHRISTY HARRIS: Um-hum.

25 THE COURT: So you are saying you just could
26 not consider that as a sentencing option.

27 JUROR CHRISTY HARRIS: No, sir, I cannot.

28 THE COURT: And also, if the facts -- I mean
29 you determine -- you know, if you were on a jury, you

1 would -- the sentence would be up to the jury to decide.
2 If he was not sentenced to death, then the sentence would
3 be life in prison without parole. And would that be some
4 sentencing option that would be --

5 JUROR CHRISTY HARRIS: Yes, sir.

6 THE COURT: -- something you would be thinking
7 available?

8 Okay. Questions?

9 MR. EVANS: Yes, sir.

10 All right. Miss Harris, I want to make sure you
11 understand. On the death penalty, what you're saying is
12 that under no circumstance could you give the death
13 penalty; is that correct?

14 JUROR CHRISTY HARRIS: Correct.

15 MR. EVANS: So it doesn't matter what the case
16 is, that your views on the death penalty are just such
17 that you could not give it.

18 JUROR CHRISTY HARRIS: My religious beliefs
19 that one day if he was found guilty of it and the death
20 penalty was the option, then, you know, that's up to, to
21 God. I mean that's not something that I would be
22 comfortable with.

23 MR. EVANS: That is all I have, Your Honor.

24 THE COURT: Any questions?

25 MR. CARTER: Miss Harris, do you understand
26 that no one is telling you that you have to vote for
27 death?

28 JUROR CHRISTY HARRIS: Yes, sir.

29 MR. CARTER: Do you further understand that the

1 State of Mississippi has determined that life without
2 possibility of parole is just as good as death for a
3 capital murder case?

4 JUROR CHRISTY HARRIS: Okay.

5 MR. CARTER: And do you also understand that we
6 are not conceding that Mr. Flowers is guilty and that he
7 will be found guilty?

8 JUROR CHRISTY HARRIS: I understand.

9 MR. CARTER: And you have not made your mind
10 up, have you, that he is guilty?

11 JUROR CHRISTY HARRIS: No, sir.

12 MR. CARTER: And if you have made your mind up
13 that he is guilty and you know that however you vote is
14 your decision and nobody else's decision and nobody else
15 can tell you how to vote, with that in mind can you
16 consider -- and that doesn't mean vote for death, can you
17 consider both life and death as a possible punishment for
18 capital murder?

19 MR. EVANS: Your Honor, I object to the
20 phrasing. I think to consider she would have to say that
21 if the facts were there she could give death. So I think
22 it is a misconception the way it is phrased.

23 MR. CARTER: I am not changing my phrasing.
24 There is nothing wrong with that question.

25 THE COURT: Well, she can allow it. And then,
26 you know, if she changes her answer, then I think that
27 would call for more explanation. But I will allow you to
28 answer -- ask it.

29 MR. CARTER: I might have confused you though.

1 I'm not even sure. Do you even remember exactly what I
2 asked?

3 JUROR CHRISTY HARRIS: I was going to ask if
4 you would repeat what you just said, please.

5 MR. CARTER: Okay. This is what I'm asking
6 you. I want to make sure that you understand. I don't
7 take for granted that people do understand this.

8 The State of Mississippi has said that life without
9 possibility of parole and the death penalty are two
10 options for a person found guilty of capital murder. And
11 the State of Mississippi doesn't choose one over the
12 other. The State of Mississippi is not telling you that
13 you have to vote for death. The State of Mississippi has
14 never told anybody they have to vote for death or how
15 they have to vote.

16 You decide how you vote. You listen to the facts.
17 And after listening to the facts, during the first
18 phase -- and you would have to have found him guilty to
19 get to the second phase, the life or death punishment
20 phase.

21 And the State of Mississippi puts on what is called
22 aggravation, their reason why they think a person
23 deserves the death penalty. We put on what is called
24 mitigation, our reasons we think he should get life
25 without possibility of parole.

26 Now, you do agree that, or do you, that life without
27 possibility of parole is a real punishment? Or do you?

28 JUROR CHRISTY HARRIS: Yes, I do.

29 MR. CARTER: And with that being the case, with

1 this being your decision, your decision alone, and both
2 consideration, nobody is telling you how to vote, can you
3 sit in judgment on this case? And if you found Mr.
4 Flowers guilty, could you consider both options and then
5 vote your will, your -- according to your personal
6 conscience, about what is the appropriate punishment?

7 JUROR CHRISTY HARRIS: As long as it wasn't
8 dealing with the death penalty, yes, sir.

9 MR. CARTER: Well, now, you gotta understand
10 that, that the death penalty and life without possibility
11 of parole are options in this case.

12 JUROR CHRISTY HARRIS: Um-hum.

13 MR. CARTER: And neither one is mandatory that
14 you have to vote for one or the other. It is your option
15 based on your conscience, your moral conscience, your
16 make-up, your judgment --

17 JUROR CHRISTY HARRIS: Um-hum.

18 MR. CARTER: -- of the facts and circumstances.
19 And what I'm trying to find out is in light of, of that,
20 can you consider -- and that mean give value, weight,
21 consideration and affect to considering both options and
22 then choosing the one you think is appropriate?

23 JUROR CHRISTY HARRIS: Yes.

24 MR. CARTER: Thank you.

25 THE COURT: Well, Miss Harris, you have got me
26 totally confused at this point, because first you said
27 you could not under any circumstance consider the death
28 penalty. And now you are saying that you can.

29 So I want to ask this question. If you found that

1 the facts justified it --

2 JUROR CHRISTY HARRIS: Um-hum.

3 THE COURT: -- the law allowed it, could you
4 vote the death penalty if you felt like the law was
5 appropriate and the circumstances --

6 JUROR CHRISTY HARRIS: I guess I misunderstood,
7 no.

8 THE COURT: So then you are saying you could
9 not ever under any circumstances then consider the
10 imposition of the death penalty.

11 JUROR CHRISTY HARRIS: No.

12 THE COURT: So if that was an option, you could
13 not ever sit in judgment as far as --

14 JUROR CHRISTY HARRIS: I guess --

15 THE COURT: -- the death penalty.

16 JUROR CHRISTY HARRIS: I guess the way I took
17 it was they were saying you could do either the death
18 penalty or life without parole. And that is why I
19 explained to him if the death penalty is there, I cannot
20 do that.

21 THE COURT: So if the death penalty was a
22 possible penalty, there is no circumstance where you
23 would ever be able to consider that.

24 JUROR CHRISTY HARRIS: No, sir.

25 THE COURT: Okay. Thank you.

26 You may step down. I'm sorry.

27 JUROR CHRISTY HARRIS: Okay.

28 THE COURT: Get Number 3, Miss O'Quinn, next.

29 (JUROR NUMBER 3, SUSAN O'QUINN, ENTERED THE COURTROOM.)

1 THE COURT: If you will, come forward, Miss
2 O'Quinn, and sit down for a couple of minutes.

3 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

4 What we are doing now is we are asking each juror a
5 couple of questions that we felt appropriate to ask
6 outside the presence of everybody else. So be
7 comfortable and don't be intimidated or anything like
8 that.

9 First of all, I want to know if you have, have heard
10 any facts about this case or have any knowledge about
11 this case or any knowledge of the investigation or
12 anything else in any way related to this case.

13 JUROR SUSAN O'QUINN: I didn't hear anything
14 about the case until I moved here four years ago, and
15 didn't hear much about it. I did look on the internet
16 and read, but that's been all.

17 THE COURT: And what, what sites did you look
18 at?

19 JUROR SUSAN O'QUINN: Typed in -- let's see.
20 Typed in, I think, Flowers case.

21 THE COURT: I guess --

22 JUROR SUSAN O'QUINN: It brought up the trial.

23 THE COURT: Is that right?

24 JUROR SUSAN O'QUINN: Yes, sir.

25 THE COURT: And these issues or items that you
26 may have read --

27 JUROR SUSAN O'QUINN: Um-hum.

28 THE COURT: -- did that cause you to form any
29 opinion as to the guilt or innocence of Mr. Flowers?

1 JUROR SUSAN O'QUINN: No, sir.

2 THE COURT: And whatever you read, will you lay
3 that aside and base your decision only on the evidence
4 that is presented here in court --

5 JUROR SUSAN O'QUINN: Yes, sir.

6 THE COURT: -- and on nothing else?

7 JUROR SUSAN O'QUINN: Yes, sir.

8 THE COURT: Now, the jury, if -- first of all,
9 it's a two-phase trial. It only gets to a second phase
10 if the jury finds Mr. Flowers guilty. If he were to be
11 found not guilty, we would not get to a second point in
12 the trial.

13 But if Mr. Flowers were to be found guilty, then we
14 would go into what we call the sentencing phase where the
15 jury would decide the appropriate sentence. The State is
16 seeking the death penalty in this case. If the jury did
17 not feel the death penalty appropriate, then the sentence
18 would be life without parole.

19 So I want to know if the facts justified it and the
20 law allowed it, could you consider the imposition of the
21 death penalty if you felt the facts appropriate and the
22 law allowed it?

23 JUROR SUSAN O'QUINN: Yes, sir.

24 THE COURT: And could you also leave open life
25 without parole if you felt like the death penalty was not
26 appropriate?

27 JUROR SUSAN O'QUINN: Yes, sir.

28 THE COURT: And so you would have an open mind
29 as to both sentencing options available; is that correct?

1 JUROR SUSAN O'QUINN: Yes, sir.

2 THE COURT: And have you got any prefixed idea
3 about which way --

4 JUROR SUSAN O'QUINN: No.

5 THE COURT: So you would wait and hear the
6 second phase of the trial before you would make any
7 determination.

8 JUROR SUSAN O'QUINN: Yes, sir.

9 THE COURT: Okay. Thank you.

10 MR. EVANS: No questions, Your Honor.

11 MRS. STEINER: Good afternoon, Miss O'Quinn.

12 JUROR SUSAN O'QUINN: Hi.

13 MRS. STEINER: His Honor has asked you and you
14 have said you could consider either of the two penalties
15 here. The first question I have is do you understand
16 that His Honor has to ask you these questions and we have
17 to ask these questions not because he believes Mr.
18 Flowers is guilty or we believe Mr. Flowers is guilty.
19 But it's kind of the cart before the horse. Does that --
20 the fact that we even have to talk about penalty affect
21 how you are looking at the question of guilt or
22 innocence?

23 JUROR SUSAN O'QUINN: No, ma'am.

24 MRS. STEINER: Okay. Should it get to a --
25 well, let me ask you this first. You said you looked on
26 the internet. When did you do that?

27 JUROR SUSAN O'QUINN: When I got the letter.

28 MRS. STEINER: When you got the juror summons

29 --

1 JUROR SUSAN O'QUINN: The juror letter.

2 MRS. STEINER: -- in this case. And did you
3 just do a -- I call them Google searches on Curtis
4 Flowers trial?

5 JUROR SUSAN O'QUINN: Yes, ma'am.

6 MRS. STEINER: All right. And if -- you said
7 you think you can set that aside and hear the evidence.

8 JUROR SUSAN O'QUINN: Yes, ma'am.

9 MRS. STEINER: I don't know what you read. But
10 if what you -- well, maybe, I guess I do need to know.
11 Specifically what, what did you read about this?

12 JUROR SUSAN O'QUINN: This? About what was on
13 it?

14 MRS. STEINER: On the internet.

15 JUROR SUSAN O'QUINN: It just told about four
16 people being murdered and about there was -- it is about
17 slight gun residue on the hands and the clothes and about
18 a bloody shoe print or tennis shoe.

19 MRS. STEINER: All right.

20 JUROR SUSAN O'QUINN: And it really didn't go
21 into much more.

22 MRS. STEINER: Okay. And if the evidence that
23 comes before you is inconsistent with what you have read
24 in -- on the internet about this --

25 JUROR SUSAN O'QUINN: Um-hum.

26 MRS. STEINER: -- is the fact that you heard
27 something -- you might not hear about these things in
28 this courtroom even.

29 JUROR SUSAN O'QUINN: Um-hum.

1 MRS. STEINER: Would that affect you in any
2 way, the fact that you knew --

3 JUROR SUSAN O'QUINN: No, ma'am.

4 MRS. STEINER: -- you heard about a piece of
5 evidence that didn't come in --

6 JUROR SUSAN O'QUINN: No, ma'am.

7 MRS. STEINER: -- or that did?

8 All right. And did you -- have you talked with
9 anybody about what you found on the internet?

10 JUROR SUSAN O'QUINN: No. No, I haven't.

11 MRS. STEINER: And you said -- how long ago was
12 it you said you came back here?

13 JUROR SUSAN O'QUINN: Oh, it's -- we lived in
14 Ripley, Mississippi. And my husband came here to run the
15 Piggly Wiggly store. And they shut it down.

16 MRS. STEINER: And that was when?

17 JUROR SUSAN O'QUINN: That's been four years
18 ago.

19 MRS. STEINER: Four years ago.

20 JUROR SUSAN O'QUINN: That I moved here. He
21 had been here earlier.

22 MRS. STEINER: All right. So you were a
23 resident here the last time there was a trial. Did you
24 read --

25 JUROR SUSAN O'QUINN: No, ma'am.

26 MRS. STEINER: -- about that?

27 JUROR SUSAN O'QUINN: When was the last trial?

28 MRS. STEINER: October 2000-and -- September of
29 2008.

1 JUROR SUSAN O'QUINN: '08. Yes, ma'am.

2 MRS. STEINER: All right. And you didn't --

3 JUROR SUSAN O'QUINN: Montgomery County.

4 MRS. STEINER: -- read anything in connection
5 with that trial?

6 JUROR SUSAN O'QUINN: I haven't even heard
7 anything about it.

8 MRS. STEINER: And you did not get a letter
9 from the judge inviting you to be a juror --

10 JUROR SUSAN O'QUINN: Yes, ma'am.

11 MRS. STEINER: -- during that trial?

12 Now, again, we are going to take this cart and put
13 it before the horse. His Honor has explained to you that
14 there are two different sentences - life without parole
15 and the death penalty.

16 JUROR SUSAN O'QUINN: Yes, ma'am.

17 MRS. STEINER: And you said you can consider
18 both.

19 JUROR SUSAN O'QUINN: Yes, ma'am.

20 MRS. STEINER: Do you consider both to be
21 punitive sentences?

22 JUROR SUSAN O'QUINN: Well, sometimes I think
23 life in prison without parole is sometimes worse than the
24 death, because they have got the rest of their lives to
25 think about what they have done, you know.

26 MRS. STEINER: If -- I mean -- and what the
27 State puts on -- just finding him guilty, that's not
28 enough. The State is going to have to have evidence that
29 means you have to find that there is something

1 aggravating, a circumstance, and it's going to have to be
2 beyond a reasonable doubt and you and your fellow jurors
3 are all going to have to agree --

4 JUROR SUSAN O'QUINN: Um-hum.

5 MRS. STEINER: -- whether or not that exists.
6 Do you understand that?

7 JUROR SUSAN O'QUINN: Yes, ma'am.

8 MRS. STEINER: And can you do that?

9 JUROR SUSAN O'QUINN: Yes, ma'am.

10 MRS. STEINER: Now, after that there will also
11 be testimony that goes to -- the term is mitigation. It
12 might be testimony we put on or even that comes in by
13 witnesses called by the State that suggest reasons that
14 the death penalty isn't the appropriate punishment.

15 JUROR SUSAN O'QUINN: Um-hum.

16 MRS. STEINER: Now, do you understand with
17 respect to that evidence, that you're able to consider --
18 you don't have to agree with anybody other than yourself
19 --

20 JUROR SUSAN O'QUINN: Um-hum.

21 MRS. STEINER: -- about whether a piece of
22 evidence is mitigating. Do you understand that?

23 JUROR SUSAN O'QUINN: Yes, ma'am.

24 MRS. STEINER: And do you understand that it's
25 up to you personally? His Honor will instruct you, you
26 should weigh the mitigating evidence against the
27 aggravating evidence. And that on the aggravating
28 evidence, you have to decide for -- with the rest of the
29 jurors. All 12 of you have to agree. But on the

1 mitigation, do you understand you can decide that of your
2 own accord?

3 JUROR SUSAN O'QUINN: Yes, ma'am.

4 MRS. STEINER: And do you understand that this
5 can be anything that suggests a death sentence might be
6 inappropriate or the less appropriate or that a death
7 sentence might not be certainly in your mind the best
8 sentence under the circumstances? You understand that?

9 JUROR SUSAN O'QUINN: Yes, ma'am.

10 MRS. STEINER: You understand that if you come
11 to make this decision, you will be in a position you have
12 found him guilty beyond a reasonable doubt. You know,
13 you know, he didn't do it in self-defense. He didn't do
14 it because he was insane. You just decided he was
15 guilty.

16 And at that point is there anything that is going to
17 change? Is there -- are you going to really be able to
18 listen to reasons why he shouldn't get the death penalty?

19 JUROR SUSAN O'QUINN: Yes, ma'am.

20 MRS. STEINER: All right. Appreciate that.

21 And then I have one question. I know it kind of got
22 tedious when y'all weren't being questioned. Some of
23 y'all were chatting among yourselves.

24 JUROR SUSAN O'QUINN: Um-hum.

25 MRS. STEINER: We were chatting among
26 ourselves. I think the lady sitting next to you, Miss
27 Johnson, Number 4, at one point she -- I think she talked
28 about knowing the family. And she said she thought she
29 could be fair. She thought she could be fair. And then

1 finally someone asked her a question. She said, you
2 know, I really don't think I can be fair.

3 Do you recall that?

4 JUROR SUSAN O'QUINN: Um-hum.

5 MRS. STEINER: I think -- I don't know if you
6 were bored or this was a joke or you were being serious.
7 Did you sort of look at her and say you shouldn't say
8 that, you are not supposed to say that? Do you recall
9 having that --

10 JUROR SUSAN O'QUINN: I don't remember saying
11 that.

12 MRS. STEINER: Do you recall that comment in
13 passing?

14 JUROR SUSAN O'QUINN: Huh-huh.

15 MRS. STEINER: Do you feel that way? Do you
16 feel it was inappropriate if a juror who felt he or she
17 couldn't be fair to tell the Court that?

18 JUROR SUSAN O'QUINN: I don't...

19 MRS. STEINER: Did you understand my question?

20 JUROR SUSAN O'QUINN: Was she talking about
21 being fair as far as judging?

22 MRS. STEINER: Judging. I think she -- I think
23 my notes show --

24 JUROR SUSAN O'QUINN: A lot of them said they
25 couldn't judge.

26 MRS. STEINER: No. This lady -- she was
27 sitting right to your left. And she had -- I think she
28 had various kin who were -- she knew.

29 JUROR SUSAN O'QUINN: Law enforcement. Aunt.

1 Yeah.

2 MRS. STEINER: -- several people in Miss
3 Tardy's family. And I really -- and I think at one
4 point -- I mean she said a couple of times, yeah, I can
5 be fair. I could set it aside. And then I think when we
6 were talking about Miss Tardy she said, you know, it
7 would be difficult. I don't think I could be fair. And,
8 and the judge issued -- she didn't come back today. She
9 was excused. Do you feel it was inappropriate of her to
10 be forthright or to admit that she might have personal
11 feelings?

12 MR. HILL: Your Honor, I, I'm sorry to
13 interrupt counsel. But I object, because I believe this,
14 this attorney is asking this juror if she thought what
15 another juror did was -- or a comment another juror made
16 was appropriate. And I'm not sure we even have for
17 certain that we know what the comment was and that this
18 juror heard it. And even if she did, I don't know that
19 her comment about whether she thought it was appropriate
20 or not is relevant to this particular juror's
21 understanding of what's -- the purpose we are being here
22 for --

23 MRS. STEINER: I just --

24 MR. HILL: -- during individual voir dire.

25 MRS. STEINER: I am just trying to explore
26 this, Your Honor.

27 JUROR SUSAN O'QUINN: I don't remember. I have
28 just heard a lot of people saying they couldn't judge
29 today. So I can't remember the one specific person.

1 MRS. STEINER: And do you have a problem with
2 the fact that if you are selected to serve on this jury
3 that those people aren't going to be sitting there with
4 you?

5 JUROR SUSAN O'QUINN: Right.

6 MRS. STEINER: Because they have been excused.
7 Do you have a problem with that?

8 JUROR SUSAN O'QUINN: No.

9 MRS. STEINER: Okay.

10 THE COURT: Okay. Miss O'Quinn, you may step
11 down.

12 If you'll get Juror Number 5.

13 I'll ask both counsel when after I ask a question, I
14 don't want you to get up and ask the same thing that I
15 have asked again. Restrict your questions to things that
16 have not been brought up by me.

17 (JUROR NUMBER 5, CAROL GRIFFIN, ENTERED THE COURTROOM.)

18 If you will come forward, Miss Griffin.

19 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

20 Miss Griffin, we are asking everybody on the panel a
21 few questions outside the presence of the other jurors.

22 You have lived here, I guess, most of your life.

23 JUROR CAROL GRIFFIN: Since 1970.

24 THE COURT: And I want to know -- I am sure you
25 heard about the case. So I'd kind of want to know what
26 you might have heard about this case.

27 JUROR CAROL GRIFFIN: I would say anything that
28 has been out there publicity-wise I have heard it and
29 talk, as well, naturally.

1 THE COURT: Is that like through newspapers,
2 radios?

3 JUROR CAROL GRIFFIN: Of course.

4 THE COURT: Conversations at church and just
5 among friends.

6 JUROR CAROL GRIFFIN: I don't think I ever
7 heard anything at church.

8 THE COURT: And do you remember anything
9 specific that you might have read or heard about the
10 case?

11 JUROR CAROL GRIFFIN: The details of what was
12 printed. I, I would think everybody in Montgomery County
13 has.

14 THE COURT: And you have read some details
15 about -- do you remember any specific details that you
16 might have read?

17 JUROR CAROL GRIFFIN: I do. I do remember
18 specific details.

19 THE COURT: What? What about like --

20 JUROR CAROL GRIFFIN: Such like who was
21 arrested. There was a picture in the *Winona Times* of the
22 inside of Tardy's, details of the scene, anything along
23 that line.

24 THE COURT: And has, has what you read or heard
25 caused you to form an opinion as to the guilt or
26 innocence of Mr. Flowers?

27 JUROR CAROL GRIFFIN: Well, the fact that there
28 has been so many trials, of course, I would.

29 THE COURT: You are aware of the prior trials.

1 JUROR CAROL GRIFFIN: Of course.

2 THE COURT: But has that caused you to form an
3 opinion as to his guilt or innocence?

4 JUROR CAROL GRIFFIN: Well, I know that at this
5 trial we are supposed to look at just the evidence on
6 this trial. But since he was tried, I would say yes. To
7 some extent, I would say yes, honestly.

8 THE COURT: And you have --

9 JUROR CAROL GRIFFIN: Honestly.

10 THE COURT: Well, that is what I want. And
11 could you lay that opinion aside and base your decision
12 only on the evidence presented here in court and on
13 nothing that you have read or heard or seen previously?

14 JUROR CAROL GRIFFIN: I could do that. But I
15 have also mentioned to you, of course, that I'm a little
16 -- mostly involved with...

17 THE COURT: I was going to get into that next.
18 But would you, if you were selected, lay all these things
19 aside and base your decision only on the evidence?

20 JUROR CAROL GRIFFIN: I would.

21 THE COURT: And you indicated you had Miss
22 Nowell --

23 JUROR CAROL GRIFFIN: Janette Nowell.

24 THE COURT: How were you and Miss Nowell
25 related?

26 JUROR CAROL GRIFFIN: Janette's father and my
27 father were first cousins.

28 THE COURT: So she was, I guess, second cousin,
29 maybe. And I believe you said already that that would

1 cause you to automatically have sympathy towards the
2 victims' family because of that; is that correct?

3 JUROR CAROL GRIFFIN: I did some soul searching
4 after that question was asked. And seeing what my
5 parents went through and seeing what victim's families go
6 through, I have to honestly say that I, I feel in that
7 direction.

8 THE COURT: So are you concerned that you could
9 not be fair and impartial because of that?

10 JUROR CAROL GRIFFIN: In this case I am
11 concerned.

12 THE COURT: And --

13 JUROR CAROL GRIFFIN: Or I would never have
14 mentioned it.

15 THE COURT: And also, of course, this is a
16 situation where if the jury found Mr. Flowers guilty,
17 found him guilty beyond a reasonable doubt of these
18 murders, then there would be a second phase of the trial.
19 We would not have a second phase unless the first phase
20 found him guilty. If they did, then we would go into a
21 second phase that would be the sentencing phase where the
22 jury would determine the appropriate punishment. The
23 State of Mississippi is seeking the death penalty in this
24 case.

25 What happens is the State puts on aggravating
26 factors. The defense puts on mitigating factors. And
27 then the jury determines whether the death penalty should
28 be imposed. If the jury does not impose the death
29 penalty, then life in prison is the sentence that, that

1 results from a capital murder conviction.

2 If the facts justified it and the law allowed it,
3 could you consider the death penalty as a sentencing
4 option?

5 JUROR CAROL GRIFFIN: I could not because of my
6 own lifestyle.

7 THE COURT: So you have got religious or
8 personal views where just you could not even consider
9 that.

10 JUROR CAROL GRIFFIN: Well, I am sure this is
11 not anything to anyone else, but I have been a really
12 good vegetarian for 38 years. And I have a hard time
13 dealing with the death of -- causing the death of
14 animals. I, I, I don't think I could cause the death of
15 a person.

16 THE COURT: So you just -- and I --

17 JUROR CAROL GRIFFIN: I mean that is my -- as I
18 say, it is just my lifestyle.

19 THE COURT: And let me tell you this. Your
20 lifestyle is respected by everybody. We are only wanting
21 your views. And you're entitled to your opinions on
22 anything that you are asked. And so don't feel bad that
23 you are sharing a view that you have, because that is
24 what we are wanting you to do.

25 JUROR CAROL GRIFFIN: Thank you.

26 THE COURT: And so you do not have to apologize
27 for any view that you might have. But you just, because
28 of that just could not even consider the death penalty;
29 is that correct?

1 JUROR CAROL GRIFFIN: I'm sorry. I can't.

2 THE COURT: Okay. Thank you.

3 MR. EVANS: No questions, Your Honor.

4 MR. CARTER: You got any?

5 MRS. STEINER: No questions, Your Honor.

6 THE COURT: Okay. Miss Griffin, you may step
7 down. Thank you.

8 Number 6. Mr. Trotter.

9 (JUROR NUMBER 6, GLENN TROTTER, ENTERED THE COURTROOM.)

10 If you will come forward and have a seat up here,
11 Mr. Trotter, and we will ask you a few questions.

12 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

13 THE COURT: I want to first clear up, because I
14 wasn't sure after we had asked questions of everyone. At
15 one point you said being friends with Priscilla Ward -- I
16 believe that is Mr. Flowers' sister.

17 JUROR GLENN TROTTER: Yes, sir.

18 THE COURT: You are friends of his family and
19 very close with them.

20 JUROR GLENN TROTTER: Yes, sir.

21 THE COURT: And did I understand you to say
22 that because of that, that would affect you as a juror
23 and you could not be a fair and impartial juror because
24 of that?

25 JUROR GLENN TROTTER: Yes, sir. Yes, sir.

26 THE COURT: So would that relationship with his
27 family come into play where you just could not listen to
28 the facts but would have that family connection with him
29 override your ability to be fair and impartial?

1 JUROR GLENN TROTTER: Yes, sir. Yes, sir.

2 THE COURT: And knowledge about the case, have
3 you heard anything about this case or have any knowledge
4 at all about this case?

5 JUROR GLENN TROTTER: No, sir.

6 THE COURT: Did you hear about it at the time
7 that it occurred or read about it in the newspaper or see
8 it in t.v. or anything?

9 JUROR GLENN TROTTER: At the time it happened,
10 I heard about, you know.

11 THE COURT: And have you heard about it or seen
12 mention of it since?

13 JUROR GLENN TROTTER: No, sir.

14 THE COURT: And could you lay aside anything
15 that you might have heard and base your decision strictly
16 on the evidence that is presented here in court?

17 JUROR GLENN TROTTER: Yes, sir, I probably
18 could.

19 THE COURT: And the State is seeking -- well,
20 well, let me explain this. First of all, if you were as
21 a juror, you would decide the guilt or innocence of Mr.
22 Flowers. If the jury found him guilty beyond a
23 reasonable doubt, then there would be a second phase. We
24 would only have the second phase if the jury found him
25 guilty in the first phase.

26 And if the jury found him guilty in the first phase,
27 then the State would put on proof that would show
28 reasons, called aggravations, why they think he should
29 receive the death penalty. And then Mr. Flowers would

1 put on mitigation that would show in his opinion why the
2 death penalty should not be imposed, where it would not
3 be appropriate.

4 If you were sitting on the jury could you consider
5 the death penalty as a sentencing option? You would not
6 have to commit to that, but could you consider that as a
7 sentencing possibility?

8 JUROR GLENN TROTTER: Could I consider it?

9 THE COURT: Yes, sir.

10 JUROR GLENN TROTTER: No, sir. I really can't.

11 THE COURT: So you just could not even consider
12 that as a sentencing option.

13 JUROR GLENN TROTTER: Right. Yes, sir.

14 THE COURT: You understand you would not be
15 committing to do it.

16 JUROR GLENN TROTTER: Right.

17 THE COURT: It would be that -- but you are
18 saying you could not even listen to the facts because you
19 would know before you even heard anything at that phase
20 that you could not under any circumstances --

21 JUROR GLENN TROTTER: Yes, sir.

22 THE COURT: -- impose the death penalty.

23 JUROR GLENN TROTTER: That's right.

24 THE COURT: And you understand now he would get
25 life in prison without parole if he did not get the death
26 penalty. But you would automatically just say you could
27 not even consider that death penalty.

28 JUROR GLENN TROTTER: No, sir, I couldn't
29 consider it.

1 THE COURT: Thank you.

2 JUROR GLENN TROTTER: Okay. Thank you.

3 Any questions?

4 MR. EVANS: No, sir.

5 MR. CARTER: Yes, sir.

6 Mr. Trotter.

7 JUROR GLENN TROTTER: Um-hum.

8 MR. CARTER: This court process is stressful
9 and pressurized, would you say?

10 JUROR GLENN TROTTER: Yes, sir.

11 MR. CARTER: And you haven't done this before,
12 have you?

13 JUROR GLENN TROTTER: No, I haven't.

14 MR. CARTER: Let me ask you some more, more
15 objective questions. You understand that -- you may not
16 understand, but I think the judge said it. It's almost
17 like two trials. There is a first phase and a second
18 phase. Do you understand that?

19 JUROR GLENN TROTTER: Yes. Yes, sir.

20 MR. CARTER: First phase. And only if he is
21 found guilty, you get to the second phase.

22 JUROR GLENN TROTTER: Right.

23 MR. CARTER: And if you got to the second
24 phase -- and you told us earlier that while you know
25 somebody in the Flowers family and you like them, by the
26 same token, you don't dislike the Tardys or the Stewarts
27 or the Goldens --

28 JUROR GLENN TROTTER: No.

29 MR. CARTER: -- or the Rigbys. You don't have

1 any reason to dislike them, do you?

2 JUROR GLENN TROTTER: No reason.

3 MR. CARTER: You don't have any reason to be
4 biased toward them.

5 JUROR GLENN TROTTER: No reason. Right.

6 MR. CARTER: Okay. If you got picked as a
7 juror -- and also, didn't you hear other people who said
8 that they knew the Tardys and the Stewarts and were close
9 to them or friends and went to church with them or a
10 whole host of things? Did you hear that?

11 JUROR GLENN TROTTER: Yes. Yes, sir.

12 MR. CARTER: And you also heard them say they
13 could be fair to Mr. Flowers, didn't you?

14 JUROR GLENN TROTTER: Right.

15 MR. CARTER: And, and since -- do you consider
16 yourself a reasonable and fair man?

17 JUROR GLENN TROTTER: Yes, sir, I do.

18 MR. CARTER: And therefore, if you got picked
19 as a juror, you wouldn't automatically vote against the
20 Tardys or the Rigbys or the Stewarts or the Goldens,
21 would you?

22 JUROR GLENN TROTTER: No, sir, I wouldn't.

23 MR. CARTER: You would be fair. You would make
24 a decision based on the evidence, wouldn't you?

25 JUROR GLENN TROTTER: Exactly.

26 MR. CARTER: And if you found Mr. Flowers
27 guilty, and you got to the second phase, you wouldn't
28 automatically -- strike that. If you got to the second
29 phase, you still would try to be fair to both Mr. Flowers

1 and the Rigbys, the Goldens, the Tardys --

2 JUROR GLENN TROTTER: Yes, sir.

3 MR. CARTER: -- the Stewarts. And you would
4 also go back there and deliberate with your fellow jurors
5 and discuss the case with them, wouldn't you?

6 JUROR GLENN TROTTER: Oh, yes, sir.

7 MR. CARTER: If that is what you are told you
8 are supposed to do.

9 JUROR GLENN TROTTER: Yes, sir. Right.

10 MR. CARTER: And as a result of that, if you
11 were told -- if you got picked and you were told to go
12 back there and deliberate -- and I want you to understand
13 that nobody can tell you how to vote. It's totally your
14 decision as to how you vote.

15 JUROR GLENN TROTTER: Yeah.

16 MR. CARTER: Based on your conscience, your
17 moral conscience and your make-up.

18 JUROR GLENN TROTTER: Exactly.

19 MR. CARTER: It's your decision and not anybody
20 else's.

21 JUROR GLENN TROTTER: Um-hum.

22 MR. CARTER: Can you tell us that if you got to
23 the second phase that you would sit back there and could
24 you sit back there, listen to the evidence and consider,
25 consider the appropriate punishment based on the facts,
26 whether that is life without possibility of parole -- do
27 you consider life without possibility of parole to be a
28 real punishment, which means you go to jail, you'd never
29 ever get out?

1 JUROR GLENN TROTTER: Yes, sir, I would say.

2 MR. CARTER: You call that a punishment. A
3 very strong punishment, isn't it?

4 JUROR GLENN TROTTER: Strong. Right.

5 MR. CARTER: And if you had those two options,
6 could you consider both of them and then vote whatever
7 your will is according to your, your moral conscience and
8 your make up?

9 JUROR GLENN TROTTER: Right. Yes, sir.

10 MR. CARTER: And after I asked you those
11 questions, is it fair to say that you understand better
12 now what you are being asked to do?

13 JUROR GLENN TROTTER: Yes, sir.

14 MR. CARTER: Thank you.

15 JUROR GLENN TROTTER: Yes, sir.

16 THE COURT: So are you saying now -- you told
17 me just about five minutes ago that you would not
18 consider the death penalty and that you could not
19 consider that under any circumstances.

20 JUROR GLENN TROTTER: Right. Yes, sir.

21 THE COURT: So are you saying now that you
22 could consider that as a sentencing option?

23 JUROR GLENN TROTTER: Only based on the
24 evidence.

25 THE COURT: Well, what I'm saying is if the
26 facts supported the death penalty and that was a
27 sentencing option available, could you vote for the death
28 penalty if that was a sentence that you felt was
29 appropriate?

1 JUROR GLENN TROTTER: If it was appropriate.

2 THE COURT: So you can vote for the death
3 penalty if you felt it was appropriate.

4 JUROR GLENN TROTTER: Right. Yes, sir.

5 THE COURT: And back on this issue. Are you
6 now saying that the fact that you know Miss Ward and
7 friends of the family that would not affect you in being
8 a fair and impartial juror?

9 JUROR GLENN TROTTER: Well, yes, it would.

10 THE COURT: It would.

11 JUROR GLENN TROTTER: It would. Right.

12 THE COURT: So you are saying you could not be
13 fair and impartial because you would have family ties or
14 friendships and connections with them; is that correct?

15 JUROR GLENN TROTTER: Yes, sir. Yes, sir.

16 THE COURT: Thank you.

17 JUROR GLENN TROTTER: I would still, you know,
18 see them.

19 THE COURT: You would still favor his side
20 because you know the family and, and have those ties; is
21 that correct?

22 JUROR GLENN TROTTER: Yes, sir.

23 THE COURT: Okay. Thank you. You may step
24 down.

25 JUROR GLENN TROTTER: Okay.

26 THE COURT: If you will get Mr. Robinson in
27 next. Number 8.

28 (JUROR NUMBER 8, ALEXANDER ROBINSON, JR., ENTERED THE
29 COURTROOM.)

1 THE COURT: If you will come forward, Mr.
2 Robinson.

3 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

4 Mr. Robinson, what we are doing now is asking
5 questions of each juror out -- without them being --
6 having to speak out in front of everyone.

7 And I was first wanting to know if you have heard
8 about this case, know anything about the investigation of
9 the case or have any knowledge at all about this case?

10 JUROR ALEXANDER ROBINSON: I have heard it
11 through t.v.

12 THE COURT: Heard about it through t.v.

13 JUROR ALEXANDER ROBINSON: Through t.v.

14 THE COURT: And read any newspaper or radio --
15 or heard radio, read internet things.

16 JUROR ALEXANDER ROBINSON: Probably on radio
17 too.

18 THE COURT: T.V. and radio. Any other forms of
19 communication?

20 JUROR ALEXANDER ROBINSON: Well, I've seen it
21 through *Winona Times*.

22 THE COURT: You've read it --

23 JUROR ALEXANDER ROBINSON: I've seen it in
24 *Winona Times*.

25 THE COURT: *The Winona Times*.

26 JUROR ALEXANDER ROBINSON: Right.

27 THE COURT: And can you remember anything that
28 you might have read about the case?

29 JUROR ALEXANDER ROBINSON: I guess mostly

1 whether they was going to retry it, retry it.

2 THE COURT: About having another trial?

3 JUROR ALEXANDER ROBINSON: Right, sir.

4 THE COURT: And any other -- do you remember
5 any particular facts you might have read?

6 JUROR ALEXANDER ROBINSON: No, sir.

7 THE COURT: And has anything you read, seen or
8 heard caused you to form an opinion as to the guilt or
9 innocence of Mr. Flowers?

10 JUROR ALEXANDER ROBINSON: No, sir, it hasn't.

11 THE COURT: And would you lay anything you see
12 -- saw, heard or read and base your decision only on the
13 evidence as presented here in court and on nothing else?

14 JUROR ALEXANDER ROBINSON: Only on the
15 evidence.

16 THE COURT: Okay. Now, the next question I've
17 got involves the possible sentence. The first phase of
18 the trial would be whether you, as a juror, would decide
19 Mr. Flowers' guilt or innocence. If he was found guilty,
20 then we would go into a second phase. If he was found
21 not guilty, we would not even go to a second phase.

22 But if he was found guilty, then at that time we
23 would go to the sentencing phase where the State would
24 put on proof, aggravating circumstances, that they
25 believe would necessitate or convince you that Mr.
26 Flowers should receive the death penalty. Then Mr.
27 Flowers would put on proof called mitigating proof that
28 would show why he should not receive the death penalty.
29 The jury would then decide whether he should receive the

1 death penalty. If the facts justified it and the law
2 allowed it, could you consider the death penalty as a
3 sentencing option?

4 JUROR ALEXANDER ROBINSON: I could.

5 THE COURT: And could you also leave open the
6 life without parole sentencing option? If he was not
7 convicted -- I mean if he was not -- if you did not
8 impose the death penalty, he would get life without
9 parole. So both options would be things that you would
10 keep open and consider; is that correct?

11 JUROR ALEXANDER ROBINSON: Right, sir.

12 THE COURT: I wanted to ask you one other
13 thing, and I don't want to embarrass you or anything.
14 But I noticed yesterday there was one time when I was
15 trying to get your attention, and I called your name
16 several times before you finally looked up and saw me.

17 Do you have any hearing problems or were you just
18 distracted?

19 JUROR ALEXANDER ROBINSON: I had this here
20 (held up juror card) turned wrong.

21 THE COURT: Okay. And when I was -- I'm saying
22 but when I was asking you something yesterday, you seemed
23 like for a couple of minutes there -- well, maybe not a
24 couple of minutes, but several times I called your name.
25 And then finally you realized I was trying to get your
26 attention. And I didn't know if you had hearing problems
27 or if you were just distracted momentarily about
28 something.

29 JUROR ALEXANDER ROBINSON: I don't have hearing

1 problems.

2 THE COURT: Okay. You don't have. Well,
3 that's good. That's all I wanted to know, because I
4 certainly want you to hear everything that is spoken over
5 -- in this courtroom if you are sitting over in that jury
6 box.

7 JUROR ALEXANDER ROBINSON: Right, sir.

8 THE COURT: Anybody got any questions?

9 MR. EVANS: Briefly, Your Honor.

10 Mr. Robinson, how are you doing, sir?

11 JUROR ALEXANDER ROBINSON: All right, sir.

12 MR. EVANS: You understand that this will be a
13 two-phase trial. The first phase will be strictly to do
14 with guilt or innocence. And you are saying that you
15 have nothing that would affect your decision at this
16 point one way or the other. You could listen to the
17 evidence and base your decision strictly on the evidence;
18 is that correct?

19 JUROR ALEXANDER ROBINSON: I could, sir.

20 MR. EVANS: All right. And when we get to the
21 second phase, you understand that in the first phase when
22 you are looking at guilt or innocence you don't even
23 think about what the appropriate penalty would be. The
24 Court will tell you when you can actually start thinking
25 what penalty should be.

26 And when we get to that phase, the State will put on
27 certain things, and the defense will put on certain
28 things. And then you can make up your mind based upon
29 the facts and the law. The judge will tell you what the

1 law is. And you can make up your mind as far as the
2 facts, whether they justify the death penalty or not.

3 Are you telling us that if the -- in this case, if
4 the Court tells you that the law authorizes it and you
5 think the facts justified the death penalty that you
6 could vote for the death penalty?

7 JUROR ALEXANDER ROBINSON: I could.

8 MR. EVANS: And if you didn't think the facts
9 justified it, you could vote for life.

10 JUROR ALEXANDER ROBINSON: Right.

11 MR. EVANS: In other words, you could vote for
12 either choice depending on what the facts were.

13 JUROR ALEXANDER ROBINSON: I could.

14 MR. EVANS: Nothing further, Your Honor.

15 MRS. STEINER: Good afternoon, Mr. Robinson.

16 JUROR ALEXANDER ROBINSON: Good afternoon.

17 MRS. STEINER: I believe --

18 MR. CARTER: Your Honor.

19 THE COURT: We will take about a five-minute
20 recess. Mr. Flowers, I think, has medication he needs to
21 take.

22 (A BREAK WAS TAKEN.)

23 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
24 AND THE DEFENDANT WERE PRESENT IN THE COURTROOM. PROCEEDINGS
25 CONTINUED AS FOLLOWS:)

26 THE COURT: Mr. Evans, were you through asking
27 Mr. Robinson --

28 MR. EVANS: Yes, sir.

29 THE COURT: I could not remember at what point

1 we had stopped.

2 So you may proceed, Mrs. Steiner.

3 MRS. STEINER: Yes.

4 Mr. Robinson, His Honor talked to you about
5 aggravation and mitigation as being two kinds of evidence
6 that you might hear if it reaches the point where you are
7 going to have to consider sentence.

8 Do you remember that?

9 JUROR ALEXANDER ROBINSON: Right.

10 MRS. STEINER: And let me ask you this. Do
11 understand that the fact that the judge is or I'm asking
12 you about sentence before we -- a jury has even made a
13 decision on guilt or innocence, it doesn't mean we think
14 he is going to be found guilty or that there is any
15 difference with any other case? It is just we have to
16 put the cart before the horse. Does that bother you?

17 Are you able to understand that when we talk about
18 sentences, it is not because we have already decided he
19 is guilty.

20 JUROR ALEXANDER ROBINSON: Right. Right.

21 MRS. STEINER: Okay. And, and when His
22 Honor -- the State will put on evidence in aggravation,
23 which will be -- it may be related to the crime of
24 conviction but they will have to at least point to
25 something in addition to merely being guilty of capital
26 murder.

27 Do you understand the State has the obligation that
28 there be in the evidence something in addition to just
29 being found guilty of capital murder in order to even ask

1 a jury to get the death penalty? Do you understand that?

2 JUROR ALEXANDER ROBINSON: I understand.

3 MRS. STEINER: And do you understand that if,
4 if the death penalty is even to be considered further,
5 all 12 of you deliberating, if you serve on this jury,
6 would have to agree that that aggravating circumstance
7 existed and His Honor will explain to you what those are?

8 Can you follow the law about what the aggravating
9 circumstances are?

10 JUROR ALEXANDER ROBINSON: I could.

11 MRS. STEINER: All right. Now, what the
12 defendant will put on is evidence called mitigation. And
13 that means anything the defendant might choose to put on
14 through his own witnesses or through maybe even witnesses
15 the State calls that suggest that the penalty of life in
16 prison without parole would be a better sentence or that
17 the death penalty would not be the best sentence. Do you
18 understand that that's a different kind of evidence than
19 aggravation?

20 JUROR ALEXANDER ROBINSON: Yes.

21 MRS. STEINER: All right. And do you
22 understand that you can -- that unlike with the evidence
23 of aggravation, that's for you to decide, whether you
24 find it mitigating. You can take any piece of evidence
25 and you can decide for yourself. No one has to agree
26 with you. Can you do that?

27 JUROR ALEXANDER ROBINSON: I can do that.

28 MRS. STEINER: Do you understand that your
29 sentence, your vote -- in anything your vote is your

1 vote? But that when you are considering sentence,
2 whether life without parole or the death penalty, that is
3 your moral judgment based on what His Honor has
4 instructed you and what evidence the State has put on in
5 aggravation and the defense has put on in mitigation.

6 Can you tell me you can consider what the -- what
7 the defendant says, what the defense -- evidence the
8 defendant puts on with the same fairness as you can
9 consider the evidence the State puts on?

10 JUROR ALEXANDER ROBINSON: I can.

11 MRS. STEINER: Okay. Thank you.

12 That was a long question. I apologize.

13 That's all I have, Your Honor.

14 THE COURT: Okay. Mr. Robinson, if you will
15 step back out with your other fellow jurors.

16 Number 12.

17 (JUROR NUMBER 12, JANELLE JOHNSON, ENTERED THE
18 COURTROOM.)

19 THE COURT: If you will have a seat down here,
20 please, Miss Johnson.

21 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

22 Miss Johnson, we are now asking all the jurors a few
23 questions outside the presence of their fellow jurors.

24 I want to know first if you have heard anything about the
25 case, have any knowledge about the case or anything related to
26 the case.

27 JUROR JANELLE JOHNSON: I did not live here
28 when it was happening. My husband actually lived in
29 Memphis at the time. He is from here. I am not.

1 THE COURT: When did you finally -- when did
2 you move to Winona --

3 JUROR JANELLE JOHNSON: When I moved here --

4 THE COURT: -- or Montgomery County?

5 JUROR JANELLE JOHNSON: Like November of 2001.

6 THE COURT: Okay.

7 JUROR JANELLE JOHNSON: Early 2002.

8 THE COURT: Okay.

9 JUROR JANELLE JOHNSON: I went to work for
10 Sta-Home Health. I am a nurse there. And just when the
11 trials would come up, you can see the Tardy Furniture
12 building from where our office used to be. And they
13 said, you know, they would -- you know, people would talk
14 about, you know, the trials coming up or something like
15 that. And they said well, it happened right there. That
16 is the Tardy Furniture building.

17 THE COURT: And have you read any newspaper or
18 internet articles or listened to any radio, t.v. or
19 internet broadcast?

20 JUROR JANELLE JOHNSON: Over the years, you
21 know, it would be announced on the radio, which I, I
22 listen to satellite radio most of the time now. So I
23 don't ever hear it. But just seeing it on the paper.
24 But I, I didn't know any of them. So I really wasn't
25 that interested, you know. Not saying I wasn't
26 interested, but I just really wasn't --

27 THE COURT: I understand what you are saying.
28 And so have you picked up any knowledge or have any
29 information about this case that would have caused you to

1 form an opinion as to guilt or innocence of Mr. Flowers?

2 JUROR JANELLE JOHNSON: No. Huh-huh.

3 THE COURT: And would you lay aside whatever
4 you might have heard and base your decision only on the
5 evidence presented here in court?

6 JUROR JANELLE JOHNSON: Yes, sir.

7 THE COURT: And the next question I want to ask
8 relates to possibility of a sentencing phase of the
9 trial. What happens in this type case is if you found
10 Mr. Flowers guilty of capital murder, then there would be
11 a second phase and that phase would determine punishment.
12 There is not a second phase unless he is found guilty.
13 If he was found not guilty, we would not get to the
14 second phase.

15 But if he were to be found guilty, then at that
16 point we would have a sentencing phase of the hearing.
17 The State would put on proof, aggravating proof, showing
18 reasons why they believed he should receive the death
19 penalty. Mr. Flowers would put on mitigating proof that
20 would show why he should not get the death penalty.

21 But the jury would decide whether he received the
22 death penalty based on the facts presented and the law.
23 And so if the law allowed it and you felt the facts
24 justified it, could you consider the death penalty as a
25 sentencing option?

26 JUROR JANELLE JOHNSON: I'd consider it if it
27 was more than a reasonable doubt in my mind.

28 THE COURT: Well, you would have to find beyond
29 a reasonable doubt that the death penalty was

1 appropriate, and you would have to find beyond a
2 reasonable doubt that he was guilty before we would even
3 get to that second phase.

4 So what I'm asking is in the second phase would that
5 be an option that you could consider.

6 JUROR JANELLE JOHNSON: If it was above beyond
7 a reasonable doubt, I could sentence somebody to death.
8 But not if there -- not if it was just reasonable -- I'm
9 not making myself clear. I would have to be positive.
10 There wouldn't be any doubt in my mind before I could
11 sentence somebody to death.

12 THE COURT: But that would be a option that you
13 would consider.

14 JUROR JANELLE JOHNSON: Yes.

15 THE COURT: You know, if the -- and that is
16 what I'm saying. If the facts justified it --

17 JUROR JANELLE JOHNSON: Yes, sir.

18 THE COURT: -- and the law allowed it --

19 JUROR JANELLE JOHNSON: Yeah.

20 THE COURT: -- would that be a sentencing
21 option that you could consider?

22 JUROR JANELLE JOHNSON: Yes. At that point.

23 THE COURT: And also, if he is -- if the jury
24 found that the death penalty was not an appropriate
25 sentence, then life in prison would be the sentence. And
26 so it would be an automatic life-in-prison sentence if
27 the jury did not sentence him to death. But you would --
28 would you leave open the idea of him being sentenced to
29 life in prison, as well, if, again, he was convicted in

1 the first phase?

2 JUROR JANELLE JOHNSON: Yes.

3 THE COURT: Okay. That is all I need to ask
4 you.

5 And the lawyers might have a couple of questions.

6 MR. EVANS: Miss Johnson, now, I think you are
7 saying that you would come in with an open mind, base any
8 decision of guilt or innocence strictly on what you hear
9 and see in the courtroom; is that right?

10 JUROR JANELLE JOHNSON: Yes, sir.

11 MR. EVANS: With no outside influences.

12 JUROR JANELLE JOHNSON: Yes, sir.

13 MR. EVANS: As far as the death penalty, you
14 understand that this is a two-part trial. The first
15 phase of the trial deals only with one thing - guilt or
16 innocence. And none of the jurors are to even consider
17 what the appropriate penalty should be until the judge
18 tells them to. And that will be after the first phase.

19 If the jury finds that the defendant is guilty
20 beyond a reasonable doubt and convicts him of capital
21 murder, then we will go into a second phase. And in that
22 phase the State will put on what are called aggravators.
23 They are reasons that we feel that the defendant would
24 justify death. The jury will hear those. Once we do
25 that, the defense can put on what is called mitigators.
26 That's reasons why they want to show that a life sentence
27 would be appropriate.

28 And the Court will tell you that if those mitigators
29 outweigh -- if those mitigators do not outweigh the

1 aggravating factors, then the death penalty can be given.
2 And it will be up to the jury to determine what sentence.

3 But I guess I say all that to ask you this one
4 question. Could you fairly consider both penalties and
5 if the facts justified it and the law allowed it, give
6 the death penalty if, if it was justified?

7 JUROR JANELLE JOHNSON: If the facts were
8 there. Yes, I could.

9 MR. EVANS: All right. And the opposite of
10 that, if you did not feel that the facts were there,
11 would you, in fact, give a life sentence then?

12 JUROR JANELLE JOHNSON: If the facts were not
13 there?

14 MR. EVANS: Right. If you -- if you didn't
15 feel like the aggravators justified the death penalty.

16 JUROR JANELLE JOHNSON: No, I would not.

17 MR. EVANS: Okay. Nothing further, Your Honor.

18 MRS. STEINER: Good afternoon, Miss Johnson. I
19 believe in response to His Honor's questions about what
20 you heard after you moved here, people at your -- home
21 health where you worked --

22 JUROR JANELLE JOHNSON: Um-hum.

23 MRS. STEINER: -- you were just in view of -- I
24 think it is still even today as Tardy Furniture.

25 JUROR JANELLE JOHNSON: We are not there now
26 but our previous office was cornered to it.

27 MRS. STEINER: But you overlooked it.

28 JUROR JANELLE JOHNSON: Um-hum.

29 MRS. STEINER: Did anybody talk about any of

1 the specific facts or their views on the guilt or
2 innocence of Mr. Flowers?

3 JUROR JANELLE JOHNSON: They mentioned the
4 names that -- you know, of course, everybody knows the
5 names. I mean you don't have to live here long just to
6 hear the names. I didn't know them, but they just
7 mentioned that it had happened, that they were -- they
8 had said so many times we can't believe we never heard
9 anything. You know, you know, because there were several
10 people within the office working, nurses, you know, just
11 in and out of the office and then office personnel. And
12 they, they just mentioned -- you know, they are just in
13 awe that nobody ever heard anything.

14 MRS. STEINER: Now, that -- if that fact
15 doesn't come out at the trial or a contrary fact comes
16 out at the trial, would you be able to set aside what you
17 heard outside the courtroom and consider only the
18 evidence at trial?

19 JUROR JANELLE JOHNSON: Yes, ma'am.

20 MRS. STEINER: All right. And were you
21 actually a visiting nurse? Did you visit in peoples'
22 homes?

23 JUROR JANELLE JOHNSON: Um-hum.

24 MRS. STEINER: Take care --

25 JUROR JANELLE JOHNSON: I have. I am a field
26 staff supervisor now. So I'm not in the field often.
27 But yes, ma'am, I did.

28 MRS. STEINER: But since you moved here --

29 JUROR JANELLE JOHNSON: Um-hum.

1 MRS. STEINER: -- in 2001. And was it ever a
2 subject of discussion in the households where you
3 visited?

4 JUROR JANELLE JOHNSON: Never. Huh-huh.

5 MRS. STEINER: Okay. Thank you.

6 Now, His Honor and Mr. Evans have each explained,
7 you know, we are putting the cart a little bit before the
8 horse here. His Honor -- just because I ask you about a
9 penalty or His Honor asks you about penalty doesn't mean
10 we are assuming that Mr. Flowers is guilty or will be
11 found guilty. You understand that?

12 JUROR JANELLE JOHNSON: Um-hum.

13 MRS. STEINER: And you are comfortable talking
14 about it. And if you were selected as a juror, you won't
15 make a decision on whether or not Mr. Flowers is guilty
16 or not guilty until --

17 JUROR JANELLE JOHNSON: I was raised by a
18 police officer, which I've already told that, retired
19 from New Orleans. I was raised to believe in what I
20 believe in, right from wrong, myself. So I don't have
21 any problem with listening.

22 MRS. STEINER: And as His Honor and Mr. Evans
23 explained, the evidence that would come in in a penalty
24 phase, the State would put on evidence in addition to
25 being guilty beyond a reasonable doubt or that they would
26 have to -- the judge will instruct and the State will
27 have to point out things that beyond being guilty beyond
28 a reasonable doubt.

29 JUROR JANELLE JOHNSON: Um-hum.

1 MRS. STEINER: That you must conclude and you
2 must join with all your fellow jurors beyond a reasonable
3 doubt to conclude that fact exists. Are you comfortable
4 with that?

5 JUROR JANELLE JOHNSON: Yes.

6 MRS. STEINER: And then the mitigation evidence
7 can be anything that comes into evidence from witnesses
8 called by Mr. Flowers. It could be -- come out of the
9 mouths of other witnesses, who may be called by the
10 State. It's anything that might be taken into account by
11 you personally and morally - I think you used that
12 word -- that would make you feel that whatever -- even if
13 you found aggravating circumstances, that you personally,
14 morally felt the mitigation was out-weighted or was made
15 a life sentence the proper sentence and, and that's your
16 decision individually.

17 JUROR JANELLE JOHNSON: Um-hum.

18 MRS. STEINER: Do you feel comfortable taking
19 that on yourself?

20 JUROR JANELLE JOHNSON: Oh, yes.

21 MRS. STEINER: And I think, you know, as His
22 Honor pointed out, at the point at which you would be
23 considering sentence, Mr. Flowers would have been found
24 guilty beyond a reasonable doubt and you feel comfortable
25 with that; is that correct?

26 JUROR JANELLE JOHNSON: Um-hum.

27 MRS. STEINER: I have nothing further, Your
28 Honor.

29 THE COURT: You may step down and return with

1 your fellow jurors.

2 MR. CARTER: Your Honor, I've been told that --

3 THE COURT: Well, let her get out, unless there
4 is something that needs to be said in her presence.

5 MR. CARTER: I don't want to say it in her
6 presence.

7 (THE JUROR LEFT THE COURTROOM.)

8 MR. CARTER: One of my persons standing outside
9 watching is saying that after jurors come in and testify
10 individually they are going out and talking to other
11 people. Can we --

12 THE COURT: Yeah. We'll just resolve that. We
13 will just bring them in a group. We will do group voir
14 dire and that will avoid any problems there.

15 MR. CARTER: Just for the record, Your Honor,
16 can we say when you go back out don't go back out and
17 discuss the testimony?

18 THE COURT: I think I'd just prefer to just
19 have them in here as a group and they can hear all the
20 questions that way.

21 MR. CARTER: Your Honor, we are not objecting.
22 We want individual voir dire.

23 THE COURT: Well, both of you are continuing to
24 repeat the very same questions that I've asked, and then
25 you repeat them several different times. And there is no
26 point in the length of time either side is taking. Out
27 of -- so far we have gotten one, two, three, four, five,
28 six, seven. And nobody has changed -- after I asked them
29 questions, nobody so far as changed from what I

1 originally asked.

2 And so I am going to from now on I will put -- I am
3 either going to put an extreme time limit on the
4 questions that both of you can ask each juror or we are
5 going to do it -- or we are going to do it as a group,
6 because y'all are -- and I'm not singling out one side
7 over the other either. I am saying this to both sides.
8 We are getting repetitive in our questions. We are
9 getting repetitive to the questions the Court has asked,
10 and there is no point in doing that.

11 So now, you know, I will try a couple more jurors
12 and then if both of you continue what I'm asking you not
13 to do, then to speed the process up we are going to bring
14 everybody in here and ask them questions as a group. And
15 for now I will admonish everybody once they are asked
16 something not to go out and discuss it with anybody else.

17 MR. CARTER: Yes, sir.

18 THE COURT: I was thinking the original
19 statement that I made not to discuss the case with anyone
20 or among themselves would, would still be in effect. But
21 in the event it is not, I will admonish each one from now
22 on.

23 If you will get Number 14.

24 (JUROR NUMBER 14, CAROLYN WRIGHT, ENTERED THE COURTROOM.)

25 Miss Wright, if you will, come down here. There is
26 just a couple of questions to ask you.

27 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

28 Miss Wright, the purpose of doing this is just to
29 get answers from each individual juror instead of having

1 them to speak out in front everybody because -- anyway,
2 that is the purpose.

3 And I first want to know if you have any knowledge
4 about this case, heard anything about the facts of the
5 case or, you know, discussed it or heard it discussed,
6 read about it in the newspaper, seen it on t.v.,
7 newspapers, internet or anywhere else.

8 JUROR CAROLYN WRIGHT: Yes. Yeah.

9 THE COURT: And can you tell us how you heard
10 about the case?

11 JUROR CAROLYN WRIGHT: T.V. Newspaper.

12 THE COURT: Can you speak --

13 JUROR CAROLYN WRIGHT: T.V. Newspaper.

14 THE COURT: And can you recall anything you
15 might have specifically read about the case or anything?

16 JUROR CAROLYN WRIGHT: About the murders that
17 was taken place at Tardy Furniture company in Winona.

18 THE COURT: And is there anything about what
19 you have seen, heard or read that would have caused you
20 to form any opinions as to the guilt or the innocence of
21 Mr. Flowers?

22 JUROR CAROLYN WRIGHT: No, sir.

23 THE COURT: And would you lay aside anything
24 that you did hear, read or see and base your decision
25 only on the evidence that is presented here in open
26 court?

27 JUROR CAROLYN WRIGHT: Yes, sir.

28 THE COURT: And the next issue, Miss Wright, is
29 if the jury after the first -- what happens in this type

1 case is there is two phases of a trial, possibly two.

2 First, you decide the guilt or innocence of Mr.
3 Flowers. If he is found not guilty, we do not go into a
4 second phase. But if he were to be found guilty, then we
5 would go to a second phase and that would decide the
6 appropriate punishment that the jury felt he should
7 receive.

8 The State of Mississippi will be seeking the death
9 penalty. They will be putting on aggravating facts that
10 would show the jury why they think he should receive the
11 death penalty. The defense would put on mitigation
12 witnesses. That would be witnesses to show why or proof
13 that would show why they think he should not receive the
14 death penalty.

15 The jury then would make that determination. If the
16 jury did not return a penalty -- death penalty, then the
17 sentence would be life without parole. So I want to
18 know, first of all, could you consider the death penalty
19 as a sentencing option if you were deliberating at the
20 second phase of the trial?

21 JUROR CAROLYN WRIGHT: Yes, sir.

22 THE COURT: And so you could consider that.

23 JUROR CAROLYN WRIGHT: Yes, sir.

24 THE COURT: That does not mean you are
25 committing to do it. It is just something that you would
26 leave open the possibility of that sentence.

27 JUROR CAROLYN WRIGHT: Yes, sir.

28 THE COURT: Would you also consider the life
29 without parole?

1 JUROR CAROLYN WRIGHT: Yes, sir.

2 THE COURT: And so when you were deliberating
3 on the sentence, you would consider the fact that he
4 would get life without parole if he didn't get the death
5 penalty.

6 JUROR CAROLYN WRIGHT: Yes, sir.

7 THE COURT: So you would leave both sentencing
8 options open and available; is that correct?

9 JUROR CAROLYN WRIGHT: Yes, sir. Yes, sir.

10 THE COURT: Okay. Thank you.

11 MR. EVANS: Are you through, Your Honor?

12 THE COURT: I am.

13 MR. EVANS: Miss Wright, I know we have gone
14 over some of this before, but are you telling us the fact
15 that you worked with his father at Wal-Mart, you're
16 cousins with the witness Weems and that you knew that
17 long line of witnesses that I read out earlier.

18 JUROR CAROLYN WRIGHT: Yes, sir.

19 MR. EVANS: None of that would affect your
20 decision at all.

21 JUROR CAROLYN WRIGHT: No, sir. No, sir.

22 MR. EVANS: Okay. And as far as the death
23 penalty, are you telling us that if the law authorized it
24 and the facts justified it you, yourself, could vote for
25 the death penalty?

26 JUROR CAROLYN WRIGHT: Yes, sir, I would.

27 MR. EVANS: Nothing further, Your Honor.

28 MR. CARTER: Miss Wright, I simply want to know
29 if you know what these terms mean, aggravation and

1 mitigation. Do you have any confusion about those?

2 JUROR CAROLYN WRIGHT: No, sir.

3 MR. CARTER: Okay. So you are saying that any
4 evidence we put on about Mr. Flowers' background, his
5 character, the nature of the crime, you would consider
6 all of that in making your decision. You wouldn't have
7 any problem with rejecting that or deeming his history
8 before this crime to be insignificant or it doesn't
9 matter.

10 JUROR CAROLYN WRIGHT: No, sir, I wouldn't.

11 MR. CARTER: You would consider everything.

12 JUROR CAROLYN WRIGHT: Yes, sir.

13 MR. CARTER: Thank you.

14 THE COURT: Miss Wright, you may step down.
15 And there may be the temptation of some of your other
16 jurors to say oh, what did they ask you or something.
17 Don't talk about what you have discussed in here when you
18 go back out with your fellow jurors, please.

19 JUROR CAROLYN WRIGHT: Okay. Okay.

20 THE COURT: If you will get Number 17.

21 (JUROR NUMBER 17, PAMELA CHESTEEN, ENTERED THE
22 COURTROOM.)

23 And Miss Chesteen, if you will, come forward and
24 have a seat down here.

25 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

26 We are asking a couple of questions of each juror
27 individually now, and I want to know -- and I take it
28 from you saying you've lived here for a while, worked at
29 Bank of Winona, you have probably heard about this case.

1 JUROR PAMELA CHESTEEN: Oh, yes, sir.

2 THE COURT: And can you tell us how you might
3 have heard about the case, like through newspaper, radio,
4 television, just talk in town?

5 JUROR PAMELA CHESTEEN: Well, yeah, I mean I
6 remember the day it happened. I was working at the bank,
7 and I just -- I guess somebody probably called us and
8 told us. I have seen it in the paper and on the radio.
9 Heard people talking about it.

10 THE COURT: So probably about every way a
11 person could communicate with another, you probably at
12 some point heard, you know, through, t.v., radio or
13 newspaper.

14 JUROR PAMELA CHESTEEN: Yes, sir.

15 THE COURT: How about internet?

16 JUROR PAMELA CHESTEEN: I have.

17 THE COURT: And has anything that you read
18 caused you to form any opinions about the guilt or
19 innocence of Mr. Flowers?

20 JUROR PAMELA CHESTEEN: No. Well, let me
21 think. I have just read or heard the things that -- you
22 know, the things that they said they had for evidence or
23 some of them.

24 THE COURT: Well, do you understand just
25 because -- and I'm not meaning to be disrespectful of
26 anybody that is in the media here today. But sometimes
27 what you read or hear might not be right.

28 JUROR PAMELA CHESTEEN: I do understand.

29 THE COURT: And I think the media tries to do a

1 good job, but sometimes they don't get things exactly
2 right. And so if you read something in the newspaper at
3 some point in the past, but that proof did not come
4 forward during the trial, would you be thinking of things
5 you read or heard in the past, or would you base your
6 decision only on the evidence that is presented in court?

7 JUROR PAMELA CHESTEEN: Honestly, I probably
8 would not remember what I had read, just to be totally
9 honest.

10 THE COURT: Well, so are you saying then that
11 you could and would lay aside anything that you might
12 have read and base your decision only on -- or heard and
13 base your decision only on the evidence presented here
14 and on nothing else?

15 JUROR PAMELA CHESTEEN: Yes. Yes.

16 THE COURT: The next question, the way a
17 capital murder trial works is first a jury decides guilt
18 or innocence. If the jury found Mr. Flowers not guilty,
19 we would not even get to the second phase of a trial.
20 But if the jury found him guilty, then we would get to a
21 second phase, which is called a sentencing phase. At
22 that time the jury would decide whether the death penalty
23 should be imposed. During that sentencing phase, the
24 State of Mississippi would put on proof that they think
25 would justify the imposition of the death penalty. That
26 would be called aggravating circumstances. Mr. Flowers
27 would put on proof of why he believes the death penalty
28 would not be appropriate. That is called mitigating
29 circumstances.

1 And at the conclusion of that proof the jury would
2 decide whether the death penalty should be imposed. If
3 the jury felt that the death penalty should not be
4 imposed, then he would receive an automatic sentence of
5 life in prison without parole.

6 So I want to know first, could you consider the
7 death penalty as a sentencing option if -- in the case?

8 JUROR PAMELA CHESTEEN: Yes.

9 THE COURT: And if the facts justified it and
10 the law allowed it, could you impose the death penalty?

11 JUROR PAMELA CHESTEEN: Yes.

12 THE COURT: And if you felt that the facts did
13 not justify the death penalty, could you consider life in
14 prison without parole as an option?

15 JUROR PAMELA CHESTEEN: If there was not
16 evidence to prove --

17 THE COURT: If you felt like the facts did not
18 justify the death penalty, could you then consider life
19 in prison without parole?

20 JUROR PAMELA CHESTEEN: Yes.

21 THE COURT: So you would leave both sentencing
22 options open and would make your decision based on the
23 evidence as presented; is that correct?

24 JUROR PAMELA CHESTEEN: Yes, sir.

25 THE COURT: And again, do you understand we
26 would not even get to the sentencing phase unless he was
27 found guilty in the first phase?

28 JUROR PAMELA CHESTEEN: Right.

29 THE COURT: Okay. Thank you.

1 MR. EVANS: I just want to go into one area
2 that I don't think the judge went as far as I would like
3 to cover. Excuse me.

4 You understand that in the first phase, the jury
5 should not even consider which sentence would be
6 appropriate, that you would only get to that once we got
7 to the second phase.

8 JUROR PAMELA CHESTEEN: Right. Yes, sir.

9 MR. EVANS: Excuse me.

10 That's all, Your Honor.

11 MRS. STEINER: Miss Chesteen, good afternoon.

12 I have to say you hesitated just a moment when His
13 Honor was asking you about whether or not all this
14 information you had received, including being here the
15 day it happened and hearing about it, like as it was
16 going -- right after it happened, you hesitated, I
17 thought, a little bit when the judge asked you about an
18 opinion and whether you had an opinion.

19 JUROR PAMELA CHESTEEN: Well, I think it's like
20 you all said earlier. We have -- a lot us have formed an
21 opinion.

22 MRS. STEINER: All right. And are you one of
23 those people?

24 JUROR PAMELA CHESTEEN: Yes. At once I did.

25 MRS. STEINER: All right. And I think you have
26 been very forthright. You have answered a lot of
27 questions when the other people were in the room also.
28 And you, you were saying things, I think, I want to be
29 fair. I hope I can be fair. Has -- you know, now you

1 are here in private. You have had some chance to think.
2 Have -- do you think you can completely set aside that
3 opinion, or would that opinion walk into the jury room
4 with you no matter how hard you tried?

5 JUROR PAMELA CHESTEEN: No. I would have to be
6 totally honest with -- whatever I heard I would have to
7 do, go by that or I wouldn't be able to live with myself.

8 MRS. STEINER: I understand that.

9 THE COURT: You talking about heard in the
10 courtroom?

11 JUROR PAMELA CHESTEEN: Right.

12 MRS. STEINER: Now, on -- I believe you said
13 you were actually friends with Miss Ballard.

14 JUROR PAMELA CHESTEEN: In high school we were.

15 MRS. STEINER: In high school. And have you
16 had any contact with her since her mother died in 1996?

17 JUROR PAMELA CHESTEEN: Only running into her
18 at a restaurant or something at the school.

19 MRS. STEINER: All right. And have you ever
20 discussed this case with her, what happened to her
21 mother?

22 JUROR PAMELA CHESTEEN: Never discussed the
23 case. I possibly may have seen her at some point and
24 told her I was sorry about her mother, but that would be
25 the extent of it. We have not ever discussed it.

26 MRS. STEINER: And I guess, you know, just
27 because you have an opinion, you think you can set it
28 aside. Let me turn to, if you, the next time she walks
29 into your bank, if you have found honestly that the

1 evidence does not support the entry of a guilty verdict,
2 is that going to be a problem for you?

3 JUROR PAMELA CHESTEEN: Huh-huh.

4 MRS. STEINER: All right. You could face her.

5 JUROR PAMELA CHESTEEN: Yeah, I could face her.

6 MRS. STEINER: And now you -- the judge used
7 words aggravation and mitigation. Aggravation being what
8 the State proves that it thinks justify the death
9 penalty, beyond find Mr. Flowers guilty beyond a
10 reasonable doubt. What do you understand mitigation to
11 be from what the judge told you?

12 MR. EVANS: Your Honor, I don't think that is
13 appropriate. The Court will instruct the jury what
14 mitigation is.

15 THE COURT: I agree. And I did tell her
16 already what mitigation was. That is the reason the jury
17 might find the death penalty not appropriate. So you are
18 again getting into issues I have already covered. So if
19 you will move on to things I have not covered.

20 MRS. STEINER: All right.

21 Do you understand that the aggravation, aggravating
22 circumstances, the State has to prove those beyond a
23 reasonable doubt and you, as a juror, have to vote with
24 all 12 of your other colleagues beyond a reasonable doubt
25 to find those aggravating circumstances?

26 JUROR PAMELA CHESTEEN: Yes, ma'am.

27 MRS. STEINER: His Honor is going to instruct
28 you that for mitigation, you do not have to agree with
29 everybody about any particular kind of mitigation or

1 whether it exists or how much it weighs. You understand
2 that.

3 JUROR PAMELA CHESTEEN: Um-hum.

4 MRS. STEINER: And you said you, you can close
5 yourself off from your opinion. Can you stand and just
6 make decisions on mitigation even if all 11 other people
7 disagree with you on a point and you think it is
8 mitigating? Can you do that?

9 JUROR PAMELA CHESTEEN: I will surely try. I
10 mean I, I will just know what I hear.

11 MRS. STEINER: Well, you said the evidence.
12 Does, does Mr. Flowers have the burden, in your mind, to
13 prove he is not -- he shouldn't get the death penalty
14 beyond a reasonable doubt?

15 JUROR PAMELA CHESTEEN: No.

16 MRS. STEINER: All right. You could be open to
17 anything, anything that he chose to put on about why he
18 --

19 MR. EVANS: Your Honor, I think she is asking a
20 question that this juror can't answer, because she
21 doesn't know what the Court is going to allow at this
22 point.

23 THE COURT: I, I think I covered everything
24 when I was questioning her, when I asked her would she
25 consider the aggravating and mitigating circumstances and
26 would she consider both sentencing options.

27 MRS. STEINER: Your Honor, I'm trying to make
28 sure she understands what mitigation is and that she can
29 fully -- that she is not mistaken about what has to be

1 proven about mitigation in light of her statement.

2 THE COURT: Well, I asked her if the facts
3 justified it and the law allowed it. And the law will be
4 explained to her in jury instructions, if she were to be
5 selected.

6 MRS. STEINER: Miss Chesteen, having heard that
7 from the judge, can you give fair consideration to any
8 piece of -- as fair consideration to any piece of
9 evidence the defense puts on in mitigation of the case,
10 as you can to any piece of evidence the State puts on in
11 aggravation?

12 JUROR PAMELA CHESTEEN: As long as I can see
13 that any of it is the truth or could possibly be true.
14 Yes.

15 MRS. STEINER: And that's at sentencing. If
16 it's at the -- you say if anything could possibly be
17 true. If in the guilt phase -- you say you read a lot
18 about it and heard a lot about it and know a lot about
19 it. Are you going to hold the State to the burden of
20 beyond a reasonable doubt, or are you going to hold them
21 to the could possibly be true standard?

22 JUROR PAMELA CHESTEEN: It's beyond a
23 reasonable doubt; right? Is that -- that is what it is
24 supposed to be.

25 MRS. STEINER: I think His Honor and the State
26 have both told you at the guilt phase --

27 JUROR PAMELA CHESTEEN: Um-hum.

28 MRS. STEINER: -- it is beyond a reasonable
29 doubt.

1 JUROR PAMELA CHESTEEN: (Nodded.)

2 MRS. STEINER: But what role does could
3 possibly be true have there in your mind, especially in
4 light of all the information you have heard from outside
5 that you are going to try to leave outside this door?

6 JUROR PAMELA CHESTEEN: I'm not sure I
7 understand what you want me to answer.

8 MRS. STEINER: You said you would listen to any
9 evidence that you thought could possibly be true.

10 JUROR PAMELA CHESTEEN: No, I will listen to
11 all of it.

12 MRS. STEINER: All right. But you would act on
13 any evidence you thought could possibly be true.

14 JUROR PAMELA CHESTEEN: As long as it seemed to
15 be the truth, yeah.

16 MRS. STEINER: That would be at both phases.

17 MR. EVANS: Your Honor, we are talking -- I
18 want to make sure the record is clear. She has asked her
19 about aggravators and mitigators, and she said she could
20 consider either one of them as long as she believed they
21 were true. And I think that is appropriate.

22 MRS. STEINER: If the Court please, I didn't
23 want to confuse the juror. I was now moving back to the
24 guilt phase and beyond a reasonable doubt and exploring
25 whether she had understood the Court's question.

26 I have nothing further from her at this point.

27 THE COURT: Well, let me just clear things up.

28 Miss Chesteen, in the guilt phase, you would listen
29 to the evidence, and you decide the facts of the case.

1 If there was a dispute among the evidence as to what the
2 true facts are, you determine those facts based on your
3 view of the evidence.

4 JUROR PAMELA CHESTEEN: Yes, sir.

5 THE COURT: Do you understand that?

6 JUROR PAMELA CHESTEEN: Yes, sir.

7 THE COURT: And you also base your decision as
8 to guilt or innocence on your view of the evidence. But
9 you could only return a verdict of guilty if the State
10 proved Mr. Flowers beyond a reasonable doubt to be
11 guilty. Do you understand that?

12 JUROR PAMELA CHESTEEN: Yes, sir.

13 THE COURT: If the State does not meet that
14 burden of proof, would you find Mr. Flowers not guilty?

15 JUROR PAMELA CHESTEEN: Yes.

16 THE COURT: And then again, on the sentencing
17 phase, during the sentencing phase if you felt like the
18 facts did not justify or the law did not allow imposition
19 of the death penalty, would you agree with life without
20 parole?

21 JUROR PAMELA CHESTEEN: Yes.

22 THE COURT: And if he -- if you felt the facts
23 did justify it and the law did allow it, could you bring
24 in a death penalty sentence if you felt that appropriate?

25 JUROR PAMELA CHESTEEN: Yes, sir.

26 THE COURT: Thank you.

27 If you please would, don't discuss any of your
28 testimony in here with anybody outside.

29 JUROR PAMELA CHESTEEN: Okay.

1 THE COURT: You can step down now.

2 If you will bring Miss Laney in here next, Number
3 18.

4 (JUROR NUMBER 18, LILLIE LANEY, ENTERED THE COURTROOM.)

5 THE COURT: Come on down here, Miss Laney, and
6 have a seat.

7 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

8 We are just asking a few questions of each juror
9 individually. And first, about the facts of the case.
10 Have you heard anything about this case through the years
11 either through newspaper, radio, television or internet
12 or just talk out in town?

13 JUROR LILLIE LANEY: Very little. I work in
14 Greenwood. So I, I don't --

15 THE COURT: So you --

16 JUROR LILLIE LANEY: I get most of my -- I'm a
17 Fox News junkie. So most of my news is...

18 THE COURT: And I assume Fox has probably never
19 covered this case.

20 JUROR LILLIE LANEY: I don't know that I have
21 ever seen anything on Fox.

22 THE COURT: And has anything that you read,
23 saw, heard or observed caused you in any way to form an
24 opinion as to the guilt or innocence of Mr. Flowers?

25 JUROR LILLIE LANEY: No, sir.

26 THE COURT: And would you lay aside anything
27 that you might have heard outside the courtroom and base
28 your decision as to guilt or innocence strictly on the
29 proof as presented here in court?

1 JUROR LILLIE LANEY: Yes, sir.

2 THE COURT: And the second question deals with
3 the possibility of the sentencing phase. What happens in
4 a capital murder is if Mr. Flowers is found guilty beyond
5 a reasonable doubt, then we go into a second phase. That
6 only occurs if he is found guilty at the first phase. If
7 he is found not guilty, that concludes everything.

8 But if he is found guilty, then the jury decides
9 what would be the appropriate sentence. The State of
10 Mississippi, I understand, is seeking the death penalty.
11 And they will be putting on aggravating factors. That
12 would be facts that they believe would justify the
13 imposition of the death penalty. And then Mr. Flowers
14 would be allowed to put on mitigating factors. That
15 would be reasons why he believes it would show the death
16 penalty would not be an appropriate sentence in this
17 circumstance.

18 If the facts allowed it -- I mean if the facts
19 justified it in your opinion and the law allowed it,
20 could you impose the death sentence if you felt that to
21 be appropriate?

22 JUROR LILLIE LANEY: Yes, sir, if it...

23 THE COURT: If you found that it's appropriate.

24 JUROR LILLIE LANEY: If the law allows it and
25 it is deemed appropriate.

26 THE COURT: And could you also -- because if he
27 is not receiving the death penalty, then he gets an
28 automatic life in prison without parole sentence. Would
29 that be something that you would also consider?

1 JUROR LILLIE LANEY: Yes, sir.

2 THE COURT: So would you leave both sentencing
3 options open until all the proof has been put on at the
4 second phase if, in fact, there is a second phase of the
5 trial?

6 JUROR LILLIE LANEY: Yes, sir.

7 THE COURT: Okay. Thank you.

8 MR. EVANS: Miss Laney, and I may have gotten
9 it wrong, but I want to ask you. I think on your
10 questionnaire you said you were generally against the
11 death penalty. Was that right?

12 JUROR LILLIE LANEY: Well, generally, but I
13 understand that it is sometimes what is required.

14 MR. EVANS: Is there anything about being
15 generally against it that would keep you from being able
16 to consider it as a possible penalty?

17 JUROR LILLIE LANEY: No, sir.

18 MR. EVANS: Okay. So as the judge said, if the
19 facts in this case justified it, you feel that you could
20 give the death penalty.

21 JUROR LILLIE LANEY: Yes, sir, I could. If the
22 facts were presented.

23 MR. EVANS: Nothing further, Your Honor.

24 MR. CARTER: Now, Miss Laney, you understand
25 that however you vote, whatever your vote is, whatever
26 your moral conscience, however you vote is your decision
27 alone. Do you understand that?

28 JUROR LILLIE LANEY: Yes, sir.

29 MR. CARTER: You understand that you decide.

1 And could you give value, meaning and consideration to
2 Mr. Flowers' character, background, the circumstances of
3 the crime or whatever we presented as mitigation?

4 JUROR LILLIE LANEY: Yes, sir, I think I could.

5 MR. CARTER: Okay. Now, when you say you think
6 you could - and I'm not trying to put words in your
7 mouth, and I want you to - are you saying that, that some
8 things that you could listen to or some things you can't?
9 Tell me -- and if that is the case, there is nothing
10 wrong with it.

11 JUROR LILLIE LANEY: I can listen -- I will do
12 my best to listen to the facts and, and the evidence that
13 is presented. I'll be attentive to whatever you present
14 as his defense, and I will be attentive to the State's
15 case.

16 MR. CARTER: Okay.

17 JUROR LILLIE LANEY: I will pay attention to
18 the facts that are brought out in this court.

19 MR. CARTER: In the first phase. And would you
20 also -- I'm assuming that you would also pay attention
21 and give consideration to whatever we present during the
22 second phase too.

23 JUROR LILLIE LANEY: Yes, sir.

24 MR. CARTER: Thank you.

25 THE COURT: Miss Laney, you may step down and
26 when you step back out, please don't talk about --

27 JUROR LILLIE LANEY: Okay.

28 THE COURT: -- with your fellow jurors what was
29 spoken in here.

1 JUROR LILLIE LANEY: Of course.

2 THE COURT: If y'all will bring in Number 22,
3 Mr. Blaylock now.

4 (JUROR NUMBER 22, LARRY BLAYLOCK, ENTERED THE COURTROOM.)

5 THE COURT: If you will come forward, Mr.
6 Blaylock, and have a seat down here. We have got a few
7 questions.

8 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

9 THE COURT: Mr. Blaylock, we are asking
10 questions of all the jury outside the presence of each
11 other, because we don't want something to be spoken that
12 might cause something that would affect some other juror.

13 I want to know if you have heard anything about this
14 case, if you read about the case in the newspaper, seen
15 it on t.v., heard it on radio, read or seen anything on
16 the internet about it or discussed this case with
17 anybody.

18 JUROR LARRY BLAYLOCK: I have heard about it.
19 Everybody in Winona has probably.

20 THE COURT: And do you remember how? Like, was
21 it newspaper and t.v. and things or how?

22 JUROR LARRY BLAYLOCK: T.V. and word of mouth.
23 At cafes and stuff like that.

24 THE COURT: And has there been any facts
25 presented to you or have you heard anything about the
26 case that has caused you to form an opinion about the
27 guilt or innocence of Mr. Flowers?

28 JUROR LARRY BLAYLOCK: No, sir.

29 THE COURT: And will you lay aside anything

1 that you might have heard, seen or read about the case or
2 any knowledge you have of the case and base your decision
3 only on the evidence that is presented here in court?

4 JUROR LARRY BLAYLOCK: Yes, sir.

5 THE COURT: And Mr. Blaylock, the way a capital
6 murder case works is there is a two-phase trial, possibly
7 two phases. First phase guilt or innocence is decided.

8 JUROR LARRY BLAYLOCK: Yes, sir.

9 THE COURT: If Mr. Flowers were to be found not
10 guilty, the trial concludes at that point and it is over.
11 If he was found guilty there would be the second phase of
12 the trial, and that would be a situation where the jury
13 would determine the appropriate sentence. They would do
14 that based on the facts presented and the law as
15 instructed by the Court.

16 The State of Mississippi will be -- would put on
17 proof that would be aggravating factors. That would be
18 factors that they believe justify the imposition of a
19 death penalty. The defense would put on what they call
20 mitigating factors, which would be things that they
21 believe would justify not imposing the death penalty.

22 And then the jury will decide based on the
23 instructions of the Court and based on the evidence as
24 presented at that phase of the trial. So if the death
25 penalty was a possibility, could you consider that as a
26 sentencing option?

27 JUROR LARRY BLAYLOCK: Yes, sir.

28 THE COURT: And also, if the death -- if the
29 death penalty was not imposed, then Mr. Flowers would

1 receive life in prison without parole. Would you leave
2 that open as a sentencing option as well?

3 JUROR LARRY BLAYLOCK: Yes, sir.

4 THE COURT: So without hearing any evidence on
5 mitigation or aggravating fact circumstance at this
6 point, you would keep an open mind and would consider
7 both of those options if it got to the point where there
8 was a second phase.

9 JUROR LARRY BLAYLOCK: Yes, sir.

10 THE COURT: Okay. Thank you.

11 MR. EVANS: No questions, Your Honor.

12 MRS. STEINER: Good afternoon.

13 JUROR LARRY BLAYLOCK: Good afternoon.

14 MRS. STEINER: Mr. Blaylock.

15 I want, Your Honor, to clear something up.

16 You had said when we were with everybody here that
17 you had a second cousin who was convicted of murder in
18 Carroll County.

19 JUROR LARRY BLAYLOCK: No, ma'am. The murder
20 happened in Carroll County. I believe it was prosecuted
21 in Montgomery County.

22 MRS. STEINER: I see. He was the victim or he
23 was the defendant?

24 JUROR LARRY BLAYLOCK: He was -- he was the one
25 that was convicted of murder.

26 MRS. STEINER: All right. And did you say that
27 would or would not affect you?

28 JUROR LARRY BLAYLOCK: It would not. I have no
29 contact with him at all. Ever.

1 MRS. STEINER: Okay. Thank you. You had
2 indicated, like everyone in Winona, you have heard
3 things. If you would, say what it is that sticks in your
4 mind that you have heard about this case or its facts.

5 JUROR LARRY BLAYLOCK: I haven't heard any
6 facts. All I have heard is, you know, the verdicts each
7 time as they come through. At the time this trial -- I
8 mean this whatever happened, I did not live in Montgomery
9 County at the time. I lived in Carroll County.

10 MRS. STEINER: I understand.

11 JUROR LARRY BLAYLOCK: So I mean, you know, I
12 just -- like I said, rumors you hear at cafe when the
13 verdict come through or, you know, what you see on t.v.
14 I do not take a newspaper. So I don't read the newspaper
15 about it.

16 MRS. STEINER: Is that a cafe here in Winona or
17 --

18 JUROR LARRY BLAYLOCK: Yes.

19 MRS. STEINER: Which cafe was that?

20 JUROR LARRY BLAYLOCK: Just several different
21 ones.

22 MRS. STEINER: Okay.

23 JUROR LARRY BLAYLOCK: We all kind of hang
24 around them.

25 MRS. STEINER: All right. I believe you have a
26 heating and cooling business; is that right?

27 JUROR LARRY BLAYLOCK: No, ma'am, I did have.
28 I own a land and timber business now.

29 MRS. STEINER: All right. At any time that you

1 were doing your heating and cooling business, did you go
2 to peoples' homes and businesses and install --

3 JUROR LARRY BLAYLOCK: Yes.

4 MRS. STEINER: Did you -- did you ever hear any
5 talk in that context?

6 JUROR LARRY BLAYLOCK: No, ma'am.

7 MRS. STEINER: Did you ever do any work at
8 Tardy Furniture?

9 JUROR LARRY BLAYLOCK: No, ma'am.

10 MRS. STEINER: Or the building, since it is
11 now --

12 JUROR LARRY BLAYLOCK: No, ma'am.

13 MRS. STEINER: -- owned by someone else.

14 Now, you said that you graduated from high school
15 with Miss Ballard.

16 JUROR LARRY BLAYLOCK: Right. Here at Winona
17 High School.

18 MRS. STEINER: At Winona High School. Has you
19 ever -- has she ever had a conversation with you about
20 either the facts of the case or her feelings about this?

21 JUROR LARRY BLAYLOCK: No, ma'am. I haven't
22 talked to Roxanne probably three times since we graduated
23 30 years ago.

24 MRS. STEINER: Okay. So you have not been in
25 communication with her.

26 JUROR LARRY BLAYLOCK: No. Right. If she
27 walked in here now, she wouldn't even know who I was
28 probably.

29 MRS. STEINER: And same way with her family.

1 JUROR LARRY BLAYLOCK: Yes. I don't know.

2 MRS. STEINER: Now, His Honor has used the
3 words mitigation and aggravation for kinds of evidence
4 that in the event -- you know, that only happens if you
5 found Mr. Flowers guilty beyond a reasonable doubt.

6 JUROR LARRY BLAYLOCK: That's correct.

7 MRS. STEINER: Does the fact that we have to
8 talk about this now, do you find that confusing?

9 JUROR LARRY BLAYLOCK: No, ma'am.

10 MRS. STEINER: You understand that none of us

11 --

12 JUROR LARRY BLAYLOCK: Yes, ma'am.

13 MRS. STEINER: -- are assuming that he is going
14 to be found guilty.

15 JUROR LARRY BLAYLOCK: I agree with that.

16 MRS. STEINER: And do you understand when the
17 judge says aggravators, he is going to advise you on
18 specific factors in addition to finding Mr. Flowers
19 guilty beyond a reasonable doubt, if you have done so.

20 JUROR LARRY BLAYLOCK: Yes, ma'am.

21 MRS. STEINER: All right. And then in
22 mitigation --

23 THE COURT: I think I have already covered
24 that. So move on to something I haven't covered, please.

25 MRS. STEINER: Now, do you understand that,
26 that for aggravating, its factors, you must find those
27 beyond a reasonable doubt.

28 JUROR LARRY BLAYLOCK: Yes, ma'am.

29 MRS. STEINER: And before you can even start

1 discussing the death penalty further, all 12 of y'all
2 must agree to that.

3 JUROR LARRY BLAYLOCK: That's correct.

4 MRS. STEINER: Do you understand with
5 mitigation it's a little different?

6 JUROR LARRY BLAYLOCK: Yes, ma'am.

7 MRS. STEINER: What do you understand to be
8 different about mitigation?

9 JUROR LARRY BLAYLOCK: I mean would that be
10 between the death penalty and not the death penalty?

11 MRS. STEINER: Yes. The evidence -- the
12 aggravating circumstance is evidence the State would put
13 on. The mitigating evidence, as His Honor has explained,
14 is anything that the defense puts on or you hear from the
15 witness stand at any point that you think might indicate
16 a death sentence wasn't the appropriate sentence.

17 JUROR LARRY BLAYLOCK: Yes, ma'am.

18 MRS. STEINER: Now, do you understand that the
19 decision on what you consider mitigating, as His Honor
20 will instruct you, that will be your personal decision?
21 You don't have to agree with other people about what is
22 mitigating and they don't have to agree with you? Do you
23 understand that?

24 JUROR LARRY BLAYLOCK: Yes, ma'am. I
25 understand that.

26 MRS. STEINER: And that if you think something
27 is mitigating, you don't -- you don't have to be talked
28 into or out of any mitigating circumstances.

29 JUROR LARRY BLAYLOCK: Won't nobody talk me in

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1187-1337

VOLUME 3247 of 7

EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

1 nothing.

2 MRS. STEINER: And what sorts of things when
3 the judge says mitigation -- well, let me say that do you
4 understand that that includes -- it could have to do with
5 the crime. It could have to do with Mr. Flowers'
6 background. It could have to do with anything that's
7 happened in Mr. Flowers' life or around the circumstances
8 of the crime. Are you able to consider all of that?

9 JUROR LARRY BLAYLOCK: Yes.

10 MRS. STEINER: Even though you found him guilty
11 beyond a reasonable doubt.

12 JUROR LARRY BLAYLOCK: Yes.

13 MRS. STEINER: Are you able to make that
14 personal, individual and moral decision?

15 JUROR LARRY BLAYLOCK: Yes.

16 MRS. STEINER: And you are saying here you
17 could consider a penalty other than death if you have
18 found him guilty beyond a reasonable doubt?

19 JUROR LARRY BLAYLOCK: Oh, yes.

20 MRS. STEINER: Thank you.

21 THE COURT: Mr. Blaylock, if you will, when you
22 step down, do not discuss the case with anyone as far as
23 your testimony that you have offered in here.

24 And you may step down.

25 JUROR LARRY BLAYLOCK: Thank you.

26 (THE JUROR LEFT THE COURTROOM.)

27 THE COURT: I want to make clear again, I am
28 going to start cutting off in mid-sentence if counsel for
29 either side continues to ask the same questions that I

1 have asked. There does not have to be 10 or 20 questions
2 following up what the Court has just asked if you are
3 repeating the same questions over again. And you do not
4 need to ask the question but one time, if you ask it at
5 all.

6 But I do not want repetition of what I have asked,
7 because there is no need, especially in the compacted
8 timeframe. Where in a five-minute timeframe it is no
9 point in them repeating over what I have already gone
10 over. So I want it limited strictly to things that I
11 have not asked.

12 If you will bring Number 25 in.

13 (JUROR NUMBER 25, SUZANNE WINSTEAD, ENTERED THE
14 COURTROOM.)

15 Miss Winstead, if you will come forward down here
16 and have a seat.

17 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

18 Miss Winstead, we are asking questions now
19 individually of the jurors on a couple of issues. I want
20 to know if you have heard anything about this case, if
21 you heard about the case through talk in town, read about
22 it in the newspaper, heard it on the radio, read about it
23 or saw it on the internet or saw it on t.v. or just
24 discussed it in anyway. Have you had any knowledge about
25 the case?

26 JUROR SUZANNE WINSTEAD: Very little, because I
27 don't watch the news. I don't read the newspaper. It's
28 all too depressing. Just that it happened. I didn't
29 even know when it happened until you said it yesterday.

1 Didn't really know who -- didn't know names of anybody
2 until yesterday.

3 THE COURT: And if you are sitting as a juror
4 in this case, would you base your verdict on the evidence
5 presented in court and on nothing that you have heard
6 outside the courtroom?

7 JUROR SUZANNE WINSTEAD: Yes, sir.

8 THE COURT: So you will lay aside anything you
9 have heard and base it only on the evidence here in
10 court; is that correct?

11 JUROR SUZANNE WINSTEAD: Yes, sir.

12 THE COURT: And I want to know -- or let me
13 explain something to you. In a capital murder case,
14 there is a two-phase trial, at most two phase. It may
15 end after the first phase. Because the first phase you
16 decide the guilt or innocence. If the person on trial is
17 found not guilty, then you do not get to that second
18 phase at all.

19 JUROR SUZANNE WINSTEAD: Um-hum.

20 THE COURT: But if a person is found guilty,
21 then you get to the second phase, and that's the phase
22 where you decide what the punishment should be.

23 JUROR SUZANNE WINSTEAD: Um-hum.

24 THE COURT: The State of Mississippi would put
25 on aggravating factors that would, in the State's belief,
26 would be things that would justify the imposition of the
27 death penalty. Then the defense would put on mitigating
28 factors that they think would mitigate, which means would
29 show that the death penalty was not justified.

1 JUROR SUZANNE WINSTEAD: Um-hum.

2 THE COURT: So if the facts justified it and
3 the law allowed it, would you consider the imposition of
4 the death penalty if you were sitting in this case as a
5 juror?

6 JUROR SUZANNE WINSTEAD: Yes.

7 THE COURT: Would you also consider life in
8 prison without parole because if he did not receive -- if
9 Mr. Flowers was found guilty and did not receive the
10 death penalty, he would get life without parole. So
11 would that be something that you would consider as well?

12 JUROR SUZANNE WINSTEAD: Yes.

13 THE COURT: So you would leave open the
14 consideration of both options until you have heard all
15 the evidence at the sentencing phase, if we got to that
16 point.

17 JUROR SUZANNE WINSTEAD: Yes.

18 THE COURT: Is that correct? Thank you.

19 MR. EVANS: May I, Your Honor?

20 Miss Winstead, I know that you said that Ray
21 Winstead was your nephew; is that right?

22 JUROR SUZANNE WINSTEAD: Nephew by marriage.

23 MR. EVANS: Okay. And I don't think you knew
24 much about that. My office did prosecute him. Is there
25 anything about that that you would hold any ill will
26 towards the State?

27 JUROR SUZANNE WINSTEAD: No.

28 MR. EVANS: You would be fair and impartial to
29 both sides in this trial.

1 JUROR SUZANNE WINSTEAD: Yes.

2 MR. EVANS: That's all, Your Honor.

3 MR. CARTER: Miss Winstead, do you consider
4 life without possibility of parole a real punishment?

5 JUROR SUZANNE WINSTEAD: Yes.

6 MR. CARTER: So you could consider it as or --

7 MR. EVANS: I couldn't understand the question.

8 JUROR SUZANNE WINSTEAD: I didn't either.

9 MR. CARTER: I hadn't finished it.

10 I am trying not to -- I'm trying to follow the
11 judge's rule.

12 If the State of Mississippi said that life without
13 possibility of parole is sufficient for murder, would you
14 have a problem voting for life without possibility of
15 parole?

16 JUROR SUZANNE WINSTEAD: No.

17 MR. EVANS: Your Honor, I don't think the State
18 of Mississippi is going to say which penalty is
19 appropriate.

20 THE COURT: I, I think maybe you need to
21 clarify that because the State of Mississippi in a
22 prosecution sense, usually you are thinking of the
23 prosecution.

24 MR. CARTER: I see what you are saying now.

25 THE COURT: But I think here you are referring
26 to the laws enacted by the legislature of this state.

27 MR. CARTER: That's correct, Your Honor.

28 Miss Winstead, I don't want to confuse you. I gotta
29 watch that. What I was asking was yes, the legislature

1 have decided, Mississippi legislature have decided that
2 life without possibility of parole and the death penalty,
3 either one is appropriate for, for a person convicted of
4 capital murder.

5 JUROR SUZANNE WINSTEAD: Um-hum.

6 MR. CARTER: And you told me that you do
7 consider life without possibility of parole real
8 punishment, a real punishment; is that correct?

9 JUROR SUZANNE WINSTEAD: Yes, sir.

10 MR. CARTER: Now, can you consider Mr. Flowers'
11 background, his character, his life history, his status
12 and situation before he got to this point and was accused
13 of this crime?

14 JUROR SUZANNE WINSTEAD: When I find out about
15 it. Because I don't know -- I mean I don't know his
16 background. I don't know any --

17 MR. CARTER: Right. But -- so my question
18 is -- right. You don't know his background and all at
19 this point. But if we put on evidence about his
20 background, about his character, about his life history
21 --

22 JUROR SUZANNE WINSTEAD: Um-hum.

23 MR. CARTER: -- would you give that
24 information, those facts value, meaning consideration,
25 affect?

26 JUROR SUZANNE WINSTEAD: Yes.

27 MR. CARTER: Okay. Although, you don't know
28 what they, you can say that because you are told so by
29 the Court or instructed by the Court to, in fact,

1 consider those things you would do it.

2 JUROR SUZANNE WINSTEAD: I would because you
3 have -- that is just how I feel. You have to consider
4 because your background and the way you've been before
5 make up who you are today.

6 MR. CARTER: Thank you.

7 THE COURT: Okay. Miss Winstead, you may step
8 down. And when you step down, don't go back out and talk
9 with anybody about what you have discussed in here. I
10 figured you wouldn't any way, but I am just cautioning
11 everybody not do that.

12 JUROR SUZANNE WINSTEAD: Okay.

13 THE COURT: Thank you.

14 If you will bring Number 26 in, Miss Chatham.

15 (JUROR NUMBER 26, JENNIFER CHATHAM, ENTERED THE
16 COURTROOM.)

17 Miss Chatham, if you will come forward and have a
18 seat. There is just a couple of questions that we will
19 be asking.

20 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

21 And we just felt it appropriate to ask these out --
22 you know, instead of out in front of all your fellow
23 jurors individually. I want to know if you have obtained
24 any knowledge about this case, have any facts about the
25 case, read about it in the newspaper, seen it on t.v,
26 heard it on the radio, read about it or seen it on the
27 internet or discussed it, or, you know, been --

28 JUROR JENNIFER CHATHAM: The only thing that I
29 have seen is what has been on the t.v. And then, you

1 know, I heard about Mr. Flowers being over at the jail
2 because that is where my fiancée works at. Other than
3 that, I had never seen him until a couple -- you know, a
4 couple of days ago.

5 THE COURT: Until this started.

6 JUROR JENNIFER CHATHAM: Right.

7 THE COURT: Last Friday.

8 JUROR JENNIFER CHATHAM: Right.

9 THE COURT: And has -- and I believe Mr.
10 Gilland is the -- who you are dating right now --

11 JUROR JENNIFER CHATHAM: Exactly.

12 THE COURT: -- who works at the jail. And has
13 he told you anything that --

14 JUROR JENNIFER CHATHAM: No.

15 THE COURT: So --

16 JUROR JENNIFER CHATHAM: He is not allowed --

17 THE COURT: Right.

18 JUROR JENNIFER CHATHAM: -- to tell me what
19 goes on over there.

20 THE COURT: And I understand. And he has. He
21 has followed that rule and not done that.

22 JUROR JENNIFER CHATHAM: Exactly.

23 THE COURT: Is that correct?

24 JUROR JENNIFER CHATHAM: I don't ask him any
25 questions.

26 THE COURT: And you just heard about it or saw
27 it on t.v. at some point.

28 JUROR JENNIFER CHATHAM: Right.

29 THE COURT: And did anything that you saw on

1 t.v. or heard cause you to form an opinion as to the
2 guilt or innocence of Mr. Flowers?

3 JUROR JENNIFER CHATHAM: No, sir.

4 THE COURT: And will you lay anything you might
5 have heard outside the courtroom -- would you lay that
6 aside and base your decision only on the evidence
7 presented here in court if you were a juror?

8 JUROR JENNIFER CHATHAM: Exactly.

9 THE COURT: And the way the situation on a
10 capital murder case works is if Mr. Flowers were
11 convicted of capital murder, there would be a second
12 phase of the trial. We would not have a second phase if
13 he were found not guilty. But if he were found guilty,
14 then we would go into a second phase, and the jury would
15 determine what they believe the appropriate punishment to
16 be.

17 The State of Mississippi would be seeking the death
18 penalty in the case. The State would put on facts they
19 call aggravating facts that would show that in the
20 State's belief the facts justified the imposition of the
21 death penalty. Mr. Flowers would put on mitigating
22 facts, which in his view would be reasons why the death
23 penalty would not be an appropriate sentence. But you,
24 as a juror, would determine what was an appropriate
25 sentence based on the mitigating and aggravating
26 circumstances.

27 And if you found beyond a reasonable doubt that
28 aggravating circumstances justified it, then you could
29 impose the death penalty. But you do not have to. But

1 that would be an option available to you.

2 JUROR JENNIFER CHATHAM: Okay.

3 THE COURT: So if the option of the death
4 penalty was available to you, is that a sentencing option
5 that you could consider?

6 JUROR JENNIFER CHATHAM: Yes, sir.

7 THE COURT: And also, if he was not sentenced
8 to death, the sentence would be life without parole. And
9 would you leave open that sentencing option as well?

10 JUROR JENNIFER CHATHAM: Yes, sir.

11 THE COURT: So as you sit here today, without
12 having heard any mitigating or aggravating factors or
13 even right now having even not considered him guilty at
14 all, but if it got to that second phase, would you leave
15 open both sentencing options?

16 JUROR JENNIFER CHATHAM: Yes, sir.

17 THE COURT: And then would you base your
18 decision based on the facts as you found them to be and
19 based on your -- law as given to you by the Court?

20 JUROR JENNIFER CHATHAM: Yes, sir.

21 THE COURT: Okay. Thank you.

22 MR. EVANS: No questions from the State.

23 MRS. STEINER: Good afternoon.

24 JUROR JENNIFER CHATHAM: Hello.

25 MRS. STEINER: You indicated that your fiancée
26 works at Carroll Montgomery --

27 JUROR JENNIFER CHATHAM: Right.

28 MRS. STEINER: -- jail. Does he work on the
29 state side or county side?

1 JUROR JENNIFER CHATHAM: He runs both.

2 MRS. STEINER: Oh, he is the warden.

3 JUROR JENNIFER CHATHAM: Oh, no, ma'am. He is
4 a corporal over there, but he is over all the inmates.
5 As far as I'm concerned, I think that is what it is. I
6 really don't know.

7 MRS. STEINER: Okay. When His Honor was
8 talking particularly about the evidence that might happen
9 at the penalty phase, should there be one --

10 JUROR JENNIFER CHATHAM: Okay.

11 MRS. STEINER: -- the State, as His Honor will
12 instruct you, in addition to finding Mr. Flowers guilty
13 beyond a reasonable doubt, the State must also prove the
14 existence of one or more very specific aggravating
15 factors that the Court will instruct you on. That's,
16 that's what the Court was telling you, will instruct you
17 about what aggravation is.

18 JUROR JENNIFER CHATHAM: Okay.

19 MRS. STEINER: Okay. Now, the Court will also
20 instruct you that even to move beyond whether you want to
21 think about the death penalty, should there be a penalty
22 deliberation, you'll all unanimously, all 12 of you, have
23 to determine that at least one of those exists, the same
24 way.

25 JUROR JENNIFER CHATHAM: Yes, ma'am.

26 MRS. STEINER: All right. And do you feel
27 comfortable doing that?

28 JUROR JENNIFER CHATHAM: Yes, ma'am. It has to
29 be proven --

1 MRS. STEINER: Right.

2 JUROR JENNIFER CHATHAM: -- with the evidence
3 first.

4 MRS. STEINER: As His Honor instructed you,
5 beyond a reasonable doubt.

6 JUROR JENNIFER CHATHAM: Right.

7 MRS. STEINER: Now, as His Honor will instruct
8 you, mitigation is slightly different. Instead of having
9 all 12 of you have to agree on anything, mitigation, as
10 His Honor will instruct you, is anything that personally
11 comes to mind from the evidence before you, the defendant
12 puts on that you hear even in witnesses the State puts
13 on. Can you consider all of the circumstances that you
14 hear in making -- and give value to anything you hear
15 that the defense puts on in mitigation?

16 JUROR JENNIFER CHATHAM: Yes, ma'am.

17 MRS. STEINER: All right. Your fiancée works
18 at the jail. It is -- the circumstances of Mr. Curtis
19 Flowers before he was ever arrested for these charges can
20 come into play. You can consider those as mitigation.

21 JUROR JENNIFER CHATHAM: I don't understand
22 what you are saying.

23 MRS. STEINER: Mr. Flowers' life up till the
24 time he was arrested for this crime --

25 JUROR JENNIFER CHATHAM: Okay.

26 MRS. STEINER: -- can come into play as
27 mitigation. Can you consider anything that we would put
28 on or you on might learn from evidence --

29 JUROR JENNIFER CHATHAM: Yes, ma'am.

1 MRS. STEINER: -- about that? It is also
2 possible the evidence concerning his life, as it has
3 existed for many years since his arrest, including in the
4 jail at Carroll Montgomery, could be evidence adduced,
5 put into evidence at the penalty phase, if we came to
6 one.

7 JUROR JENNIFER CHATHAM: Yes, ma'am.

8 MRS. STEINER: Could you consider that?

9 JUROR JENNIFER CHATHAM: Yes ma'am.

10 MRS. STEINER: Now, I know, of course, your
11 fiancés and you are not allowed to discuss specific cases
12 or inmate such-and-such did that. But I'm assuming like
13 most couples you do talk about the kinds of things each
14 other does at work.

15 JUROR JENNIFER CHATHAM: He doesn't go into
16 detail with it about --

17 MRS. STEINER: But you know --

18 JUROR JENNIFER CHATHAM: Now, he does tell me
19 things that goes on over there --

20 MRS. STEINER: Oh, okay.

21 JUROR JENNIFER CHATHAM: -- but he does not
22 tell me names of people.

23 MRS. STEINER: Okay. Has he told you anything
24 that quote went on over there that you just based on
25 watching t.v. or anything else --

26 JUROR JENNIFER CHATHAM: No, ma'am, he has not.

27 MRS. STEINER: -- you figured this might be
28 about Mr. Flowers' case.

29 JUROR JENNIFER CHATHAM: No, ma'am. Because

1 there is several people over there that I know. I have a
2 cousin over there.

3 MRS. STEINER: Okay.

4 JUROR JENNIFER CHATHAM: And, you know, there
5 is different things that goes on over there that not even
6 I know.

7 MRS. STEINER: I understand that. I'm just
8 asking you if, if you -- if it turns out that things
9 about jails come in -- and I believe you say your fiancée
10 has shared that with you.

11 JUROR JENNIFER CHATHAM: Right.

12 MRS. STEINER: There may be things you think
13 you know about that jail or might have gone on at that
14 jail on the basis of those conversations. Can you, if
15 evidence comes in, put that aside, the way --

16 JUROR JENNIFER CHATHAM: Yes, ma'am. Yes,
17 ma'am.

18 MRS. STEINER: -- that you promised you can put
19 aside any other information?

20 JUROR JENNIFER CHATHAM: Yes, ma'am.

21 MRS. STEINER: And just hear what is said in
22 the courtroom.

23 JUROR JENNIFER CHATHAM: Yes, ma'am.

24 MRS. STEINER: And if you have heard, you
25 know -- perhaps you didn't hear an abstract thing was
26 talked about and you are sitting there saying oh, my
27 gosh.

28 MR. EVANS: Your Honor, I believe she has
29 answered this question at least five times.

1 THE COURT: You have asked it at least a half a
2 dozen different ways. I think you have made your point
3 clear. If you will wrap it up with this juror.

4 MRS. STEINER: Okay. If you hear something in
5 the courtroom that is different from what you had in your
6 head with conversations from your -- with your fiancée
7 about that jail or what has gone on, can you set that
8 aside --

9 JUROR JENNIFER CHATHAM: Yes, ma'am.

10 MRS. STEINER: -- and decide only on what you
11 have heard in the courtroom?

12 JUROR JENNIFER CHATHAM: Yes, ma'am. I'll only
13 use the evidence that is presented here.

14 MRS. STEINER: And can you give, in your moral
15 judgment, hear and consider every piece of evidence that
16 is put on in mitigation with the crime?

17 JUROR JENNIFER CHATHAM: Yes, ma'am.

18 MRS. STEINER: And with Mr. Flowers in general,
19 even if it is not related to the crime.

20 JUROR JENNIFER CHATHAM: Yes, ma'am.

21 THE COURT: Miss Chatham, you may step down.
22 When you go back out, please don't talk about with your
23 fellow jurors anything you have discussed or talked about
24 in here.

25 JUROR JENNIFER CHATHAM: Yes, sir.

26 THE COURT: You may step down now.

27 Mr. Waller, Number 29.

28 (JUROR NUMBER 29, HAROLD WALLER, ENTERED THE COURTROOM.)

29 If you will, come down here, Mr. Waller, and have a

1 seat.

2 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

3 MR. EVANS: Your Honor, may we have one minute?

4 I'm sorry, Your Honor.

5 THE COURT: Mr. Waller, we are bringing
6 everybody in and asking them a couple of questions
7 outside the presence of the other jurors. And one of the
8 questions I want to ask is if you have heard anything
9 about this case or have obtained any knowledge about the
10 case or the investigation of the case or anything like
11 read it in the newspaper, seeing it on t.v., read it on
12 the internet or radio or any -- hearing it on the radio
13 or any facts about the case.

14 JUROR HAROLD WALLER: I just read what is in
15 the local paper, you know, radio. I haven't talked about
16 it.

17 THE COURT: Sir.

18 JUROR HAROLD WALLER: I haven't discussed it,
19 the case with anybody.

20 THE COURT: And has anybody tried to discuss it
21 with you at any point?

22 JUROR HAROLD WALLER: No, sir.

23 THE COURT: And has anything that you saw or
24 read or heard caused you to form an opinion as to the
25 guilt or innocence of Mr. Flowers?

26 JUROR HAROLD WALLER: No, sir.

27 THE COURT: And would you lay aside anything
28 that you heard outside the courtroom and base your
29 decision strictly on the evidence that is presented here

1 in court?

2 JUROR HAROLD WALLER: Yes, sir.

3 THE COURT: And the next question revolves
4 around the sentencing phase of the case, if the trial got
5 to that point. What happens first is, is the
6 determination of guilt or innocence. If Mr. Flowers was
7 found not guilty, there will not be a second phase. But
8 if he were to be found guilty, then we would get into the
9 sentencing phase. Are you with me so far?

10 JUROR HAROLD WALLER: Yes, sir.

11 THE COURT: If we got to the sentencing phase,
12 the jury would decide then whether he should receive the
13 death penalty. If the jury found he did not deserve the
14 death penalty, life in prison would be the sentence that
15 would be imposed.

16 The State of Mississippi will be putting on
17 aggravating factors which in the State's view would
18 justify the imposition of the death penalty. Mr.
19 Flowers, if it got to the second phase, would be putting
20 on proof that in his view would mitigate, would be
21 reasons why he should not receive the death penalty. And
22 so if it got to the second phase, could you consider the
23 death penalty as a sentencing option?

24 JUROR HAROLD WALLER: Yes, sir.

25 THE COURT: And could you also consider life
26 without parole as a sentencing option?

27 JUROR HAROLD WALLER: Yes, sir.

28 THE COURT: So as we sit here today, you would
29 consider both options and would make your determination

1 based on the evidence presented at the second phase and
2 based on the law instructed by the Court?

3 JUROR HAROLD WALLER: Yes, sir.

4 THE COURT: And that is understanding if it
5 even got to that second phase.

6 JUROR HAROLD WALLER: Yes, sir.

7 MR. EVANS: No questions from the State.

8 MR. CARTER: I have a few, Your Honor.

9 Mr. Waller, could you ever consider a life sentence,
10 life without possibility of parole as a adequate
11 punishment for the capital murder of four people?

12 JUROR HAROLD WALLER: I could consider it, yes.

13 MR. CARTER: What do you mean by consider?

14 JUROR HAROLD WALLER: Well, I mean if that was
15 one of the options that was going on in the court, I, I
16 mean, yeah. If it was capital, I could go, you know, go
17 with the death sentence too.

18 MR. CARTER: Okay. All right. So you said you
19 would consider it. But could you vote for life without
20 possibility of parole?

21 JUROR HAROLD WALLER: Yes.

22 MR. EVANS: Your Honor, he is asking for him to
23 decide what he would vote. That is not the proper
24 question.

25 MR. CARTER: I will strike that, Your Honor. I
26 did over step. I will strike that.

27 Now, Mr. Waller, would the, the nature of the crime
28 matter to you in your vote for life or death? Would you
29 want to know what happened and how it happened, why it

1 happened, that kind of stuff before voting for life or
2 death?

3 JUROR HAROLD WALLER: Yes, sir. I mean I would
4 have to see the evidence that was put forth.

5 MR. CARTER: Would you want to -- would the
6 background, the character, the life history of the
7 defendant before they got charged with the capital
8 murder, would that matter to you? Would you want to know
9 that?

10 MR. EVANS: Again, Your Honor, he is asking him
11 now to say what would matter. He can't --

12 THE COURT: I sustain. The appropriate
13 question is to say would you consider the aggravating and
14 mitigating factors and base your decision on what is
15 presented. And I have already asked that of him.

16 MR. CARTER: Well, Your Honor, I accept that.
17 Your Honor, I just wanted to make sure he knew what
18 mitigation was.

19 THE COURT: I explained that to him.

20 MR. CARTER: Okay.

21 THE COURT: You may step down now. And please
22 do not go out and discuss your testimony in here with
23 anybody outside, you know, your fellow jurors or anyone
24 else.

25 If you will bring in Number 30, Mr. Whitfield.

26 (JUROR NUMBER 30, JEFFREY WHITFIELD, ENTERED THE
27 COURTROOM.)

28 THE COURT: If you will come forward, Mr.
29 Whitfield, and have a seat down here.

1 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

2 THE COURT: Mr. Whitfield, there are a few
3 questions that we'll ask you outside the presence of your
4 fellow jurors. And I wanted to ask a couple of questions
5 also. You work now for the sheriff's department; is that
6 correct?

7 JUROR JEFFREY WHITFIELD: No, sir.

8 THE COURT: Or used to work here?

9 JUROR JEFFREY WHITFIELD: No, sir.

10 THE COURT: Are you in law enforcement at all?

11 JUROR JEFFREY WHITFIELD: No, sir.

12 THE COURT: Okay. I got something confused on
13 a jury questionnaire, and I don't know how that happened.
14 But you are not involved in law enforcement.

15 JUROR JEFFREY WHITFIELD: No, sir.

16 THE COURT: I think you said -- I'm sorry. I
17 misread. You've got a relative that is in law
18 enforcement.

19 JUROR JEFFREY WHITFIELD: Yes, sir.

20 THE COURT: I'm sorry. Mr. Harris. I was just
21 not reading my own notes well. But him working at the
22 sheriff's department wouldn't be a factor --

23 JUROR JEFFREY WHITFIELD: No, sir.

24 THE COURT: -- or influence you being a juror
25 in this case.

26 JUROR JEFFREY WHITFIELD: No, sir.

27 THE COURT: I want to know now how old were you
28 in 1986 -- '96?

29 JUROR JEFFREY WHITFIELD: Nine or ten.

1 THE COURT: And did -- have you heard anything
2 about this case or know any facts about this case or
3 heard it discussed or anything like that?

4 JUROR JEFFREY WHITFIELD: Not really.

5 THE COURT: Have you read anything in the paper
6 or seen it on the t.v., internet or news or radio or
7 anything?

8 JUROR JEFFREY WHITFIELD: I vaguely remember
9 when it happened. That pretty much it. Before this I
10 probably couldn't have told you who all was killed or
11 whatnot.

12 THE COURT: And would you base your decision
13 only on the evidence presented here in court and on
14 nothing else?

15 JUROR JEFFREY WHITFIELD: Yes, sir.

16 THE COURT: And if you are sitting as a juror
17 would you lay aside anything that you might have heard
18 and base your decision only on the evidence presented?

19 JUROR JEFFREY WHITFIELD: Yes, sir.

20 THE COURT: Mr. Whitfield, the way it works is
21 if the jury found Mr. Flowers guilty, there would be a
22 second phase of the trial. If they found him not guilty,
23 we would not get to a second phase. But if the jury
24 found him guilty, then the same jury would then go into a
25 sentencing phase to determine the appropriate punishment.

26 The State of Mississippi would be seeking the death
27 penalty. They would put on aggravating factors that they
28 believe would justify the imposition of the death
29 penalty. The defense would be putting on mitigating

1 factors. That would be facts that they believe would
2 show that the death penalty would not be an appropriate
3 sentence.

4 Could you consider both the -- could you consider
5 the death penalty as a possible sentence?

6 JUROR JEFFREY WHITFIELD: I kind of have mixed
7 feelings about the death penalty.

8 THE COURT: But could you consider it as a
9 sentencing option?

10 JUROR JEFFREY WHITFIELD: Yes, sir, I could.

11 THE COURT: Now, I understand that there is --

12 JUROR JEFFREY WHITFIELD: Yes, sir.

13 THE COURT: Well, what is your feelings about
14 it, you know? If you want to just --

15 JUROR JEFFREY WHITFIELD: Depending on the
16 brutality of the crime.

17 THE COURT: So if the facts justified it and
18 the law provided and allowed for it, could you consider
19 that as a sentencing option?

20 JUROR JEFFREY WHITFIELD: Yes, sir.

21 THE COURT: And also, if he was not sentenced
22 to death then the sentence would be life without parole.
23 Would you also consider that as a sentencing possibility?

24 JUROR JEFFREY WHITFIELD: Yes, sir.

25 THE COURT: And would you wait and hear all the
26 evidence, aggravating and mitigating facts, and base your
27 decision on whether life in prison or the death penalty
28 based on that?

29 JUROR JEFFREY WHITFIELD: Yes, sir.

1 THE COURT: Okay. Thank you.

2 MR. EVANS: No questions.

3 MRS. STEINER: Good afternoon, Mr. Whitfield.
4 You said you, quote, not really haven't heard anything
5 about the facts of this case.

6 JUROR JEFFREY WHITFIELD: Yes, ma'am.

7 MRS. STEINER: And I, I don't think you put
8 your hands up about knowing any of the witnesses or --

9 JUROR JEFFREY WHITFIELD: Yes, ma'am.

10 MRS. STEINER: -- or Mr. Flowers or his family,
11 Miss Tardy. So you haven't heard anything from anybody
12 who's actually been involved.

13 JUROR JEFFREY WHITFIELD: No, sir. No, ma'am.
14 I'm sorry.

15 MRS. STEINER: It's all right. You worked at
16 Halter Construction and then at Camp McCain. Do you
17 recall if it was ever talked about at either of those
18 work places?

19 JUROR JEFFREY WHITFIELD: No, ma'am.

20 MRS. STEINER: All right. In response to His
21 Honor's questions when you said you had mixed feelings
22 about the death penalty, you said depending on the
23 brutality --

24 JUROR JEFFREY WHITFIELD: Yes, ma'am.

25 MRS. STEINER: -- of the crime. You understand
26 that if you even get to convicting -- get to considering
27 the penalty --

28 JUROR JEFFREY WHITFIELD: Yes, ma'am.

29 MRS. STEINER: -- for Curtis Flowers at all,

1 you will have found him guilty of four capital murders.

2 JUROR JEFFREY WHITFIELD: Yes, ma'am.

3 MRS. STEINER: And the State will certainly
4 argue they were brutal. Could you get passed that --

5 MR. EVANS: Your Honor, I object.

6 MRS. STEINER: -- and consider other things in
7 mitigation?

8 MR. EVANS: She is asking him to take into
9 consideration facts that aren't in evidence yet.

10 THE COURT: He has already said that he would
11 consider the facts, mitigating and aggravating, and base
12 his decision on that. So I think he has already
13 answered.

14 MRS. STEINER: Thank you, Your Honor. I'd
15 like -- may I ask him?

16 Could you after that, after you have found him
17 guilty of four capital murders, could you consider
18 matters concerning his background, what happened before
19 the crime, how he has been after the crime, those sorts
20 of things? Could you consider those in mitigation of his
21 sentence?

22 JUROR JEFFREY WHITFIELD: Yes, ma'am.

23 MRS. STEINER: Even after that?

24 JUROR JEFFREY WHITFIELD: Yes, ma'am.

25 MRS. STEINER: Now, as His Honor will instruct
26 you, to find it was capital murder you must find specific
27 factors in aggravation that the State must prove.

28 JUROR JEFFREY WHITFIELD: Yes, ma'am.

29 MRS. STEINER: Beyond just being guilty of

1 capital murder. Do you understand that?

2 JUROR JEFFREY WHITFIELD: Yes, ma'am.

3 MRS. STEINER: And you understand that that has
4 to be beyond a reasonable doubt, and you have to agree
5 with all 12 other people deliberating to do that.

6 JUROR JEFFREY WHITFIELD: Yes, ma'am.

7 MRS. STEINER: And you are comfortable with
8 doing that no matter how brutal the crime.

9 JUROR JEFFREY WHITFIELD: I wouldn't say
10 comfortable, but I'm willing to.

11 MRS. STEINER: All right. Thank you. And
12 mitigation is a little different. His Honor will
13 instruct you at the appropriate time, if there is a
14 penalty phase, that that is something you get to make
15 your own personal mind up about.

16 JUROR JEFFREY WHITFIELD: Yes, ma'am.

17 MRS. STEINER: On the basis of what you hear in
18 the courtroom and your personal moral values, and it
19 doesn't include things other than the crime itself.

20 JUROR JEFFREY WHITFIELD: Yeah.

21 MRS. STEINER: Can you take all those things
22 into account?

23 JUROR JEFFREY WHITFIELD: Yes, ma'am, I can.

24 MRS. STEINER: If you think something is
25 mitigating and a fellow juror does not, you understand
26 you don't have to come to an agreement like you do on a
27 aggravating factor. You understand you can consider all
28 of those.

29 JUROR JEFFREY WHITFIELD: Yes, ma'am.

1 MRS. STEINER: That is all I have, Your Honor.

2 THE COURT: Mr. Whitfield, you can step back
3 out. And I'll ask you not to discuss with your fellow
4 jurors the testimony you have offered in here.

5 JUROR JEFFREY WHITFIELD: Yes, sir.

6 THE COURT: You can send in Jessie Lee Crawford
7 next. That would be Number 33.

8 (JUROR NUMBER 33, JESSIE CRAWFORD, ENTERED THE COURTROOM
9 AND WAS SEATED ON THE WITNESS STAND.)

10 THE COURT: Mr. Crawford, if you will have a
11 seat. There is a couple of things that we are asking all
12 jurors outside the presence of other jurors because we
13 don't want to have what one might say influence what
14 somebody else my say. And so that is why we are doing
15 this.

16 And there was a couple of questions I wanted to
17 follow-up too about your statements out in front of
18 everyone. I believe you said that you have a
19 granddaughter that's, that's the child of Mr. Flowers'
20 brother; is that --

21 JUROR JESSIE CRAWFORD: My son have a --

22 THE COURT: Which would be your granddaughter.

23 JUROR JESSIE CRAWFORD: Right.

24 THE COURT: So your son has got a child with
25 Mr. Flowers' sister.

26 JUROR JESSIE CRAWFORD: Sister.

27 THE COURT: Is that -- and that's a
28 granddaughter. Is that a grandchild, granddaughter.

29 JUROR JESSIE CRAWFORD: My granddaughter.

1 THE COURT: Yeah. It is your granddaughter.
2 That is what I'm saying.

3 JUROR JESSIE CRAWFORD: Yeah.

4 THE COURT: Did I understand you to say that
5 because of that you could not be a fair and impartial
6 juror in this case?

7 JUROR JESSIE CRAWFORD: Right.

8 THE COURT: And that would influence you and
9 knowing the Flowers family would influence you where you
10 just could not be fair to both sides going into the
11 trial; is that correct?

12 JUROR JESSIE CRAWFORD: Correct.

13 THE COURT: And also, I want to ask you if you
14 have heard any facts about this case, talked, you know,
15 read about it in the paper, seen it on t.v., radio or
16 just gossip out in town or street talk. You had any
17 knowledge at all about the case?

18 JUROR JESSIE CRAWFORD: No, sir.

19 THE COURT: And you hadn't heard anybody ever
20 talk about the case?

21 JUROR JESSIE CRAWFORD: Not -- well, I don't
22 get out too much.

23 THE COURT: Is that right. How long have you
24 lived in the county?

25 JUROR JESSIE CRAWFORD: All my life.

26 THE COURT: All your life. But this is
27 something that you hadn't heard brought up or discussed.

28 JUROR JESSIE CRAWFORD: No. Not with nobody.

29 THE COURT: Okay. Not really. I mean what

1 does not really -- does that mean not, not at all?

2 JUROR JESSIE CRAWFORD: I said not with anyone.

3 THE COURT: Not with anyone. Oh, okay. You
4 have got a soft voice, and my ears are clogged up because
5 of allergies. So forgive me if I ask you to repeat
6 something. I am not trying to -- you know, other than
7 wanting to hear everything. And so I want that to be
8 clear.

9 Now, the situation as far as a trial goes is this.
10 First, in a capital murder case the jury decides guilt or
11 innocence. If they found Mr. Flowers not guilty there
12 would not be a second phase at all. We would not even
13 proceed any further and the proceeding would be
14 concluded. Do you understand that up to now?

15 JUROR JESSIE CRAWFORD: Yes, sir.

16 THE COURT: But if the jury found him guilty,
17 then we would get to a second stage and that would be a
18 determination of what the appropriate punishment would
19 be. The State of Mississippi would put on factors called
20 aggravating factors. These would be factors that the
21 State believes would justify the imposition of the death
22 penalty. The defense, on behalf of Mr. Flowers, would
23 then put on mitigating factors, being factors that they
24 believe would show that he should not be sentenced to
25 death. So there would be aggravating and mitigating
26 factors. Both sides would be putting on evidence in
27 regard to what the sentence should be. Do you understand
28 that?

29 JUROR JESSIE CRAWFORD: Yeah.

1 THE COURT: If the death penalty was a possible
2 sentence, could you consider that as a sentence?

3 JUROR JESSIE CRAWFORD: No.

4 THE COURT: So there is -- no matter under any
5 -- are you saying under no circumstance could you even
6 consider that as a possible sentence?

7 JUROR JESSIE CRAWFORD: No.

8 THE COURT: But you could consider life without
9 parole as appropriate sentence; is that correct?

10 JUROR JESSIE CRAWFORD: Yes.

11 THE COURT: Okay. Thank you.

12 MR. EVANS: No questions.

13 MRS. STEINER: Your Honor, we have no
14 questions.

15 THE COURT: Mr. Crawford, you may step down.
16 If you will just step back out with your fellow jurors
17 but don't talk about out there what has been said in
18 here. And I thank you.

19 JUROR JESSIE CRAWFORD: You're welcome.

20 THE COURT: Next if you will get Mr. Eskridge,
21 Number 34.

22 (JUROR NUMBER 34, JOHN ESKRIDGE, ENTERED THE COURTROOM.)

23 Mr. Eskridge, if you will come down. Have a seat.
24 If you will, have a seat right here.

25 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

26 We are asking questions of everybody outside the
27 presence of the other jurors so that, you know, one
28 person might by mistake say something that would
29 influence somebody else. So that is why we are asking

1 these questions individually. And there were a couple of
2 questions that I wanted to follow up with.

3 JUROR JOHN ESKRIDGE: Okay.

4 THE COURT: And then there will be a couple
5 more questions. At one point, I believe this morning,
6 when the prosecutor was asking you, you were saying that
7 you just could not judge. And then I think you came back
8 when Mr. Carter was asking you questions and indicated
9 maybe you could sit in judgment. And I was not really
10 clear on what you were meaning. So could you sit in
11 judgment of one of your fellow human beings and decide
12 their guilt or innocence.

13 JUROR JOHN ESKRIDGE: Well, what I said this
14 morning on account, see, I know one from each family.

15 THE COURT: So you know some people that were
16 maybe victims. Is that what you are saying?

17 JUROR JOHN ESKRIDGE: Well, I know -- well, I'm
18 talking about -- this what I'm saying. I may be getting
19 the wrong understanding, but I know a person from that
20 side of the family.

21 THE COURT: Okay. What side of the family are
22 you talking about?

23 JUROR JOHN ESKRIDGE: The Golden family.

24 THE COURT: Golden. So you know a -- one of
25 the Goldens.

26 JUROR JOHN ESKRIDGE: Um-hum.

27 THE COURT: Okay. And who is it in the Golden
28 family that you know?

29 JUROR JOHN ESKRIDGE: His brother.

1 THE COURT: What is his name?

2 JUROR JOHN ESKRIDGE: Willie.

3 THE COURT: Willie.

4 JUROR JOHN ESKRIDGE: Um-hum.

5 THE COURT: And then are you saying you also
6 know some of Mr. Flowers' family?

7 JUROR JOHN ESKRIDGE: Um-hum.

8 THE COURT: Who do you know in his family?

9 JUROR JOHN ESKRIDGE: I guess his brother. The
10 one that's called --

11 THE COURT: Would that be Archie, Jr.?

12 JUROR JOHN ESKRIDGE: Yeah. I guess it would
13 be Archie, Jr. He work at Heat Craft, Heat Craft or
14 Lavada, whatever you call the place. I am going to call
15 it Heat Craft.

16 THE COURT: Now, is this something where you
17 just wouldn't be comfortable judging, or is it something
18 where you just could not judge?

19 JUROR JOHN ESKRIDGE: I just could not judge.

20 THE COURT: You feel like you could not --

21 JUROR JOHN ESKRIDGE: Yeah.

22 THE COURT: -- judge because of these --

23 JUROR JOHN ESKRIDGE: Yeah.

24 THE COURT: Because of the knowledge of these
25 families.

26 JUROR JOHN ESKRIDGE: Yeah.

27 THE COURT: And you, I guess, wouldn't want to
28 decide between them. Is that what you are saying?

29 JUROR JOHN ESKRIDGE: Right. Right. Right.

1 THE COURT: And also, I want to know if you
2 have heard any facts about this case, like seen it on
3 t.v., read about it, heard it on the radio, read it on
4 the internet or had any knowledge at all about the case.

5 JUROR JOHN ESKRIDGE: No. I really hadn't had
6 no knowledge about it.

7 THE COURT: Did you hear about it --

8 JUROR JOHN ESKRIDGE: Really, really, just -- I
9 guess I heard it on the radio, and I never did think no
10 more about it.

11 THE COURT: And did you hear about it at the
12 time it happened?

13 JUROR JOHN ESKRIDGE: Yeah, I was at work.

14 THE COURT: Is that right?

15 JUROR JOHN ESKRIDGE: Um-hum.

16 THE COURT: And has anything that you read,
17 seen, heard caused you to form any opinion as to the
18 guilt or innocence of Mr. Flowers?

19 JUROR JOHN ESKRIDGE: No.

20 THE COURT: And if you were sitting as a juror
21 in this case, would you base your decision only on the
22 evidence presented and not on any information you heard
23 outside the court?

24 JUROR JOHN ESKRIDGE: Right. Just only what I
25 could hear inside here.

26 THE COURT: And nothing else would influence
27 you at all.

28 JUROR JOHN ESKRIDGE: No. Huh-huh.

29 THE COURT: Is that correct?

1 JUROR JOHN ESKRIDGE: Right.

2 THE COURT: And the next question deals with
3 the possible sentence if there was a penalty phase. What
4 happens in this type case is if Mr. Flowers was found
5 guilty beyond a reasonable doubt of the capital murder,
6 then we would get to a sentencing phase. If he was found
7 not guilty, the trial would conclude. Are you with me so
8 far?

9 JUROR JOHN ESKRIDGE: Right.

10 THE COURT: Now, if we got to the second phase,
11 the jury would then decide what the appropriate
12 punishment would be. The State of Mississippi would put
13 factors on they call aggravating factors, which would
14 show why in the State's view Mr. Flowers should be
15 sentenced to death. And then Mr. Flowers would put on
16 proof called mitigating factors that would show why in
17 their opinion or his opinion the death penalty would not
18 be appropriate.

19 And then at that time the jury would decide what the
20 appropriate punishment would be. All 12 jurors would
21 have to agree if there was a death penalty involved in
22 the case. But could you consider the death penalty as a
23 sentencing option if you were to be a juror in this case?

24 JUROR JOHN ESKRIDGE: No.

25 THE COURT: So are you saying under no
26 circumstance would that even be something you would think
27 about, consider.

28 JUROR JOHN ESKRIDGE: Right.

29 THE COURT: Okay. Thank you.

1 MR. EVANS: No questions.

2 MR. CARTER: Did he say no questions?

3 THE COURT: He did.

4 MR. CARTER: One moment, Your Honor.

5 Mr. Eskridge.

6 JUROR JOHN ESKRIDGE: Um-hum.

7 MR. CARTER: If you got picked as a juror,
8 would you listen to the evidence?

9 JUROR JOHN ESKRIDGE: Yeah.

10 MR. CARTER: And if you got picked as a juror
11 and listened to the evidence and the jury went back in
12 the deliberation room, would you deliberate with the rest
13 of the jurors?

14 JUROR JOHN ESKRIDGE: Yes, I would. On account
15 of the way I feel now, not nobody else.

16 MR. CARTER: Right. Right. That is all we are
17 asking, the way you feel.

18 JUROR JOHN ESKRIDGE: Um-hum.

19 MR. CARTER: And you would also vote based on
20 the way you feel; is that right?

21 JUROR JOHN ESKRIDGE: That's right.

22 MR. CARTER: And you would consider everything
23 you are told to consider.

24 JUROR JOHN ESKRIDGE: That's right.

25 MR. CARTER: Thank you.

26 THE COURT: But on the -- on the sentencing
27 phase, are you saying though that you would not even
28 consider the death penalty as an option?

29 JUROR JOHN ESKRIDGE: Right.

1 THE COURT: So you would under no circumstances
2 ever even consider the imposition of it.

3 JUROR JOHN ESKRIDGE: Right.

4 THE COURT: Thank you. You may step down.

5 Mr. Eskridge, when you go out, don't talk about your
6 testimony here with anybody out there, please.

7 JUROR JOHN ESKRIDGE: Yes, sir, I won't.

8 THE COURT: You may step down for now, sir.
9 Thank you.

10 JUROR JOHN ESKRIDGE: Thank you, sir.

11 THE COURT: Number 38.

12 (JUROR NUMBER 38, BARRON DAVIS, ENTERED THE COURTROOM.)

13 THE COURT: Mr. Davis, if you will come forward
14 and have a seat for a couple of questions.

15 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

16 THE COURT: There is a few questions that we
17 are asking outside the presence of the other jurors.

18 And first of all, I want to know if you have any
19 knowledge about the case where you might have read about
20 it, heard about it on t.v. or on the radio, seen anything
21 on the internet or any knowledge at all about this case.

22 JUROR BARRON DAVIS: I haven't seen anything on
23 the internet, but I have seen things in the past on
24 television and on -- in *Winona Times*.

25 THE COURT: And did that cause you to form an
26 opinion as to the guilt or innocence of Mr. Flowers?

27 JUROR BARRON DAVIS: No. It wasn't that much
28 information.

29 THE COURT: And would you lay aside anything

1 you might have read or heard and base your decision only
2 on the evidence presented here in court if you were
3 selected as a juror?

4 JUROR BARRON DAVIS: Yes.

5 THE COURT: The next issue, Mr. Davis, is if
6 the jury found Mr. Flowers guilty of capital murder, we
7 would get into the second phase of the trial, which would
8 be the sentencing phase. If they found him not guilty,
9 we would not get into the sentencing phase. But if he
10 were to be found guilty, we would then have a sentencing
11 phase.

12 The State would be seeking the death penalty. They
13 would be putting on aggravating factors, which are things
14 that they believe would justify the imposition of the
15 death penalty. Mr. Flowers would be putting on
16 mitigating factors. That would be reasons he believes
17 the death penalty would not be appropriate.

18 Could you consider the death penalty as a sentencing
19 option if the facts justified it and the law allowed it?

20 JUROR BARRON DAVIS: If the facts justified it,
21 yes.

22 THE COURT: And could you also consider life
23 without parole? Because he -- if he was -- did not
24 receive the death penalty, he would receive life in
25 prison without parole. So would you consider that as an
26 option as well?

27 JUROR BARRON DAVIS: I would, depending on the
28 circumstances naturally.

29 THE COURT: So you would wait and hear the

1 facts and be instructed on the law before you made a
2 decision; is that correct?

3 JUROR BARRON DAVIS: That's right.

4 THE COURT: Okay.

5 MR. EVANS: All right. You may have answered
6 this. I'm not sure. But you understand you would not
7 even start thinking about what penalty was appropriate
8 until you got into the second phase.

9 JUROR BARRON DAVIS: I understand that, yes.

10 MR. EVANS: So we would have to go through the
11 first part on just the guilt first.

12 JUROR BARRON DAVIS: Yes.

13 MR. EVANS: Nothing further, Your Honor.

14 MRS. STEINER: Excuse me. Good afternoon, Mr.
15 Davis. You -- let me -- you're one of the people who has
16 four family members here; is that correct?

17 JUROR BARRON DAVIS: Yes, ma'am, that's very
18 true.

19 MRS. STEINER: Your wife is on the venire and
20 your son and your daughter-in-law --

21 JUROR BARRON DAVIS: All four of us.

22 MRS. STEINER: -- are also here. And I believe
23 you have like a 16-year-old grandson.

24 JUROR BARRON DAVIS: I have a 17 -- a 16, 17 or
25 18. I have two grandsons and one granddaughter.

26 MRS. STEINER: With your son and
27 daughter-in-law who are here.

28 JUROR BARRON DAVIS: Oh, well, I have two sons.
29 The son you are referring to is Charles. I have one

1 grandson with him and Lee.

2 MRS. STEINER: I'm just worried about Barron,
3 your son who is here.

4 JUROR BARRON DAVIS: Barron Lee. Yes, that is
5 my oldest son. He is not here. Charles Lloyd is here.

6 MRS. STEINER: Charles is here. All right.
7 And he has a 16-year-old.

8 JUROR BARRON DAVIS: Charles does, yes.

9 MRS. STEINER: And if it turned out all four of
10 y'all were on the jury, would that affect your ability to
11 concentrate, worrying about who is going to be looking
12 after that 16-year-old for a week?

13 JUROR BARRON DAVIS: Well, he is looking out
14 after his self today. Unfortunately he thinks he is an
15 adult, I'm sure. Me, personally, I have -- don't
16 babysit.

17 MRS. STEINER: All right. Do you -- I mean so
18 that would not distract you --

19 JUROR BARRON DAVIS: Not a bit.

20 MRS. STEINER: -- with your whole family here.

21 JUROR BARRON DAVIS: I leave without him quite
22 often.

23 MRS. STEINER: Say again.

24 JUROR BARRON DAVIS: I leave without the
25 grandson quite often.

26 MRS. STEINER: I appreciate that. Do you -- I
27 think your son and daughter-in-law are both doing
28 something, on-line courses for their professional
29 development.

1 JUROR BARRON DAVIS: Yes, ma'am. They are
2 working on some kind of degree from Ole Miss online.

3 MRS. STEINER: All right. Would you be
4 concerned or worried if they were sitting in the jury
5 room wanting to speed it up or get things done?

6 JUROR BARRON DAVIS: No, ma'am. That doesn't
7 bother me. I just wish they would have gotten their
8 education when they were younger.

9 MRS. STEINER: Say again.

10 JUROR BARRON DAVIS: I wish they had gotten
11 their education when they were young, when they were in
12 college before.

13 MRS. STEINER: So it is important to you that
14 they finish this.

15 JUROR BARRON DAVIS: Not really to me. It is
16 important to them, but not to me. Not really. No.

17 MRS. STEINER: Now, you said you read the
18 *Winona Times* and t.v. And you were living here back when
19 this happened, and you have been living here every time
20 this case has come up for trial since then; is that
21 correct?

22 JUROR BARRON DAVIS: I have. Yes.

23 MRS. STEINER: All right. What, what did you
24 keep in your head from what you read in *The Winona Times*
25 and saw on t.v. about the facts of this case, if
26 anything?

27 JUROR BARRON DAVIS: Well, the main thing I
28 remember is four people were shot and killed. That's the
29 main thing I remember.

1 MRS. STEINER: Okay. And anything about the
2 facts about Mr. Flowers or the prosecution that sticks to
3 your mind that is specific that you think you know from
4 reading that?

5 JUROR BARRON DAVIS: Oh, I am sure I don't know
6 the details of the case. I've never sat in on anything,
7 haven't read a transcript or anything like that.

8 MRS. STEINER: I'm sure you haven't. I'm glad
9 to hear that. His Honor would like to know that if you
10 had, I'm sure.

11 Have you discussed with anybody who has kept up with
12 the facts or sat in or anything like that?

13 JUROR BARRON DAVIS: I don't even know anybody
14 that has kept up with it. No. No. I haven't discussed
15 nothing with the attorneys or nothing with you or any --

16 MRS. STEINER: Or other citizens. You walk in
17 for a cup of coffee in a cafe and other people are
18 talking about it. Have you ever had those kinds of
19 discussions?

20 JUROR BARRON DAVIS: No.

21 MRS. STEINER: And you -- turning now to the --
22 if in the event there were a conviction and you were
23 asked to deliberate on sentence, you -- when the judge
24 asked you could you consider a sentence of life without
25 parole for the crime of capital murder, I believe your
26 answer was you would consider it depending on the
27 circumstances.

28 Well, first of all, do you consider life in prison
29 without parole a severe sentence for capital murder?

1 JUROR BARRON DAVIS: Oh, it is a severe
2 sentence. Yes. I would say yes.

3 MRS. STEINER: And I just -- I'm not sure. You
4 would only consider it if there were certain
5 circumstances already existing? Or would you consider
6 all the circumstances about it? What does your answer
7 mean there?

8 JUROR BARRON DAVIS: Well, I would consider
9 life without parole. If it -- that is the second phase,
10 I believe, you are referring to.

11 MRS. STEINER: Yes. Yes.

12 JUROR BARRON DAVIS: Once you found the, the
13 charges to be guilty, is that what you are --

14 MRS. STEINER: Well, no. No. You finished the
15 first phase. We will only get to a sentencing phase --

16 JUROR BARRON DAVIS: During the sentencing
17 phase.

18 MRS. STEINER: If 12 of you sitting on the jury
19 have decided beyond a reasonable doubt Mr. Flowers is
20 guilty of one of up to four capital murders beyond a
21 reasonable doubt. That will all be behind you. At that
22 point is that a circumstance that would keep you from
23 considering the sentence of life without parole?

24 JUROR BARRON DAVIS: No, I --

25 MR. EVANS: I object to the form of the
26 question.

27 JUROR BARRON DAVIS: It would have to be
28 considered, wouldn't it? I would think it would have to
29 be considered.

1 MRS. STEINER: All right. Now, just
2 considering the sentence, the Court will be instructing
3 you. He will be instructing you on, as he said, the term
4 aggravating circumstances and mitigating circumstances.
5 And the State will have to prove aggravating
6 circumstances beyond the four -- or however many, beyond
7 the murders of which the person is found guilty. The
8 Court will instruct you what you have to find in addition
9 to having found them guilty. And the State has to prove
10 those beyond a reasonable doubt. Do you understand that?

11 JUROR BARRON DAVIS: I understand.

12 MRS. STEINER: And then the State will put on
13 its evidence.

14 THE COURT: I think you have asked him and
15 asked him and asked him. So wrap it up with this
16 witness.

17 MRS. STEINER: Thank you.

18 Now, mitigating circumstances that might come into
19 evidence might have nothing to do with the crime. Can
20 you consider those as mitigating of that crime, of the
21 sentence for that crime?

22 MR. EVANS: Your Honor, is she --

23 JUROR BARRON DAVIS: Sure. I can. I can.
24 Whatever come from this seat, I'm in --

25 MRS. STEINER: Um-hum.

26 JUROR BARRON DAVIS: -- I, I can consider that.
27 Yes.

28 MRS. STEINER: All right. And you would not
29 make up your mind about a sentence until you had fully

1 considered all of those circumstances.

2 JUROR BARRON DAVIS: No. I haven't now. And I
3 won't until the trial is over, the first phase is over.
4 I wouldn't do it.

5 MRS. STEINER: All right.

6 JUROR BARRON DAVIS: I don't any -- I don't
7 have any reason to.

8 MRS. STEINER: I appreciate that.

9 I just want to make sure that when you said you can
10 consider it depending on the circumstances, what you are
11 saying is you can consider -- you can walk into that jury
12 room in a second phase considering all the circumstances.
13 Nothing would prevent you from considering anything.

14 JUROR BARRON DAVIS: No.

15 MRS. STEINER: Thank you.

16 THE COURT: Mr. Davis, you may step down. And
17 when you walk out, don't talk about, you know, about what
18 you talked about in here with anybody out there. I mean
19 they might want to ask you a question about what you were
20 asked, but you can't discuss that.

21 If you will step down now.

22 Need Number 40 now.

23 (JUROR NUMBER 40, CHARLES DAVIS, ENTERED THE COURTROOM.)

24 If you will come down here and have a seat.

25 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

26 Mr. Davis, we are asking all jurors questions
27 outside the presence of other jurors just to make sure
28 that somebody didn't blurt something out in front of
29 everybody that would be harmful or prejudicial to either

1 side.

2 First, I want to know have you heard anything about
3 the case or had any knowledge of the case, like read
4 about it, heard anything about it, seen anything on t.v.
5 or anything like that?

6 JUROR LLOYD DAVIS: Yes, sir. Over the years.

7 THE COURT: And how have you come to have heard
8 about it?

9 JUROR LLOYD DAVIS: Newspaper. Just living
10 near the community. And I may have seen something on
11 t.v., but I have a feeling most of the information came
12 from the newspaper.

13 THE COURT: And has anything that you read, saw
14 or heard caused you to form any opinions as to the guilt
15 or innocence of Mr. Flowers?

16 JUROR LLOYD DAVIS: Yes.

17 THE COURT: Could you lay those opinions aside
18 and base your decision on the evidence presented here in
19 court?

20 JUROR LLOYD DAVIS: Yes.

21 THE COURT: Because sometimes what you might
22 read in the newspaper or see on t.v., that may not be
23 right. Do you understand that?

24 JUROR LLOYD DAVIS: Yes, sir.

25 THE COURT: So if you have read something in a
26 newspaper or heard it on t.v. and you did not hear that
27 in court, would you be thinking about what you had read,
28 seen or heard outside of court in any way when you were
29 deliberating?

1 JUROR LLOYD DAVIS: No, sir.

2 THE COURT: So you will base then, again, your
3 decision only on the evidence that is presented here in
4 court; is that correct?

5 JUROR LLOYD DAVIS: Yes, sir.

6 THE COURT: Also, I want to ask you about the
7 second phase of the trial. If we got to a point where
8 there was a second phase of the trial, that would be only
9 if Mr. Flowers was found guilty of the crime of capital
10 murder. If he was found guilty, then we would get to the
11 second phase of the trial. That would be determination
12 of what the appropriate punishment would be at that
13 point. We would only get to that point if he was found
14 guilty during the first phase. Do you understand that?

15 JUROR LLOYD DAVIS: Yes, sir.

16 THE COURT: And if they were -- if we got to
17 the second phase, the State of Mississippi would be
18 seeking the death penalty. They would be putting on
19 aggravating factors. That would be things that they
20 believe would justify the imposition of the death
21 penalty. The defense would be putting on mitigating
22 facts, which would believe -- which they believe in their
23 view that would justify the death penalty not being
24 imposed. If the facts justified it and the law allowed
25 it, could you consider the imposition of the death
26 penalty?

27 JUROR LLOYD DAVIS: Yes, sir.

28 THE COURT: And also, if he was not given the
29 death penalty, Mr. Flowers, upon conviction and failure

1 to find the death penalty, would be sentenced to life
2 without parole. Would you leave that open as a
3 sentencing option as well?

4 JUROR LLOYD DAVIS: Yes, sir.

5 THE COURT: So are you telling the Court that
6 you could consider both sentencing options and will wait
7 until you hear the facts and are instructed on the law
8 before you make that determination?

9 JUROR LLOYD DAVIS: Yes, sir.

10 THE COURT: Okay. Thank you.

11 MR. EVANS: Mr. Davis, I want to make sure I
12 understand. What you are telling the Court, that you
13 will come in here as a juror and completely disregard
14 anything you may have heard or any opinion you may have
15 had and base your decision strictly on what evidence you
16 see and hear in court; is that right?

17 JUROR LLOYD DAVIS: Yes, sir.

18 MR. EVANS: That's all, Your Honor.

19 MRS. STEINER: Good afternoon, Mr. Davis. You
20 have a 16-year-old at home.

21 JUROR LLOYD DAVIS: Seventeen. Yes, ma'am.

22 MRS. STEINER: If you and your wife serve
23 together, is he going to be unsupervised?

24 JUROR LLOYD DAVIS: No, ma'am. We have a lot
25 of family there close to home.

26 MRS. STEINER: All right.

27 JUROR LLOYD DAVIS: Honestly, when I was
28 thinking of the probability of all four of the family
29 members, I knew that he was going to be -- he was going

1 to be fine. He works for my father at his store. So he
2 has plenty of responsibilities.

3 MRS. STEINER: But if your father and your wife
4 and you are all on the jury, would you --

5 JUROR LLOYD DAVIS: That's true.

6 MRS. STEINER: -- be comfortable having the
7 whole family up here?

8 JUROR LLOYD DAVIS: I have a brother that lives
9 in Webster County across the -- right across the line,
10 and he would stay with him.

11 MRS. STEINER: Now, you told His Honor you do
12 have an opinion on the guilt or innocence of Mr. Flowers.

13 JUROR LLOYD DAVIS: I formed my opinion from
14 the previous news articles and, and just the history of
15 the case.

16 MRS. STEINER: What are the facts in the
17 previous news article that you base your opinion on?

18 JUROR LLOYD DAVIS: The only thing that I can
19 recollect right now that sticks out in my head is that he
20 was found guilty.

21 MRS. STEINER: The fact that he was found
22 guilty.

23 JUROR LLOYD DAVIS: Yes. And then the fact
24 that it was overturned. I don't know the details of
25 that.

26 MRS. STEINER: How do you feel about the fact
27 that a Court set aside a jury verdict?

28 JUROR LLOYD DAVIS: I don't. I feel
29 indifferent. I don't know -- what's the question?

1 MRS. STEINER: Well, does it -- I mean you say
2 that even though it was overturned --

3 JUROR LLOYD DAVIS: Um-hum.

4 MRS. STEINER: -- and a court has determined
5 that there is no valid conviction of him, you still
6 believe he is guilty.

7 JUROR LLOYD DAVIS: No.

8 MR. EVANS: Your Honor, he has not said --

9 THE COURT: He has not said what his opinion
10 was.

11 MRS. STEINER: Oh, I'm sorry. You still have
12 an opinion with respect to guilt on the basis of the
13 prior guilty verdict.

14 JUROR LLOYD DAVIS: No. Well, I said my
15 opinion was formed on that, and it was at that time. I
16 mean I still can have -- that opinion was formed at that
17 time I guess is the question I am answering. Maybe I am
18 not understanding what you are saying. I'm sorry.

19 MRS. STEINER: Okay. Now, the -- I believe you
20 are taking an online course, and I don't think His Honor
21 asked you had you been on the internet at all looking up
22 on this case?

23 JUROR LLOYD DAVIS: No. Not with this case.
24 No, ma'am.

25 MRS. STEINER: Okay. Have you run across
26 anything in the internet, like a Google search where the
27 case came up?

28 JUROR LLOYD DAVIS: No ma'am.

29 MRS. STEINER: And as His Honor has stated,

1 there are two phases to the sentencing. And I am now
2 going to the second one, to the case. If, if you were
3 deliberating sentence -- and you said you could consider
4 life without parole or the death penalty. Do you
5 consider life without parole a severe sentence?

6 JUROR LLOYD DAVIS: Yes.

7 MRS. STEINER: All right. And do you consider
8 it an appropriate sentence for four --

9 MR. EVANS: Your Honor --

10 MRS. STEINER: -- capital murders?

11 MR. EVANS: -- I object. That is the not the
12 proper question.

13 THE COURT: I sustain.

14 MRS. STEINER: Can you consider it as an
15 appropriate sentence for four --

16 MR. EVANS: That is not appropriate either.
17 She can ask him if he would consider it as a possible
18 penalty, but she can't ask him which penalty is
19 appropriate at this point.

20 THE COURT: I sustain the objection.

21 MRS. STEINER: All right. Okay. The State --
22 the legislature of the state of Mississippi has
23 designated two equally possible penalties for the crime
24 of capital murder, as His Honor has instructed you. Do
25 you agree that either is an appropriate sentence, that --
26 do you have any quarrels with that law?

27 JUROR LLOYD DAVIS: No. I have no quarrels
28 with that law.

29 MRS. STEINER: Okay. Thank you. Now, at the

1 sentencing, should there be a sentencing proceeding, the
2 State will have to prove specific aggravating factors
3 before you can even, as a jury, address, think about
4 considering the death penalty versus life in prison.
5 They will have to prove those beyond a reasonable doubt.

6 Can you -- do you understand that?

7 JUROR LLOYD DAVIS: Yes, ma'am.

8 MRS. STEINER: And then the evidence you will
9 have to look at for mitigating circumstances -- and that
10 would include things that have to do with the crime. Do
11 you understand that? Could you hear things that mitigate
12 the sentence of the crime, that had to do with the crime
13 --

14 JUROR LLOYD DAVIS: Yes, ma'am.

15 MRS. STEINER: -- you found someone guilty of?
16 Could you consider factors that have nothing do with the
17 crime?

18 JUROR LLOYD DAVIS: Yes, ma'am.

19 MRS. STEINER: Okay.

20 JUROR LLOYD DAVIS: Can you explain that a
21 little bit better for me?

22 THE COURT: Well, I think, Miss Steiner, he has
23 already said that he would listen to all the facts, he
24 would consider the law, and he would base his decision
25 based on the facts. And I don't think it is appropriate
26 for you to explain what might be presented during the
27 sentencing phase if it got to that point. He has already
28 answered these questions, and you are continuing to ask
29 him questions that he has already answered. So if you

1 have got something that has not been brought up, move on
2 to it. But you cannot explain that question because it
3 was not a question that should have been asked to begin
4 with.

5 He has already, again, said that he would consider
6 all things that were presented and base the decision on
7 that.

8 MRS. STEINER: If the Court please, I think in
9 this particular set of questions -- in some of the
10 questions the Court has gone over things that had to do
11 with background and family and other things that had to
12 do with the crime. And you didn't do it in this
13 instance. And I was --

14 THE COURT: I haven't asked those questions of
15 anyone. But if you will wrap it up and ask him.

16 MRS. STEINER: Okay. Do you understand that
17 proof of mitigation can include evidence that has nothing
18 to do with the crime, has to do with the defendant's
19 background, his social history, his behavior before this
20 crime and even in incarceration? Do you understand that
21 that evidence can come before you?

22 JUROR LLOYD DAVIS: Yes, ma'am.

23 MRS. STEINER: And can you consider any such
24 evidence that comes before you in mitigation?

25 JUROR LLOYD DAVIS: If it -- is it relevant to
26 the case? Or is it relevant to look at that? If it's
27 presented to me, of course, I will review it, if that is
28 -- I'm just...

29 MRS. STEINER: If the Court lets it in --

1 JUROR LLOYD DAVIS: Yes. I will absolutely. I
2 understand what you are saying now. If the Court allows
3 it, I will absolutely.

4 MRS. STEINER: Thank you. And you understand
5 that when you are deciding mitigation, that is your
6 personal decision. You don't have to -- you can find
7 something mitigating even if 11 other jurors don't want
8 to pay attention to it.

9 JUROR LLOYD DAVIS: Okay.

10 MRS. STEINER: And can you do that?

11 JUROR LLOYD DAVIS: Yes.

12 MRS. STEINER: Even if your colleagues
13 disagree. If your father disagreed.

14 JUROR LLOYD DAVIS: Absolutely.

15 MRS. STEINER: If your wife disagreed.

16 JUROR LLOYD DAVIS: Yes.

17 MRS. STEINER: If your mother-in-law.

18 JUROR LLOYD DAVIS: Yes, ma'am.

19 MRS. STEINER: Your mother disagreed. All
20 right.

21 JUROR LLOYD DAVIS: That's a lot of folks.

22 MRS. STEINER: Could you agree with them if
23 they thought something was mitigating, or would you feel
24 obligated to oppose them?

25 JUROR LLOYD DAVIS: No, I would not feel
26 obligated to oppose them.

27 MRS. STEINER: Thank you.

28 I have nothing further, Your Honor.

29 THE COURT: Mr. Davis, you may step down. When

1 THE COURT: If you will speak up a little bit.
2 Your voice is a soft -- you are soft-spoken.

3 JUROR MARGARET GIVENS: Um-hum.

4 THE COURT: But just look at us as all among
5 friends here and don't be shy about speaking up.

6 JUROR MARGARET GIVENS: The reason why I said
7 that, because it didn't offend me or nothing. It just
8 because, see, I don't like to judge people just because
9 of my son got sent away for something that he really
10 didn't do. It was another person involved with it.

11 THE COURT: So you are saying Reginald Lindsey,
12 Reginald Lindsey --

13 JUROR MARGARET GIVENS: Yeah, that is my son.

14 THE COURT: -- is your son. And he was
15 prosecuted by the district attorney's office.

16 JUROR MARGARET GIVENS: Um-hum.

17 THE COURT: And so you are saying because of
18 the prosecution of him you could not be fair to the State
19 of Mississippi in this case because of ill will toward
20 how your son was treated.

21 JUROR MARGARET GIVENS: Well, I can be fair,
22 but I don't think -- I just don't think I can do it.

23 THE COURT: Well, why? Why do you think you
24 could not do it?

25 JUROR MARGARET GIVENS: Because I just -- my
26 way that I had never judged nobody before that had a
27 crime that killed somebody before.

28 THE COURT: So are you just saying you feel it
29 inappropriate for you, a personal belief that you just

1 don't think you should judge anybody.

2 JUROR MARGARET GIVENS: No.

3 THE COURT: Is that what you are saying?

4 JUROR MARGARET GIVENS: Yes, sir.

5 THE COURT: And would it be any case or just
6 this case in particular?

7 JUROR MARGARET GIVENS: Any case.

8 THE COURT: So you just feel like you could not
9 judge anybody for any reason.

10 JUROR MARGARET GIVENS: Um-hum.

11 THE COURT: Is that correct?

12 JUROR MARGARET GIVENS: Yes, sir.

13 THE COURT: If it got to the point -- well, let
14 me ask you a few more questions.

15 Have you got any knowledge about the case or heard
16 any facts about this case or read about it, seen it on
17 t.v., radio, newspapers or talk about in town or
18 anything?

19 JUROR MARGARET GIVENS: No, sir.

20 THE COURT: I mean I guess you heard about it.

21 JUROR MARGARET GIVENS: Yeah, I heard about it.

22 THE COURT: The fact it did occur. But other
23 than just general knowledge that it happened, have you
24 heard any facts about the case?

25 JUROR MARGARET GIVENS: No, sir.

26 THE COURT: And have you had anything, heard
27 anything that has caused you to form an opinion as to the
28 guilt or innocence of Mr. Flowers?

29 JUROR MARGARET GIVENS: No, sir.

1 THE COURT: And if you were sitting as a juror
2 in this case, would you lay aside anything you heard
3 outside the courtroom and base your decision only on the
4 evidence here in court that is presented?

5 JUROR MARGARET GIVENS: Yes, sir.

6 THE COURT: The next question concerns a
7 possible sentencing phase. What happens in a capital
8 murder trial is first the jury decides the guilt or
9 innocence.

10 JUROR MARGARET GIVENS: Um-hum.

11 THE COURT: If they found Mr. Flowers guilty,
12 then we would go to a second phase which would be a
13 sentencing phase. If he were found not guilty at the
14 first phase, we would not even get to the second part.
15 But if he was found guilty, then we would get to the
16 second part. And at that time the jury would determine
17 what the appropriate punishment should be.

18 JUROR MARGARET GIVENS: (Nodded.)

19 THE COURT: The State would put on proof called
20 aggravating facts. That would be facts that they believe
21 would justify the imposition of the death penalty.

22 JUROR MARGARET GIVENS: Okay.

23 THE COURT: And then the defendant would put on
24 proof called mitigating facts that he believes would be
25 reasons why the death penalty should not be imposed. And
26 so you would hear both mitigating and aggravating
27 factors. And then if you found beyond a reasonable doubt
28 that aggravating factors were there, then you could
29 return the death penalty if you felt that appropriate, if

1 you felt the facts justified it and the law allowed it.
2 You would not have to, but that would be something you
3 could consider.

4 So could you consider the death penalty as a
5 sentencing option if the facts justified that and the law
6 allowed it?

7 JUROR MARGARET GIVENS: Yeah, if they allow it.
8 Yeah.

9 THE COURT: So you could consider the death
10 penalty --

11 JUROR MARGARET GIVENS: Um-hum.

12 THE COURT: -- under the appropriate
13 circumstances.

14 JUROR MARGARET GIVENS: If they allow it.
15 Yeah.

16 THE COURT: And do you understand if the death
17 penalty were not imposed there would be a life with --
18 life in prison without parole would be the sentence then.
19 In other words, if the death penalty was not imposed, if
20 he was found guilty and he didn't get the death penalty,
21 life in prison would be the automatic sentence. Do you
22 understand that?

23 JUROR MARGARET GIVENS: Yes, sir.

24 THE COURT: And could you consider life without
25 parole as an appropriate sentence as well?

26 JUROR MARGARET GIVENS: I -- yeah, that would
27 be better, I guess.

28 THE COURT: So well, I mean it would be up to
29 you to decide. It would not be up to anybody but you and

1 the other 11 people that were on the jury with you if you
2 were selected. And so would you be able to consider both
3 options in a sentencing phase, if it got to that point?

4 JUROR MARGARET GIVENS: Well, if it got to that
5 point, I will. But if it didn't get to that point, I
6 wouldn't.

7 THE COURT: Well, if it didn't get to that
8 point, you wouldn't have to. But I believe you already
9 said you just -- because of -- you've just got a
10 religious view of life that you just can't judge anybody
11 for any reason anyway; is that correct?

12 JUROR MARGARET GIVENS: Um-hum.

13 MR. EVANS: Very briefly, Your Honor.

14 Miss Givens, is it in part because your son was
15 prosecuted that you just don't feel that you should sit
16 in judgment on anybody else?

17 JUROR MARGARET GIVENS: Yeah.

18 MR. EVANS: And because of that there is just
19 no way that you could judge anyone; is that right?

20 JUROR MARGARET GIVENS: No.

21 MR. EVANS: Nothing further.

22 MR. CARTER: Miss Givens, it is quite obvious
23 that you don't like judging people, and there is nothing
24 wrong with that. But if you got picked as a juror, would
25 you sit over there with the other jurors and listen to
26 the facts as they are presented in court?

27 JUROR MARGARET GIVENS: Listen to them? What
28 you say now?

29 MR. CARTER: Let me ask you again. If you got

1 picked as one of the jurors, could you sit and listen to
2 witnesses as they take the witness stand, where you are
3 sitting now, and testify and give testimony? Would you
4 listen to them?

5 JUROR MARGARET GIVENS: Yeah, I'd listen.
6 Yeah. If they gave the truth. If they gave the truth.

7 MR. CARTER: And you would listen to them. And
8 would you also -- there is a jury room right behind you.
9 And when the judge instructed you to retire to the jury
10 room and deliberate on a verdict, would you do that too?

11 JUROR MARGARET GIVENS: I guess.

12 MR. CARTER: So if you sat as a juror, would
13 you follow the law and the instructions that the judge
14 gave you? In other words, would you do the things that
15 the judge --

16 JUROR MARGARET GIVENS: Yeah.

17 MR. CARTER: -- tells you you are supposed to
18 do?

19 JUROR MARGARET GIVENS: Yeah. If, if the law
20 said that -- if the jury said that he was found guilty,
21 he's found guilty. If they say he was not guilty, he
22 wasn't guilty.

23 MR. CARTER: So you are saying that you can sit
24 in the jury box and listen to the testimony. You can go
25 in the jury room and deliberate with the other jurors and
26 --

27 JUROR MARGARET GIVENS: Yeah.

28 MR. CARTER: -- and would you go back there
29 make your own mind up and decide for yourself based on

1 your personal makeup and your conscience what you thought
2 the appropriate verdict was -- would be or should be? Or
3 would you go back and let somebody else tell you what to
4 do? Would you decide for yourself?

5 JUROR MARGARET GIVENS: I decide with them
6 because everybody have to decide together.

7 MR. CARTER: No, that isn't -- well, let me
8 just say it's your verdict. You don't have to let
9 somebody else tell you how to vote or how to decide.

10 JUROR MARGARET GIVENS: Okay.

11 MR. CARTER: Now, you are supposed to talk to
12 them --

13 JUROR MARGARET GIVENS: Um-hum.

14 MR. CARTER: -- listen to them and discuss the
15 case and discuss the facts.

16 JUROR MARGARET GIVENS: Um-hum.

17 MR. CARTER: But it's your -- do you understand
18 it is your decision how to vote? You decide.

19 JUROR MARGARET GIVENS: Yeah. I know how to
20 vote, but I don't know whether he is guilty or not guilty
21 so I can't say.

22 MR. CARTER: Right. I understand that at this
23 point. But by the time you get back there you will --
24 and start deliberating, you would have heard the facts
25 from the witness stand there. Do you understand that?

26 JUROR MARGARET GIVENS: Um-hum.

27 MR. CARTER: And after you hear all facts of
28 the case, could you go back with the rest of the jury and
29 make your own personal mind up about whether he is guilty

1 or not guilty?

2 JUROR MARGARET GIVENS: Yeah.

3 MR. CARTER: Thank you.

4 THE COURT: So are you saying then now that you
5 could judge his guilt or innocence?

6 JUROR MARGARET GIVENS: Well, I guess I don't
7 know.

8 THE COURT: Well, only you can know what is in
9 your heart and nobody else can.

10 JUROR MARGARET GIVENS: Yeah. Yeah.

11 THE COURT: And so you are either saying you
12 could not sit in judgment, because if you are back there
13 and you have heard the evidence, there will come a time
14 when you have to vote either guilty or not guilty.

15 JUROR MARGARET GIVENS: Yeah.

16 THE COURT: You would have -- you would have to
17 participate in deliberations on guilt or innocence. You
18 understand that?

19 JUROR MARGARET GIVENS: Yeah.

20 THE COURT: Because you couldn't sit silent and
21 never take an opinion. Do you understand that?

22 JUROR MARGARET GIVENS: (Nodded.)

23 THE COURT: So at some point, if you were
24 selected, during deliberations you would be making a
25 decision as to whether he is guilty or not guilty. Do
26 you understand that?

27 JUROR MARGARET GIVENS: Yeah.

28 THE COURT: And could you do that.

29 JUROR MARGARET GIVENS: I don't know. I guess

1 but...

2 THE COURT: Well, what --

3 JUROR MARGARET GIVENS: I just...

4 THE COURT: What is it -- what is it that is
5 confusing you or bothering you about that possibility?

6 JUROR MARGARET GIVENS: I just ain't ever been
7 on no, you know, big thing like this.

8 THE COURT: I understand you have never been on
9 a jury. Most everybody probably out here has not been on
10 one before. It is a very important, very serious thing.
11 And I, I can tell that even the possibility of doing
12 something that serious is weighing heavily on your heart.
13 But we need to know whether you could actually sit in
14 judgment if you were selected as a juror.

15 If you cannot, then everybody respects your view.
16 If you can, we respect that view as well. But we need to
17 know one way or another.

18 JUROR MARGARET GIVENS: I don't think I can.

19 THE COURT: So are you saying you just could
20 not judge the case? And so if you were sitting as a
21 juror and you went back there, are you saying you just
22 could not participate in deliberations?

23 JUROR MARGARET GIVENS: Uh-huh.

24 THE COURT: Is that what you are saying?

25 JUROR MARGARET GIVENS: Yes.

26 THE COURT: So you are saying I could not
27 participate in deliberations.

28 JUROR MARGARET GIVENS: (Nodded.)

29 THE COURT: Is that correct?

1 JUROR MARGARET GIVENS: Yeah.

2 THE COURT: Okay. Thank you, Miss Givens.

3 MR. CARTER: Your Honor, just for the record,
4 it is our opinion that she is saying that it would be
5 stressful to do so, but she can do so.

6 THE COURT: Is that what you are saying - that
7 it would be stressful and you can do it? Or are you
8 saying you could not do it?

9 JUROR MARGARET GIVENS: Well, it would be
10 stressful but it -- just a lot -- I can do it, but it
11 just -- I don't know.

12 THE COURT: Well, I don't understand what you
13 are saying. So you know, we will sit here until you kind
14 of really put into words exactly what it is you're
15 saying. Because, you know, I want to know if you can sit
16 in judgment of Mr. Flowers.

17 JUROR MARGARET GIVENS: I don't think I can.

18 THE COURT: Ma'am, you could not?

19 JUROR MARGARET GIVENS: I don't think I can.

20 THE COURT: So you are saying you could not sit
21 in judgment of him; is that correct?

22 JUROR MARGARET GIVENS: Uh-huh.

23 THE COURT: Uh-huh it is not correct or yes --

24 JUROR MARGARET GIVENS: No, sir.

25 THE COURT: Or yes, it is correct that I could
26 not sit in judgment.

27 JUROR MARGARET GIVENS: I could not.

28 THE COURT: Okay. Thank you. And you can step
29 back out. And don't talk about with anybody --

1 JUROR MARGARET GIVENS: Oh, no. Huh-huh.

2 THE COURT: I, I knew you wouldn't, but I am
3 cautioning everybody. I wasn't singling you out. I was
4 just cautioning everybody about that.

5 JUROR MARGARET GIVENS: Okay.

6 THE COURT: If you will bring in Number 42, Mr.
7 Fielder.

8 MRS. STEINER: Your Honor, before he comes in,
9 I'd like to interpose an objection, I mean --

10 THE COURT: Stop. Hold on a second before he
11 comes in.

12 MRS. STEINER: Your Honor, I, I believe that
13 there are some jurors who are ambiguous. I believe there
14 are some jurors who are certain, and there are some
15 jurors who cannot be made certain. And I believe that
16 this was a juror who the Court's continuing questioning
17 is -- that this is a juror who but for the Court's
18 continuing questioning and ambiguous -- the Court may
19 have determined as a matter of trier of fact when the
20 striking came up that this ambiguity was insufficient to
21 qualify her as a juror, but we do object to the Court's
22 re-cross examination or re-voir dire of the witness
23 following the party's voir dire.

24 THE COURT: Are you saying the Court does not
25 need complete answers from every one that is a potential
26 juror? Am I -- am I understanding that right?

27 MRS. STEINER: Your Honor, I am saying that in
28 the Court's voir dire -- I think, was complete and had
29 elicited answers. And I, I am not saying the Court

1 shouldn't get answers.

2 THE COURT: And so if somebody is ambiguous, do
3 you not believe that we need to get complete answers from
4 them? I don't understand the basis of your objection.
5 So if you can explain it, I would -- you know, it would
6 be helpful.

7 MRS. STEINER: There may be people who are just
8 ambiguous, and we have to deal with and strike them on
9 that basis. And I am not sure that continued questioning
10 back and forth is fully appropriate under those
11 circumstances. And that is my objection.

12 THE COURT: For what your objection is worth, I
13 will overrule your objection. The Court wants complete
14 answers from everyone, and the Court believes it
15 appropriate to get answers from everyone. And if
16 somebody is all over the map on some issue, the Court
17 believes it appropriate to get a straight, final, firm
18 answer from everybody that is a potential juror in this
19 case.

20 Apparently, you do not like what the juror said, but
21 she did say that she could not judge this case. And her
22 statement is what it is. The Court did not do anything
23 other than seek to get a complete answer from her on that
24 issue. And I do not think it inappropriate to get that
25 answer.

26 And I have asked follow-up questions of several
27 jurors that I was not clear on what they were trying to
28 say. It, it did appear that this juror is probably not
29 very educated and not very articulate. But we have got

1 to get complete responses from everyone before we can
2 have a fair and impartial jury selected. So that was the
3 purpose for the Court's follow-up questions, and do I not
4 believe the questions were in the least bit suggestive,
5 inappropriate or anything else.

6 Now, if you will bring in Number 42.

7 (JUROR NUMBER 42, MARCUS FIELDER, ENTERED THE COURTROOM.)

8 If you will come forward and have a seat, Mr.
9 Fielder.

10 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

11 Mr. Fielder, what we are doing is asking all the
12 jurors questions outside the presence of each other to
13 find out a few things that, you know, we were afraid
14 somebody might say something that would influence
15 negatively somebody else. So the questions basically
16 following fall into two categories. First, I want to
17 know if you have got any knowledge about the case, heard
18 anything about the case, know anything about it.

19 JUROR MARCUS FIELDER: None other than what has
20 been printed in the paper, so forth and so on in years
21 past?

22 THE COURT: And have you been -- I guess you
23 probably have heard about the facts, that the Tardy
24 murders did occur.

25 JUROR MARCUS FIELDER: Yes, sir.

26 THE COURT: And when you saw it in the paper,
27 did you read about --

28 JUROR MARCUS FIELDER: Just the snippets. I
29 mean that's --

1 THE COURT: Read the snippets about it.

2 JUROR MARCUS FIELDER: Yes, sir.

3 THE COURT: Did you hear anything in the t.v.
4 or see anything in t.v., listen on radio or anything?

5 JUROR MARCUS FIELDER: Just the normal stuff.
6 The little blips that come across on the news broadcast.

7 THE COURT: And at some point you worked in the
8 sheriff's department here.

9 JUROR MARCUS FIELDER: Yes.

10 THE COURT: And I think that was at a period of
11 time after this incident occurred.

12 JUROR MARCUS FIELDER: Yes, sir.

13 THE COURT: Is that right?

14 JUROR MARCUS FIELDER: Yes, sir.

15 THE COURT: And has anything you heard from any
16 source caused you to form an opinion as to the guilt or
17 innocence of Mr. Flowers?

18 JUROR MARCUS FIELDER: No, sir.

19 THE COURT: And will you lay aside anything
20 that you may have seen or heard or any knowledge you have
21 of the case and base your decision only on the evidence
22 that is presented here in court?

23 JUROR MARCUS FIELDER: Yes, sir.

24 THE COURT: And you will not let any other
25 factors come into play if you were deliberating; is that
26 correct?

27 JUROR MARCUS FIELDER: That's correct.

28 THE COURT: The next series of questions refers
29 to the possible sentencing phase. What happens in a

1 capital murder case is first, the jury decides guilt or
2 innocence. If Mr. Flowers is found not guilty, the
3 proceedings are over. There is not a second phase. But
4 if the jury finds him guilty, then there is a sentencing
5 phase for the purpose of determining an appropriate
6 punishment.

7 The State of Mississippi at that time would be
8 seeking the death penalty. The State would put on
9 aggravating factors, which would be factors that the
10 State believes would justify the imposition of the death
11 penalty. The defense would put on mitigating factors.
12 That would be facts that they believe would justify the
13 death penalty not being imposed. You will base the
14 determination of the death penalty on those facts that
15 you hear during the sentencing phase and on the law as
16 given to you in instructions.

17 So if the law allowed it and the facts justified it,
18 could you consider the death penalty?

19 JUROR MARCUS FIELDER: I could consider it.

20 THE COURT: And could you also consider life
21 without parole? Because if he was not -- if the death
22 penalty was not imposed upon conviction, he would receive
23 life without parole. So is that something you would
24 leave open as a sentencing option as well?

25 JUROR MARCUS FIELDER: Yes, sir.

26 THE COURT: So would you wait until all the
27 facts were in and the law was given to you before you
28 even made a determination about the appropriate sentence?

29 JUROR MARCUS FIELDER: Yes, sir.

1 THE COURT: And again, do you understand you
2 would not even get to that phase unless he was found
3 guilty at the first phase?

4 JUROR MARCUS FIELDER: Yes, sir.

5 MR. EVANS: No questions.

6 MRS. STEINER: Good evening, Mr. Fielder. It's
7 good evening now, not good afternoon.

8 I believe that His Honor asked about your time at
9 the sheriff's department. That was under Sheriff
10 Thornburg; is that correct?

11 JUROR MARCUS FIELDER: Yes, ma'am.

12 MRS. STEINER: You're aware he is a possible
13 witness --

14 JUROR MARCUS FIELDER: Yes, ma'am.

15 MRS. STEINER: -- in this case. And you were
16 under his discipline and his authority when you were an
17 officer in the department.

18 JUROR MARCUS FIELDER: Yes, ma'am.

19 MRS. STEINER: And I assume you are accustomed
20 to taking orders from him when you were an officer under
21 him.

22 JUROR MARCUS FIELDER: When I was under him,
23 yes, ma'am.

24 MRS. STEINER: And you only left the sheriff's
25 department when a new administration came in; is that
26 correct?

27 JUROR MARCUS FIELDER: I left a little bit
28 before that, because I got a new job, wasn't around as
29 much.

1 MRS. STEINER: Are you -- are you affiliated --
2 are you a part-time deputy --

3 JUROR MARCUS FIELDER: No, ma'am.

4 MRS. STEINER: -- with any department now?

5 JUROR MARCUS FIELDER: No, ma'am.

6 MRS. STEINER: Did -- was this -- did you go to
7 the law enforcement academy?

8 JUROR MARCUS FIELDER: Went through the class
9 in Grenada, that they had in Grenada.

10 MRS. STEINER: All right. And did you -- were
11 you certified as a full police officer?

12 JUROR MARCUS FIELDER: No, ma'am. As part-time
13 or reserve.

14 MRS. STEINER: And he was actually an
15 investigating officer in this -- in this event.

16 JUROR MARCUS FIELDER: Okay. I was not aware
17 of that.

18 MRS. STEINER: All right. Does that make a
19 difference to you? If he has to testify about a fact
20 that he discerned in the course of his investigation, are
21 you going to be able to subject that fact to the same --
22 that he testifies to with the same kind of scrutiny and
23 bring your common sense about whether it makes sense to
24 bear on something he testifies to about this case?

25 JUROR MARCUS FIELDER: Yes, ma'am.

26 MRS. STEINER: And you will give it -- if, if
27 you don't think the evidence supports it, the fact that
28 he is testifying to it wouldn't make you feel -- well,
29 that tips me. If he is saying it, I can't believe the

1 other evidence.

2 JUROR MARCUS FIELDER: No, ma'am.

3 THE COURT: All right. And you -- were you --
4 did you do security? You were here from '04 to '08.
5 Were you actually with the sheriff's department at any
6 time either during the trial that occurred in 2004 --

7 JUROR MARCUS FIELDER: I was on the roster.
8 But no, ma'am. I had nothing to do with the trial.

9 MRS. STEINER: All right. You did not provide
10 security.

11 JUROR MARCUS FIELDER: No, ma'am.

12 MRS. STEINER: You did not bailiff the
13 witnesses.

14 JUROR MARCUS FIELDER: No, ma'am.

15 MRS. STEINER: You didn't serve summons.

16 JUROR MARCUS FIELDER: No, ma'am.

17 MRS. STEINER: You didn't do any actual --

18 JUROR MARCUS FIELDER: No, ma'am.

19 MRS. STEINER: I guess somebody had to be a
20 sheriff while everybody else was up here.

21 JUROR MARCUS FIELDER: Well, I was actually
22 busy with my regular job at that time. So I had -- I
23 didn't have time to get into it.

24 MRS. STEINER: And was that your sales and
25 delivery job with Nexaire that you were with then?

26 JUROR MARCUS FIELDER: Yes, ma'am. I was with
27 them at that time.

28 MRS. STEINER: And it says you did driver and
29 route sales. Did you do that within Winona, within

1 Montgomery County?

2 JUROR MARCUS FIELDER: Well, it's scattered
3 over several counties.

4 MRS. STEINER: All right. And did you call on
5 customers?

6 JUROR MARCUS FIELDER: Yes, ma'am. I do call
7 on customers.

8 MRS. STEINER: All right. Did you ever hear
9 the case discussed --

10 JUROR MARCUS FIELDER: No, ma'am.

11 MRS. STEINER: -- in the course of running that
12 route?

13 JUROR MARCUS FIELDER: No, ma'am.

14 MRS. STEINER: I thought you had answered His
15 Honor's question that you could consider either the death
16 penalty or life in prison without parole. Do you
17 consider those both serious punishments?

18 JUROR MARCUS FIELDER: Yes, ma'am, I do.

19 MRS. STEINER: Okay. He -- His Honor used the
20 terms aggravation and mitigation. What do you understand
21 aggravation to be?

22 JUROR MARCUS FIELDER: Aggravation would mean
23 --

24 MR. EVANS: I object. I don't think it is
25 proper to --

26 THE COURT: I sustain the objection. His -- he
27 will be instructed on the law.

28 MRS. STEINER: Let me say whatever -- if the
29 Court instructs you on aggravating factors, he will limit

1 those to only certain things and they will be -- they may
2 be related to the crime, but they will be in addition to
3 merely having found guilty. Do you understand you have
4 to find those in accordance with the judge's
5 instructions?

6 JUROR MARCUS FIELDER: Yes, ma'am.

7 MRS. STEINER: And that you can't consider
8 anything else as aggravating except what the judge will
9 instruct you.

10 JUROR MARCUS FIELDER: Yes, ma'am.

11 MRS. STEINER: Now, on mitigation do you
12 understand that unlike -- well, the Court will instruct
13 you that unlike aggravating factors, that all 12 of you
14 have to agree on before you can even consider the death
15 penalty. Do you understand that mitigating factors and
16 how much weight to give them is a individual decision
17 that you must arrive at in your heart?

18 JUROR MARCUS FIELDER: Yes, ma'am.

19 MRS. STEINER: And you don't have to be
20 unanimous. If you think something is mitigating and
21 outweighs the aggravating factor, His Honor will instruct
22 you that you don't have to agree with everybody else
23 about that.

24 JUROR MARCUS FIELDER: Yes, ma'am.

25 MRS. STEINER: Based on -- and I believe you
26 said -- oh, that is someone else. You did not have an
27 opinion.

28 JUROR MARCUS FIELDER: No, ma'am.

29 MRS. STEINER: You have not formed an opinion.

1 JUROR MARCUS FIELDER: No ma'am.

2 MRS. STEINER: So there is nothing to set
3 aside. Your snippets in the newspaper, if you read
4 something in the newspaper, even heard something dropped
5 in the sheriff's department, and the facts here either
6 don't bear that out or put another color on it, can you
7 set aside something the newspaper said when you go in
8 that jury room and make a decision?

9 JUROR MARCUS FIELDER: Yes, ma'am.

10 MRS. STEINER: Thank you. I have nothing
11 further.

12 THE COURT: Okay. Mr. Fielder, you may step
13 down and step out with the rest of your fellow jurors.
14 And don't talk about with them what you have discussed in
15 here.

16 JUROR MARCUS FIELDER: Yes, sir.

17 THE COURT: I think at this point we can look
18 through the list of those we have gone over. There may
19 be some we can excuse. Then we are going to recess for
20 the day and resume in the morning.

21 Number 2, Miss Harris stated that she could not
22 under any circumstances consider the death penalty as a
23 sentencing option.

24 What says the State on that?

25 MR. EVANS: No objection.

26 MRS. STEINER: I believe that was her final
27 statement.

28 THE COURT: I will allow her to be -- to go for
29 cause. Same thing applies to Carol Ann Griffin. She

1 even stated she was a vegetarian and basically doesn't
2 feel any, I think, living being should be killed. And I
3 respect her view, but she said she could not consider the
4 death penalty as an option.

5 MR. EVANS: No objection.

6 MR. CARTER: What number is she?

7 THE COURT: Five.

8 MRS. STEINER: Number 5. I, I believe that is
9 what she said. Yes, Your Honor.

10 THE COURT: And then Number 6, Mr. Trotter said
11 he was a friend of Miss Wards. He was very close. He
12 could not be fair and impartial. He also said under no
13 circumstances could he consider the imposition of the
14 death penalty.

15 MR. EVANS: No objection.

16 MR. CARTER: Well, that -- he said that and
17 more so.

18 What do you think, Counselor?

19 MRS. STEINER: Well, I think he was ambiguous
20 and went very much back and forth on whether or not he
21 can be fair. So we can't concede that he definitively
22 said that. I believe his answers with respect to the
23 death penalty; however, were definitive.

24 THE COURT: I'll allow him to be excused for
25 cause.

26 And then Number 33, Mr. Crawford, he indicated that
27 his son and Mr. Flowers' sister have a child together and
28 indicated that that would affect him and that he could
29 not be fair and impartial. And also, he cannot consider

1 the death penalty.

2 MR. EVANS: State agrees.

3 MRS. STEINER: Your Honor, I don't believe we
4 even voir dired him.

5 THE COURT: I will allow him to be excused.
6 And then -- and Mr. Eskridge also, Number 34, said he
7 could not consider the death penalty.

8 MR. EVANS: State agrees and would move to
9 strike him.

10 THE COURT: Allow him to be excused for cause.
11 And then Miss Givens, Number 41. I know it was at
12 times difficult for her to articulate her thought
13 process. She did say that she could not sit in judgment
14 of Mr. Flowers in this case.

15 MR. EVANS: State agrees and would move to
16 strike Miss Givens, Number 41.

17 MRS. STEINER: Your Honor, we reiterate our
18 prior objection. I believe she is ambiguous and not
19 necessarily excusable for cause.

20 THE COURT: I actually think ambiguity in and
21 of itself would be grounds for excusing someone for
22 cause. But she definitely in the end -- she was
23 definitive in saying she could not sit in judgment of Mr.
24 Flowers or judge him in this case.

25 And I think that's all we are down to right now. I
26 am going to call everybody back in, excuse these, and
27 then tell everybody else to be back tomorrow.

28 (THE PROSPECTIVE JURORS RETURNED TO THE COURTROOM.)

29 THE COURT: Okay. Ladies and gentlemen, there

1 are a few people who I can excuse from the panel at this
2 time.

3 That would be Number 2, Miss Harris; and Number 5,
4 Miss Griffin; and Number 6, Mr. Trotter; Number 33, Mr.
5 Crawford; and Number 34, Mr. Eskridge; and Number 41,
6 Miss Givens.

7 THE BAILIFF: Please leave your numbers on the
8 bench.

9 THE COURT: If your name was not called, I need
10 you to be back here at 9:00 in the morning. And I'll ask
11 everybody to be punctual and be back straight up at 9:00.
12 As sure as I say that, I will have flat tire or
13 something. But I am going to hold myself to the same
14 rule I'm asking you to. But so we will all be back at
15 9:00.

16 And I'll ask during this overnight recess please do
17 not discuss this case with anyone. Do not discuss it
18 among yourselves. I know we have a couple of spouses on
19 here. You can't talk about the case with each other or a
20 parent and child or cousins or anybody. You just cannot
21 discuss it with each other or with anyone else.

22 Also, when you get here tomorrow, you may see some
23 lawyers that walk by you and ignore you. They are not
24 offending you by doing -- they are not intending to
25 offend you and don't hold that against them.

26 Also, can't talk to the parties, witnesses, anybody
27 else involved in the case.

28 With that, ladies and gentlemen, I believe I saw one
29 gentleman maybe that -- he was excused but just.

1 MR. HILL: He hasn't been told.

2 THE COURT: Mr. Trotter, you were excused, and
3 you don't have to come back.

4 And again, ladies and gentlemen, we will be in
5 recess and will see you in the morning at 9:00.

6 (THE PROCEEDING ON THIS DATE WAS CONCLUDED.)

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MOTION - DEFENSE

(THE FOLLOWING PROCEEDINGS WERE HAD IN
OPEN COURT ON JUNE 9, 2010, WITH THE
COURT, THE COURT REPORTER, ALL COUNSEL,
THE DEFENDANT, THE CIRCUIT CLERK, AND THE
PROSPECTIVE JURORS PRESENT, TO-WIT:)

BY THE COURT: Ladies and gentlemen of the
jury, we're going to continue the process we
started --

BY THE BAILIFF: Your Honor, we do have
one that's absent.

BY THE COURT: That's what I'm told. I'm
going to continue the process we started
yesterday. I'm told that Juror No. 95 is
late again today, but we're going to be
individually questioning jurors at this
point, so we can go ahead and do that. And
when 95 gets here, we can question her. So
if you'll all step back out of the courtroom
and then when we need you, we'll call you
each individually in here.

BY MR. EVANS: Your Honor, if you would,
would you ask the bailiff to let us know what
time that juror actually gets here?

BY THE COURT: Notify us when No. 95
finally shows up, if you would.

BY THE BAILIFF: Okay.

(PROSPECTIVE JURORS EXIT THE COURTROOM)

BY THE COURT: And I've read a memorandum
that Defense counsel is complaining because

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1 certain questions aren't being asked on the
2 question of the death penalty, and I would
3 like to know just what needs to be asked that
4 is not being asked. Because as I understand
5 *Morgan* and the other cases, you ask if they
6 could consider all options, if they will
7 consider mitigating and aggravating
8 circumstances, and that's been asked by the
9 Court on every juror that we have come -- had
10 come before us.

11 I don't think it's appropriate for
12 the defense lawyers to start questioning the
13 jurors, asking them in their minds what
14 mitigating and aggravating factors actually
15 are, which seems to be one of the main issues
16 that defense counsel's been doing. So if you
17 can inform and educate me on what it is that
18 has not been asked by the Court that should
19 be on this issue.

20 **BY MS. STEINER:** Thank you, your Honor.
21 In the first instance, I had -- since it's a
22 capital case and out of an abundance of
23 caution -- since that is just a memorandum --
24 I've asked that Ms. Martin's filed a copy of
25 the proceedings in the file.

26 **BY THE COURT:** It's filed. Now, I'll ask
27 you to respond to my question.

28 **BY MS. STEINER:** Thank you, Your Honor.
29 Your Honor, on page --

MOTION - DEFENSE

1 **BY THE BAILIFF:** Your Honor, it's --

2 **BY THE COURT:** Has No. 95 shown up yet?

3 **BY THE BAILIFF:** No, sir, but I need --
4 can I come --

5 **BY THE COURT:** Tell us all.

6 **BY MS. STEINER:** I'd like this on the
7 record, Your Honor.

8 **BY MR. EVANS:** Your Honor, and I don't
9 know that -- I don't know what's there. I
10 would like a copy of whatever has been filed.

11 **BY MS. STEINER:** I handed it to
12 Mr. Whitfield at his request.

13 **BY MR. EVANS:** I'm just asking for a copy.

14 **BY THE BAILIFF:** No. 96, they just sent
15 word up here that her grandfather just passed
16 away, and she is very upset and holding back
17 tears out there, and she needs to leave.

18 **BY MR. EVANS:** Your Honor, we understand
19 that that would be something that --

20 **BY THE COURT:** Well, if you'll bring her
21 in here. I mean, you know, let me have that
22 on the record with her.

23 **BY THE BAILIFF:** Yes, sir.

24 (JUROR NO. 96, JESSICA WINTERS, ENTERS
25 THE COURTROOM)

26 **BY THE COURT:** If you'll come down,
27 Ms. Winters. Ms. Winters, I've just been
28 advised and I'm sorry to hear of your loss.
29 Your grandfather passed away this morning; is

RELEASING JUROR NO. 96 - JURY OUT

1 that correct?

2 BY JUROR: Yes, sir.

3 BY THE COURT: And I'm sure that you're --
4 well, I can tell you've been crying and, I'm
5 sure, distraught over the idea of his death.
6 And I'm sure funeral arrangements haven't
7 even been made yet, probably, have they?

8 BY JUROR: (Shaking head).

9 BY THE COURT: Are you wanting to be
10 released from this panel?

11 BY JUROR: I know I ain't going to be able
12 to sit on here.

13 BY THE COURT: So you wouldn't be able to
14 sit in here and keep your mind on this; is
15 that correct?

16 BY JUROR: Yes, sir.

17 BY THE COURT: And you would have your
18 mind on your grandfather's death?

19 BY JUROR: (Nodding head).

20 BY THE COURT: Ms. Winters, I'm sorry for
21 your loss. And, you know, I am going to
22 excuse you and wish you and your family the
23 best in this terrible time.

24 BY JUROR: Thank you.

25 BY THE COURT: And you may go.

26 (JUROR LEAVES THE COURTROOM)

27 BY MS. STEINER: May I proceed, Your
28 Honor?

29 BY THE COURT: You may.

MOTION - DEFENSE - JURY OUT

1 **BY MS. STEINER:** Thank you, Your Honor.

2 Commencing on the bottom of Page 2 in the
3 memorandum, we will respectfully submit that
4 the voir dire -- you're limiting voir dire to
5 the abstract questions concerning mitigation
6 in general. The United States Supreme Court
7 in the cases of *Smith v. Texas* and the
8 Abdul-Kabir case, both of which are cited
9 from 2007, that meaningful consideration of
10 mitigation is required. Those were in the
11 context of jury instructions.

12 And they rely on *Henry v. Johnson*,
13 the 2001 Supreme Court case at -- which
14 expressly found that in the instruction
15 context -- and I quote, "The mere mention of
16 mitigating circumstances to a capital
17 sentencing jury does not satisfy the 8th
18 amendment nor is it constitutionally
19 sufficient to inform the jury merely that it
20 may consider mitigating circumstances in
21 deciding the appropriate sentence." And
22 those are both progeny --

23 **BY THE COURT:** Well, I read your brief.
24 And now I'll ask you the question again:
25 What is it that has not been asked that
26 should be asked of this jury concerning
27 aggravating and mitigating factors?

28 **BY MS. STEINER:** Your Honor, every time we
29 have attempted to pursue specifically

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1 inquiring into the kinds of mitigating
2 factors, when they fall before and after and
3 the more general nature -- I mean, we've
4 restricted ourselves. If we were not being
5 restricted --

6 **BY THE COURT:** Well, I'll just bring
7 everybody in and we can voir dire on the
8 death question in front of everyone because
9 there may be people that did not get some
10 questions asked that you wanted to be asked.
11 So to save us the -- we'll just bring
12 everybody in and voir dire the group on the
13 issue of the death penalty. And then we'll
14 resume individually questioning on the facts
15 of the case.

16 **BY MR. EVANS:** Your Honor, may I put
17 something in the record on that, also?

18 **BY THE COURT:** You may.

19 **BY MR. EVANS:** I think the Court has
20 allowed -- every time that they have asked
21 about a specific mitigator, whether or not
22 the juror would consider it, the Court has
23 allowed that. The only thing that I have
24 heard the Court not allow, which we objected
25 to, is the fact that they want to ask these
26 jurors in their mind what is mitigation and
27 aggravating factors before they have been
28 told by the Court what they are. And that is
29 completely improper. We object to it. And

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1 it's -- from my memory, that's the only thing
2 that the Court has not allowed as far as
3 mitigators and aggravators.

4 **BY THE COURT:** And that's been done
5 several times. I know counsel has asked,
6 Well, what -- can you define mitigating or
7 can you define aggravating, asking them to
8 define it.

9 But anyway, as I say, the only way
10 that we can have all jurors asked the very
11 same questions is if we ask them all
12 together. Because otherwise, you know, the
13 questions may be phrased differently for each
14 juror.

15 So in order to have a complete record
16 where everybody is asked the very same
17 questions, we will bring them all in here as
18 a group and ask them the questions concerning
19 this issue, because it's apparently of grave
20 concern to defense counsel.

21 In my mind, the jury -- you know,
22 after they say they will consider both
23 aggravating and mitigating, they will
24 consider both options equally or they will --
25 you know, without -- on the front end, they
26 would not preclude consideration of one or
27 the other, and they would consider both. I
28 don't see that there's a whole -- you know,
29 based on Morgan, there's not a whole lot more

MOTION - DEFENSE - JURY OUT

1 to ask.

2 But as I say, in order to get a
3 complete record on every -- so that everybody
4 can be asked the very same questions, we will
5 just bring them in here and ask them that as
6 a group.

7 **BY MS. STEINER:** If the Court, please, we
8 object to --

9 **BY THE COURT:** On what basis? I mean, you
10 can't have it both ways. You either have
11 to -- you know, one way or the other. I
12 mean, you know, I don't know any other
13 procedure to follow.

14 **BY MS. STEINER:** Your Honor, voir dire is
15 a process where the Court, of course, asks
16 its questions; the State asks questions, and
17 the Defense asks questions. Your Honor has
18 correctly ruled that for these conversations
19 regarding the death penalty and also
20 regarding publicity, that the possibility of
21 jurors becoming either confused or influenced
22 by other juror responses, it requires the
23 individual voir dire --

24 **BY THE COURT:** It doesn't require it. The
25 law doesn't require it. And you and Mr.
26 Carter have rotated on asking questions of
27 these jurors. You have not asked the same
28 questions of every juror every time. You've
29 asked them different questions at different

MOTION - DEFENSE - JURY OUT

1 times. Some jurors are asked different
2 questions different than the others.

3 So again, the only way we can have
4 all the jurors asked the very same questions
5 is to have them all in here at the same time.

6 **BY MS. STEINER:** Your Honor, I am not
7 asking for uniformity. I am asking for
8 completeness of the questioning. So --

9 **BY THE COURT:** Well, which juror up till
10 now has not given a complete answer? I mean,
11 who do we need to ask a question of that has
12 not been asked?

13 **BY MS. STEINER:** Your Honor, I think Mr.
14 Carter, when he began questioning
15 Ms. Hamilton -- Your Honor, in every case,
16 each of us have attempted to talk about
17 mitigation in more specific circumstances
18 crafted to each juror's responses to Your
19 Honor's questions --

20 **BY THE COURT:** And again, please answer my
21 question rather than --

22 **BY MS. STEINER:** I would say that all of
23 the jurors who have heretofore been --
24 starting with Ms. Hamilton, when you
25 restricted Mr. Carter's questions --

26 **BY THE COURT:** Okay. Well, as I say,
27 right now, we're going to bring them all in.
28 We're going to voir dire the jury as a group
29 on the death question because as I say,

MOTION - DEFENSE - JURY OUT

1 there's no way under the sun that we can ask
2 the very same question of the entire panel.
3 And the only way to do this fairly -- I mean,
4 you can't have it both ways. Either we do it
5 this way or we do it individually. And, you
6 know, so that everybody can be asked the same
7 questions, we will bring them in and we will
8 ask them as group the question concerning the
9 death penalty.

10 **BY MR. CARTER:** Well, can I just put in
11 the record, Your Honor, you said that is the
12 only way. That is not the only way. Another
13 way is to do it as we have been doing it so
14 far and to allow us to just go a little
15 further --

16 **BY THE COURT:** Well, you have not been --
17 well, the only way I'm going to do it is this
18 way, because --

19 **BY MR. CARTER:** That might be the case
20 but --

21 **BY THE COURT:** -- as I say, every issue so
22 far there -- everybody that we've asked so
23 far has said they would equally consider
24 both. They do not, going in, have any fixed
25 idea on what the penalty would be. They
26 have -- every one that we've individually
27 questioned has said they would consider both
28 options. They would not preclude
29 consideration of either one. They've all

MOTION - DEFENSE - JURY OUT

1 said that they would consider aggravating and
2 mitigating circumstances and would listen to
3 the facts and listen to the law and base
4 their decision on that.

5 And -- but yet, that's not
6 satisfactory for Defense counsel. So I don't
7 know any other way to do it other than to
8 bring everybody in here so that we can have
9 everybody asked the same questions. Because
10 your questions were different than
11 Ms. Steiner's. And I disagree totally with
12 the idea that some of your followup questions
13 were called for. You know, where one person
14 might say something that would require a
15 different followup question. That has not
16 been -- you know, that has not been the case.

17 But as I say, you know, you can't
18 point out to anybody on the panel so far that
19 we've asked questions of -- you can't point
20 out any individual juror that has some
21 question that should have been asked of them
22 that was not. And so as I say, at this
23 point, you either -- we continue like we're
24 doing or we bring them all in.

25 **BY MR. CARTER:** Your Honor, I prefer that
26 we continue as we've been doing. We filed
27 our motion. We made our record. The Court
28 ruled against our motion. That's fine. But
29 we need -- Mr. Flowers need individual voir

MOTION - DEFENSE - JURY OUT

1 dire in order to insure that fairness occurs.

2 **BY THE COURT:** Well, I'm not going to come
3 back and individually voir dire 20-something
4 people that we've already individually voir
5 dired --

6 **BY MR. CARTER:** I don't know that we're
7 asking that, are we, Ms. Steiner?

8 **BY MS. STEINER:** Your Honor --

9 **BY THE COURT:** Well, not 20-something
10 because there's several of them that were
11 excused --

12 **BY MS. STEINER:** Yes, Your Honor.

13 **BY THE COURT:** -- so it wouldn't be -- it
14 would be about 16, 18 --

15 **BY MS. STEINER:** Your Honor, I believe the
16 record is preserved in those cases where Your
17 Honor has sustained objections and where Your
18 Honor has announced about what is and is not
19 appropriate voir dire. And we wish to
20 respect Your Honor's rulings on this. Part
21 of the reason I'm raising this here is we do
22 not wish to be irritating Your Honor. We do
23 not wish to be --

24 **BY THE COURT:** Ms. Steiner, let me say
25 this: You're not irritating me. You're an
26 advocate for your client. And I expect you
27 to be a zealous advocate for your client. I
28 wouldn't want it any other way because that
29 is your job. And so I -- my rulings --

MOTION - DEFENSE - JURY OUT

1 **BY MS. STEINER:** But I do not want the
2 jurors to see an unhappy judge or a --
3 whether -- I mean, you were -- admonished
4 both the State and the Defense about not
5 questioning. I think that did not happen in
6 front of the jurors.

7 Your Honor, we would want to comply
8 with whatever your ruling is with respect to
9 the scope of our voir dire. I will continue
10 to ask the questions. And if Your Honor --
11 if the State objects or Your Honor feels
12 necessary to reduce the scope of each
13 witness, then -- then we can deal with it. I
14 just -- I did want to raise this as a general
15 thing and have the case law before the Court.

16 I do have another matter. Yesterday,
17 in connection with the questioning of the
18 Juror No. 41, we interpose an objection to
19 the manner in which the Court had pursued,
20 basically, cross examination and persistent
21 with leading questions of that juror. And
22 really throughout the voir dire, the Court
23 has been appointing leading questions and
24 fairly confrontational techniques in order to
25 extract the information that it is seeking
26 with respect to many matters.

27 I would cite the Court to **State v.**
28 **Davis**, 660 So.2d 1228 at 1258, where it
29 discusses a Court of Wyoming decision,

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1 Schwenke v. State, 768 P.2d 1031. The
2 context in Davis was an objection by the
3 appellate to the State using leading
4 questions, suggesting responses from jurors
5 who the State wished to retain. And the
6 Mississippi Supreme Court held that it is
7 proper for advocates to use such questions in
8 the course of voir dire. And expressly,
9 distinguished without -- distinguished the
10 case of -- but cited the Schwenke case where
11 the Wyoming Court had precluded leading
12 questions during death qualification in --
13 leading questions during voir dire being used
14 by the trial judge. The Schwenke court had
15 said it was inappropriate --

16 **BY THE COURT:** Well, what has been
17 suggestive of the answer from any of these
18 jurors so far? I mean, you know, including
19 Ms. Givens. Ms. Givens was all over the map.
20 I mean, you know, we had to get -- you know,
21 I think you -- I think the law requires a
22 juror to -- to -- if there's given two
23 answers to the same question, I think it's
24 appropriate to find out what their view is.

25 **BY MS. STEINER:** I have no problem with
26 the parties or even the Court asking
27 questions that are not leading or
28 suggestive --

29 **BY THE COURT:** Well, what was suggestive

MOTION - DEFENSE - JURY OUT

1 or leading about what I asked Ms. Givens?

2 **BY MS. STEINER:** Your Honor, very frankly,
3 throughout the voir dire, you have generally
4 opened as soon as the juror has made a remark
5 about knowing someone or -- or having an
6 opinion -- you've said you had an opinion and
7 you said this. You couldn't put it aside;
8 you could put it aside. I mean, with --

9 **BY THE COURT:** Well, how is that leading?
10 How is that leading? How is that calling for
11 a particular response from the -- from a
12 juror? I mean, that's -- have I misstated
13 anybody's statement that they made when I've
14 asked these questions? Have I -- because if
15 I'm misstating what they had previously said,
16 I -- you know, an objection would be
17 appropriate to the particular question from
18 the Court.

19 **BY MS. STEINER:** Your Honor, it's
20 objectionable when -- when the State has one
21 of our witnesses on cross examination, and he
22 wishes to lead them, "Isn't it true that."
23 It's not objectionable when cross examination
24 is appropriate --

25 **BY THE COURT:** Well, this isn't cross
26 examination. This is jury selection.

27 **BY MS. STEINER:** Exactly, Your Honor. And
28 I think the Mississippi Supreme Court has
29 cited with approval the principle that the

MOTION - DEFENSE - JURY OUT

1 court -- the case which states very clearly
2 that when the Court is conducting voir dire
3 that failing -- that the use of leading
4 questions is a tool of advocacy --

5 **BY THE COURT:** And again, I'll ask again.
6 I've asked it several times already. Just
7 exactly what is it the Court asked that was
8 leading? What is it that was suggestive of
9 an answer?

10 **BY MS. STEINER:** "It's true you've told us
11 that you have an opinion, but you can be
12 fair," that you have asked of every witness
13 who came up yesterday for voir dire who have
14 previously expressed an opinion. The
15 questions on many of the people with death
16 penalty issues have been, I believe it's --
17 from here, "You've said you really can't
18 consider the death penalty; is that correct?"

19 Those are leading questions, Your
20 Honor, and I would submit that they were used
21 with respect to all of the people who
22 expressed opinions and with respect to the
23 people who had expressed at some point,
24 either on their questionnaire or in earlier
25 voir dire, reservations with respect to the
26 death penalty.

27 **BY THE COURT:** Well, at this --

28 **BY MS. STEINER:** And I would certainly ask
29 that Your Honor, henceforth in the rest of

MOTION - DEFENSE - JURY OUT

1 any voir dire, refrain from the use of
2 leading questions of the jurors.

3 **BY MR. EVANS:** Your Honor, I don't believe
4 that opposing counsel understands what a
5 leading question is because asking somebody
6 if they made a prior comment is not a leading
7 question. It does not suggest an answer.

8 **BY THE COURT:** The only purpose the
9 Court's asking any questions is to make sure
10 that we get a fair and impartial jury to try
11 this case. I don't think there's a question
12 that the Court has asked of any of these
13 jurors that would be suggestive of a
14 particular answer.

15 If there is jurors that have
16 stated -- answered two different ways to a
17 question, it's appropriate to get the
18 confusion solved. Because if somebody's
19 saying one thing and then saying something
20 else, it's necessary to resolve any conflict
21 in their views and find out what their true
22 views are.

23 And that's the only purpose the
24 Court's asked any followup questions, is if
25 somebody has said they can't judge at all and
26 then they say they can, then, you know -- you
27 know, they -- the next question they may
28 change their opinion again. And it's, you
29 know, somebody has got to be able to sit up

MOTION - DEFENSE - JURY OUT

1 here and judge the case if they're sitting as
2 a juror. So if somebody says originally, Oh,
3 I can't judge anybody and then they say,
4 Well, yeah, I can and -- you know, it's
5 appropriate to get a complete response from
6 them. And that is what the Court has done.

7 **BY MS. STEINER:** If the Court please, you
8 had asked for specific examples, and I had
9 cited Juror 41. I have my notes. I won't
10 ask the court reporter to read it back. I
11 agree the juror was back and forth. I think,
12 in response to questions, said, I guess, I
13 don't know. If she can judge guilt or
14 innocence, "I guess I could." And perhaps
15 Your Honor misheard, but it was a leading
16 question. "Could you -- are you saying you
17 could not judge the case," at which point,
18 Mr. Carter objected.

19 Your Honor, she's saying it would be
20 stressful, that she can't do it. The Court
21 reiterated the question in a non-leading
22 fashion. And she -- in response to that
23 colloquy, she said she could not. I think,
24 Your Honor, that exchange is -- exemplifies
25 where the Court has been using the kind of
26 leading questions that may be appropriate for
27 an advocate but is not --

28 **BY THE COURT:** Well, again, you just said
29 that the Court then rephrased it with a

MOTION - DEFENSE - JURY OUT

1 non-leading fashion. And my response is and
2 ruling is if there's a question that you feel
3 like the Court has asked in a suggestive way,
4 the appropriate thing is make an objection
5 contemporaneously at that point.

6 **BY MS. STEINER:** All right. Your Honor,
7 we'd like to make this a continuing
8 objection --

9 **BY THE COURT:** No, ma'am. It's not going
10 to be a continuing objection. If there's
11 something that you feel is suggestive of an
12 answer, then you need to bring that up.
13 Because it's no way that you -- you know,
14 that you can have a continuing objection
15 because the questions are not going to be --
16 again, that -- you know, you have uniformity
17 of questioning, we could bring them all in as
18 a group, which is not what y'all are saying
19 you want to do.

20 **BY MS. STEINER:** Thank you, Your Honor.

21 Your Honor, allow me to introduce
22 three additional members of our summer intern
23 staff, who are going to be with us for part
24 or all of the trial. Ms. Lawanda Williams,
25 she is a law student at Mississippi College,
26 who is interning with us. I especially want
27 her acknowledged since when she was coming in
28 to Winona yesterday, the security pulled her
29 over on the road even before she entered the

MOTION - DEFENSE - JURY OUT

1 town and, you know, questioned her about her
2 business here. They, of course, let her go
3 on when she explained what she was doing.

4 And the other two, Ms. Pria Bandis
5 and Mr. David Rubin. They are from the
6 University of California, San Fransisco, who
7 are also interning. They were not -- did not
8 have similar problems this morning when they
9 arrived.

10 **BY THE COURT:** Well, the best thing you
11 need to do is make their presence known to
12 the sheriff and the security, because I can't
13 be in control of everything.

14 **BY MS. STEINER:** I know. I appreciate
15 that, Your Honor.

16 **BY THE COURT:** And I welcome all of them
17 here to the court. And I, you know,
18 appreciate the service that you rendered to
19 individuals who are -- you know, that you're
20 working -- whose case you're working on this
21 summer.

22 But if there is any problem at all
23 with staff, bring that up to the sheriff.
24 And if that doesn't get resolved, then bring
25 it up to me.

26 But I -- you know, I -- you know, and
27 I think that it would be resolved with the
28 sheriff. But if there were to be some
29 problems that was not resolved, then at that

MOTION - DEFENSE - JURY OUT

1 point, I would -- I would take it up.

2 **BY MS. STEINER:** All right. Then,
3 finally, Your Honor, when we were entering
4 through the security check point to come to
5 the back of the courthouse in order to park,
6 I think uniform deputy -- Winona Deputy Ables
7 was running the security point. There were
8 four or five men standing around him. And I
9 would like have him brought in and ask if he
10 knows the identity of the men standing
11 around.

12 I would say for the record that I
13 recognized and, of course, had to not make
14 eye contact with Mr. Amason, Juror 67, and
15 Mr. Carpenter, Juror 69, standing around and
16 identifying for the security purposes who we
17 were.

18 I'm an attorney. The deputy did not
19 recognize me. And I identified myself, and
20 he let me through. And I would like to
21 have -- I would like to examine the deputy on
22 who was standing with him and what
23 conversation occurred about the case because
24 I recognized this --

25 **BY THE COURT:** Ms. Steiner, I don't know
26 if you feel like they've got magic carpets
27 that the jurors can ride into the courtroom
28 on. If they're coming to court, it's, you
29 know, pretty clear that they're going to have

MOTION - DEFENSE - JURY OUT

1 to pass security to get here.

2 **BY MS. STEINER:** No, Your Honor. They
3 were not passing security. They were
4 standing around -- I thought, in fact, when I
5 saw it from afar that the security force had
6 put plain clothes security officers in casual
7 clothes to help monitor the security
8 situation, especially since Ms. Williams had
9 been stopped on the highway coming into town
10 that this was a security --

11 **BY THE COURT:** This highway stopping
12 coming into town, are you suggesting that the
13 cops stopped her because they thought she was
14 involved in this case? I mean, why did she
15 get stopped?

16 **BY MS. STEINER:** I -- well, the only
17 distinction I know between Ms. Williams and
18 my other two interns is Ms. Williams is
19 African-American --

20 **BY THE COURT:** Well, it very well could be
21 that she was violating the traffic law. I
22 mean, was a citation issued --

23 **BY MS. STEINER:** Your Honor, she was not
24 ticketed. She was not warned. She was told
25 it was a matter of court security. And I
26 would --

27 **BY THE COURT:** Well, who stopped -- was
28 this a state trooper or was this a city
29 police?

MOTION - DEFENSE - JURY OUT

1 **BY MS. WILLIAMS:** Montgomery County.

2 **BY THE COURT:** On the state highway?

3 **BY MS. STEINER:** Were you just off the
4 exit?

5 **BY MS. WILLIAMS:** It was just off the
6 exit. I just saw Montgomery on the car,
7 inside of the car.

8 **BY THE COURT:** If you can provide the name
9 of an officer that stopped someone on the
10 highway, I'll have them brought in and ask
11 them a question about it.

12 **BY MR. EVANS:** Your Honor, I object to
13 these bogus accusations that are coming out
14 in court. If they have anything to show
15 this, I would ask that it be proven right now
16 or the whole thing be stricken from the
17 record. It's just bogus accusations that
18 they continue to raise.

19 **BY MR. CARTER:** Your Honor, I'll just
20 state Mr. Evans doesn't know whether it's
21 bogus or not.

22 **BY MR. EVANS:** Well, unless you put on
23 something, it's bogus.

24 **BY THE COURT:** Unless you can name the
25 deputy and call him in here, because, you
26 know --

27 **BY MS. STEINER:** Your Honor --

28 **BY MS. WILLIAMS:** I wouldn't be able to
29 name the deputy.

MOTION - DEFENSE - JURY OUT

1 **BY MS. STEINER:** I'd like to call

2 Ms. Williams as a witness on this --

3 **BY THE COURT:** At this point, what does
4 this have to do with anything? I mean, I
5 don't see what it has to do with anything
6 involving this case, if somebody gets stopped
7 out on the highway, you know, speeding or
8 breaking some traffic violation. But I can
9 assure you, we don't have road blocks out in
10 the county setting up to find out who's
11 coming to watch a trial.

12 **BY MS. STEINER:** Your Honor, I would
13 proffer that her testimony will be as she has
14 said from the audience and she also has
15 stated that the deputy -- she was unable to
16 provide a name because the deputy directed
17 her to keep her eyes forward while he was
18 talking to her, and she was unable to read
19 his tag.

20 **BY MR. HILL:** Judge, this has got nothing
21 to do with this trial.

22 **BY THE COURT:** It has absolutely nothing
23 to do with it --

24 **BY MR. HILL:** This is the most irrelevant
25 thing I've ever heard of in a trial.

26 **BY THE COURT:** It is. I mean, I agree
27 totally. I mean, it's -- we're entering the
28 theater of absurdity here. And, you know,
29 when a deputy can be named, when somebody's

MOTION - DEFENSE - JURY OUT

1 badge number can be named, but -- you know --

2 **BY MS. STEINER:** Well, Your Honor --

3 **BY THE COURT:** -- if you want to proffer
4 that, I'll let you proffer it. You know, one
5 or two things -- I mean, I'm not going to sit
6 here for very long. But, I mean, it doesn't
7 have anything to do with anything as far as I
8 can tell.

9 **BY MR. EVANS:** I think she just proffered
10 it, Your Honor.

11 **BY THE COURT:** I mean, is that the basis
12 of the testimony?

13 **BY MS. STEINER:** That is what the
14 testimony would be. She is available to
15 testify if either the Court or the
16 Defendant -- or the State would like to
17 examine her. But that is --

18 **BY MR. EVANS:** I don't care to examine
19 her.

20 **BY THE COURT:** I don't need to hear
21 anything further on it, either. I'll say
22 this: I don't believe it. I believe it's
23 totally a false statement, because I -- you
24 know, people are not being stopped on the
25 highway --

26 **BY MS. STEINER:** I believe her statement
27 was it was off the exit coming into Winona.

28 **BY THE COURT:** Well -- and that's not the
29 highway?

MOTION - DEFENSE - JURY OUT

1 **BY MS. STEINER:** Well, Your Honor, it's
2 not Highway 55.

3 **BY THE COURT:** Anyway, I'm ready to start
4 voir diring these witnesses --

5 **BY MS. STEINER:** Your Honor, I would ask
6 to call Deputy Ables to identify whether any
7 jurors, in addition to Mr. Amason or Mr.
8 Carpenter, were standing with him at the
9 security checkpoint. And I would like to
10 have individual voir dire on Mr. Amason and
11 Mr. Carpenter regarding the nature of the
12 conversation and the duties assigned to them
13 by the deputies.

14 **BY MR. EVANS:** Your Honor, standing by
15 somebody -- we all stand by every one of
16 these jurors every day during the trial.
17 This is absurd. It's getting into personal
18 attacks on people with no basis. And it is a
19 waste of the Court's time --

20 **BY THE COURT:** I agree totally with the
21 prosecutor. There's no -- I mean, this
22 deputy, whose name is not listed as a
23 witness -- he's not listed as providing
24 anything during this trial. All the law
25 enforcement -- I guess pretty much of the
26 county is former law enforcement.

27 You could ask these two individuals
28 during the course of individual voir dire if
29 they had any conversation about the case with

MOTION - DEFENSE - JURY OUT

1 anybody. And if there were four people
2 standing next to them, these two individuals
3 ought to be able to tell you who they were
4 without calling any deputy.

5 **BY MS. STEINER:** Thank you. Have we
6 reached Mr. Amason and Mr. Carpenter yet? I
7 guess not.

8 **BY THE COURT:** We have not reached them
9 yet.

10 **BY MS. STEINER:** Thank you, Your Honor.

11 **BY THE COURT:** But they will be
12 individually questioned anyway. I think the
13 next one we've got to bring in is Tasha Renee
14 Cunningham.

15 **BY MR. EVANS:** Yes, sir.

16 **BY THE BAILIFF:** Are you ready for her?

17 **BY THE COURT:** I am.

18 (JUROR NO. 44, TASHIA CUNNINGHAM,
19 ENTERS THE COURTROOM)

20 **BY THE COURT:**

21 **Q** Ms. Cunningham, if you'll come forward,
22 please, and have a seat down here.

23 Ms. Cunningham, what we're doing is we're
24 asking questions of everybody privately and
25 individually on a couple of issues.

26 First, on the issue of whether you have
27 any knowledge about this case or have heard anything
28 about this case?

29 **A** No.

INDIVIDUAL VOIR DIRE

1 **Q** And did you ever even hear about the Tardy
2 murders at all?

3 **A** I heard about it.

4 **Q** So how did you come to hear about it?

5 **A** On the news.

6 **Q** Was that T.V. or radio?

7 **A** Uh-huh.

8 **Q** T.V.?

9 **A** With a neighbor, yes, sir.

10 **Q** And have you read any papers or really
11 kept up with the case?

12 **A** No, sir.

13 **Q** And has anything that you read or heard
14 caused you to form an opinion as to the guilt or
15 innocence of Mr. Flowers?

16 **A** No, sir.

17 **Q** Would you lay aside anything that you may
18 have heard outside the courtroom and base your
19 decision, if you're to serve as a juror on this
20 case, only on the evidence presented here in court?

21 **A** Yes, sir.

22 **Q** And you would not let anything you've
23 heard come into play as far as your jury
24 deliberation?

25 **A** No, sir.

26 **BY MS. STEINER:** Your Honor, I would
27 interpose the leading objection to the
28 question.

29 **BY THE COURT:**

INDIVIDUAL VOIR DIRE

1 Q Okay. Would you let anything that came in
2 outside the courtroom come into play?

3 A No, sir.

4 Q Also, the next issue involves the
5 possibility of the imposition of a sentence. If it
6 got to the point where we did have a sentencing --
7 first, it would get to the point where Mr. Flowers
8 would have had to be found guilty. If he's found
9 innocent on the guilt phase, we do not even get to
10 the second phase. But if it got to that phase, then
11 the State of Mississippi would be seeking the death
12 penalty. They would be putting on aggravating
13 factors, which would show why they think the death
14 penalty is appropriate.

15 Mr. Flowers would be putting on mitigating
16 facts, which will show why he believes the death
17 penalty would not be appropriate. You would then be
18 instructed on the law and so what -- would you or
19 would you not be able to consider the death penalty?
20 I mean, what's your view on even considering the
21 death penalty?

22 A I would not.

23 **BY THE COURT REPORTER:** I'm sorry. What?

24 A I would not.

25 **BY THE COURT:**

26 Q Are -- are you saying you would not
27 consider it?

28 A No, sir.

29 Q Even if the law allowed it and the facts

INDIVIDUAL VOIR DIRE

1 justified it, you just could not even consider it?

2 A No, sir.

3 Q Also, there's -- you know, if he didn't
4 get the death penalty, it would be a situation where
5 life without parole would be the sentence. Would
6 that be something that you could consider?

7 A Yes, sir.

8 Q So -- but again, just tell me again what
9 your feelings are on the death penalty.

10 A I don't believe in the death penalty.

11 Q And would there be a possible -- could you
12 consider it?

13 A I don't think so.

14 Q You don't think so?

15 A I don't think so.

16 Q But there's -- in our own mind, you might
17 could -- are you saying you could possibly?

18 A I don't think so.

19 Q See, I'm not asking you to make a -- you
20 know, you haven't heard anything. And all we want
21 to know is whether you could consider that as a
22 possibility -- that as a sentencing possibility,
23 because you and your fellow jurors will decide the
24 sentence, but I just want to know if you could even
25 consider that as a possible sentence?

26 A I might. I might. I don't know. I
27 might.

28 Q So you might be able to consider that?

29 A (Nodding head).

INDIVIDUAL VOIR DIRE

1 **BY THE COURT:** Okay.

2 **BY MR. EVANS:**

3 **Q** Good morning, Ms. Cunningham.

4 **A** Good morning.

5 **Q** Ms. Cunningham, do you also go by the name
6 of Small?

7 **A** That's my married name.

8 **Q** You need to speak --

9 **A** That's my married name.

10 **Q** Your married name?

11 **A** Uh-huh.

12 **Q** All right. As far as the death penalty --
13 and I want to make sure that I understand what
14 you're saying -- if the law authorized the death
15 penalty in this case and you found that the facts of
16 the case that came from the stand justified it,
17 could you, in fact, vote for the death penalty?

18 **A** I don't think so.

19 **BY MS. STEINER:** I object. I think the
20 question is whether she could consider it --

21 **BY MR. EVANS:** No, sir. That is the exact
22 question, I think, that has been approved by
23 the Supreme Court.

24 **BY THE COURT:** And what was the question
25 again?

26 **BY MR. EVANS:** The question is: If the
27 law authorized it and the facts justified it,
28 could she vote for the death penalty?

29 **BY MS. STEINER:** I object. I believe it's

INDIVIDUAL VOIR DIRE

1 could she consider --

2 **BY THE COURT:** I think it should be could
3 she consider voting for it. I don't think
4 she should be asked to be committing to it so
5 I'll let you rephrase.

6 **BY MR. EVANS:** Yes, sir. I would like to
7 get a case for that, but I'll continue with
8 this witness at this time, Your Honor.

9 **BY MR. EVANS:**

10 **Q** Could you consider the death penalty
11 yourself if the facts justified it and the law
12 allowed it?

13 **A** I don't think so.

14 **Q** You don't think so?

15 **A** That I could.

16 **Q** All right. I want to go back to something
17 we talked about the other day. You work at ADP; is
18 that right?

19 **A** Yes.

20 **Q** And you work with the Defendant's sister,
21 Sherita Baskin?

22 **A** Yes.

23 **Q** Now, the other day, I think you said that
24 you do not work close to her?

25 **A** No, I do not.

26 **Q** Would you think about that for a minute?

27 **A** I do not.

28 **Q** Are you sure that you do not work side by
29 side with her?

INDIVIDUAL VOIR DIRE

1 **A** No, I do not.

2 **Q** And you're saying that under oath?

3 **A** Yes, sir.

4 **Q** You've also said that you know -- in
5 addition to Sherita, you know Nelson Forrest and
6 Reverend Lewis; is that correct?

7 **A** Yes.

8 **Q** And you're saying that knowing none of
9 those would affect you in any way in this case?

10 **A** No, sir.

11 **BY MR. EVANS:** Nothing further, Your
12 Honor. Wait a minute, Your Honor. That's
13 all we have, Your Honor.

14 **BY MR. CARTER:**

15 **Q** Ms. Cunningham, let me just briefly make
16 sure you're not confused about something and that
17 the record is clear on this.

18 Now, you realize that whatever decision
19 you make is your decision, not anybody else's
20 decision. If you get picked on the jury, you're
21 going to be on there with several other people.
22 However, whatever your verdict is -- and your
23 personal verdict, based on your own moral conscience
24 and not anybody else's and nobody can tell you how
25 to vote. Do you understand that?

26 **A** Yes.

27 **Q** And so the question is: Could you listen
28 to the evidence and consider it -- it says
29 consider -- we're not talking about -- can't nobody

INDIVIDUAL VOIR DIRE

1 tell you how to vote. Do you understand that?

2 **A** Yes.

3 **Q** And do you also understand that our state
4 legislature have deemed life without possibility of
5 parole and the death penalty as appropriate
6 sentences for a person convicted of capital murder.
7 Do you understand that?

8 **A** Yes.

9 **Q** Either one. And that what you're required
10 to do is just consider both, then decide which way
11 you want to vote. Do you understand now?

12 **A** Yes, sir.

13 **Q** And that's your decision. And with that
14 being the case, can you consider both options, then
15 vote your conscience?

16 **A** Yes.

17 **BY MR. CARTER:** Thank you.

18 **BY THE COURT:** You may step down,
19 Ms. Cunningham. And when you go back, don't
20 sit out there and talk -- you can't go back
21 out among your jurors and talk about what you
22 testified to in here.

23 **BY JUROR:** Okay.

24 **BY THE COURT:** And if you'll step back
25 out, and then we'll call the next one in.

26 (JUROR LEAVES THE COURTROOM)

27 **BY THE COURT:** No. 45?

28 (JUROR NO. 45, EDITH BURNSIDE, ENTERS
29 THE COURTROOM)

INDIVIDUAL VOIR DIRE

1 **BY THE COURT:**

2 Q Ma'am, if you'll come forward,
3 Ms. Burnside? If you'll come down and have a seat.

4 And what we're doing is we're asking
5 several questions of the jurors individually so --
6 to find out particular thoughts and frames of mind
7 on issues.

8 First, I want to know if you have heard
9 anything about this case or had any knowledge of the
10 case or know any facts of the case.

11 A Not -- just a few rumors and stuff. Right
12 after it happened, I moved to Eely, Nevada. And
13 after I come back, I have heard a few things, not
14 very much.

15 Q And so you moved to Eely, Nevada?

16 A Yes.

17 Q And how long were you in Nevada?

18 A Four years.

19 Q And by that time, I guess most of the talk
20 had disappeared if there --

21 **BY MS. STEINER:** I'm going to object to
22 leading, Your Honor.

23 **BY THE COURT:**

24 Q And Ms. Burnside, have you heard any facts
25 about this case that would cause you to form an
26 opinion as to guilt or innocence of --

27 A No, sir.

28 Q -- Mr. Flowers?

29 A No, sir.

INDIVIDUAL VOIR DIRE

1 **Q** Would you be able to lay aside any facts
2 you might have heard and base your decision on the
3 evidence presented here in court?

4 **A** Yes, sir.

5 **Q** And would you do that?

6 **A** Yes, sir, I would.

7 **Q** Also, the State -- well, let me back up.
8 The way the case works is on a capital murder case
9 is it can possibly be a two-phase trial. First
10 phase would be the guilt or innocence. If
11 Mr. Flowers is found not guilty, it concludes.
12 There's not a second phase at all.

13 But if he were to be found guilty, then
14 the jury would be deciding what the appropriate
15 penalty should be. The State of Mississippi would
16 be seeking the death penalty. They would put on
17 aggravating facts which would show in their mind why
18 the death penalty should be -- would be appropriate.

19 And Mr. Flowers will be putting on what's
20 called mitigating factors. That would be things
21 that, in his view, would be reasons why the death
22 penalty would not be an appropriate penalty.

23 And so I want to know if the facts
24 justified it and the law allowed it, could you
25 consider the death penalty as a sentencing
26 possibility?

27 **A** That I don't think I could do. I don't
28 know if I could do that.

29 **BY MR. CARTER:** I can't hear, Your Honor.

INDIVIDUAL VOIR DIRE

1 **BY THE COURT:** Can you speak up because --

2 **A** I don't -- I don't know if I could
3 consider it, sending anybody to death. I don't know
4 if I could do that.

5 **BY THE COURT:**

6 **Q** And can you explain further your views on
7 that?

8 **A** I just never been put in a predicament.
9 I've always just don't know if I could do that.
10 It's just the best way I can explain it. I just
11 don't think I could do that.

12 **Q** Again, let me explain. You're not
13 committing to do it or not do it. You're just -- we
14 just need to know if that's something that would be
15 in your mind where you could think about it and you
16 could consider the possibility of it.

17 **A** I could think about it and consider it.
18 That's all I could say.

19 **Q** And would you consider the imposition of
20 the death penalty, if you were on the jury and it
21 got to the second phase?

22 **A** If I was on there, yeah, I guess I'd have
23 to.

24 **Q** So if the facts justified it and the law
25 allowed it, you would consider it?

26 **A** Yes.

27 **Q** Also, if he did not receive the death
28 sentence -- if he was convicted and the jury did not
29 impose the death sentence, he could be facing the

INDIVIDUAL VOIR DIRE

1 possi -- and would receive the sentence of life
2 without parole. So is that a sentencing option that
3 you could consider, also?

4 **A** Yes. I could consider that.

5 **Q** And so you would consider and have an open
6 mind as to both sentencing options then; is that
7 correct?

8 **A** Yes, sir.

9 **BY THE COURT:** Okay. Mr. Evans.

10 **BY MR. EVANS:**

11 **Q** Good morning, Ms. Burnside.

12 **A** Good morning.

13 **Q** If you were a juror on this case, in the
14 sentencing phase, would you just automatically vote
15 for life sentence?

16 **BY MR. CARTER:** Your Honor, I object.

17 She's already said that she could consider
18 both.

19 **BY THE COURT:** I'll sustain the objection.

20 **BY MR. EVANS:** Your Honor, are you saying
21 I can't ask her if she would automatically
22 vote for a life sentence?

23 **BY THE COURT:** Well, I'll reverse my
24 ruling. I think that is appropriate.

25 **BY MR. EVANS:**

26 **Q** If you were picked as a juror -- let me
27 explain what I'm asking. Because of your beliefs on
28 the death penalty, would that force you, if you had
29 to make a decision of life or death, to just

INDIVIDUAL VOIR DIRE

1 automatically vote for life?

2 **A** I'm not sure if I'm understanding what
3 you're asking me --

4 **Q** All right. I want to make sure you
5 understand.

6 **A** -- can you explain it?

7 **Q** If you're picked as a juror in the case,
8 the first phase of the trial deals with guilt or
9 innocence. If this defendant is found guilty, we go
10 into the second phase where the jury will be asked
11 to give the death penalty by the State.

12 **BY MR. CARTER:** Your Honor, I object to
13 him going back over the same question. The
14 Court has already asked --

15 **BY MR. EVANS:** Your Honor, she said she
16 did not understand it. I'm trying to explain
17 it to her.

18 **BY THE COURT:** I think he can explain his
19 question, because she did say she did not
20 understand.

21 **BY MR. EVANS:**

22 **Q** And in that phase, the State will be
23 asking for the death penalty and the defense will be
24 asking for a life sentence. My question is simply
25 this: Because of your beliefs that you have some
26 problems with the death penalty, would those beliefs
27 cause you to just automatically vote for a life
28 sentence instead of the death penalty?

29 **A** No. I can keep an open mind about it --

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1 **Q** Okay.

2 **A** -- but that's all I can say. I just --
3 (shaking head).

4 **Q** And when were you sued by Tardy Furniture?

5 **A** I don't remember. Let me explain that. I
6 worked for Ms. Bertha. She hired me to work for Mr.
7 Tardy before she was married to him the first time.
8 I was caring for Ms. Lena Tardy. That's how I met
9 Ms. Bertha. So when me and my husband was going
10 through a divorce, she let me have some furniture.
11 And she said that she was going to note it on the
12 book. Sometimes, I cleaned up for her and I paid
13 for it and we just have, like, a little
14 understanding about it. Okay. When she got killed,
15 it was still on the book. And then her
16 son-in-law -- when I came back from Nevada, then
17 that's when I had to pay for it. I don't remember
18 when it was.

19 **Q** So there was a dispute between you and her
20 son-in-law?

21 **A** No. It wasn't a dispute. He just --

22 **Q** Well, did you agree that you owed it?

23 **A** Yes. We had no falling out about it. I
24 had the funds, and I agreed I owed it. When I went
25 to Nevada, I guess it was just a space where I owed
26 him. When I came back here and went to work, I paid
27 him for it. We never had no misunderstanding about
28 it.

29 **Q** If it wasn't no misunderstanding, why did

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1 it have to go to court?

2 **A** I'm not quite sure about that. I remember
3 them bringing the papers after I come back here to
4 go to work. Maybe he found out I was back or what.
5 But then I went down to the store -- that's when
6 they had moved the store over to where the other
7 building was -- and I talked to him about when I
8 paid it. We never had a falling-out about it.

9 **Q** But you did have to be sued over it?

10 **A** Yes. I can't remember the --

11 **Q** And there was a judgment against you?

12 **A** Yes. But it was no falling-out about it.

13 **Q** Is there anything about that, that would
14 cause you any difficulty in this case?

15 **A** No. Because he is a distributor for
16 something for one of our salesman at Super Value
17 where I work, and he come in every Thursday, and the
18 lady make a order so I see him like on a weekly
19 basis. But, you know, sometimes, I speak if it's --
20 because she see him like over in her office, so no,
21 it's nothing about that would make me have no --

22 **Q** When I was asking the questions the other
23 day about jurors that could judge other people, you
24 stated at that time that you could not judge anyone.
25 Why did you state that?

26 **A** Well, because I -- you know, I prefer not
27 to judge anyone. But then when they come back and
28 say could I be fair. My thing is I prefer not to
29 judge anyone. But now, I will be fair.

INDIVIDUAL VOIR DIRE

1 **Q** All right. Who will you be fair to?

2 **A** I will be fair to whoever evidence is
3 presented. I will be fair. Because I would want
4 somebody to be fair to me or my children or my
5 family. That's the only way I can explain it.

6 **Q** So now you are --

7 **BY MR. CARTER:** I object. She's answered
8 that question. He's badgering this witness.

9 **BY MR. EVANS:** Your Honor, I don't believe
10 this witness is badgered.

11 **BY THE COURT:** I think I'll overrule. He
12 hasn't even asked a question.

13 **BY MR. EVANS:**

14 **Q** So you have changed your mind, and you say
15 now that you could judge someone; is that correct?

16 **A** Well, basically, I haven't changed my
17 mind. I just prefer not to be in a predicament
18 where I have to judge somebody.

19 **Q** So you still have a problem with judging
20 someone?

21 **A** I still have a problem with that.

22 **Q** Would that problem be such that you would
23 think about it if you were picked on a jury?

24 **A** Well, I'd have to say yes.

25 **Q** It would? So that might affect your
26 judgment in the case; is that right?

27 **A** It could, possibly, yes, sir.

28 **Q** And I -- I'm not trying to get personal
29 but these are things we need to know. Your son was

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1 convicted of robbery; is that right?

2 **A** Yes.

3 **BY MR. CARTER:** Same objection, Your
4 Honor.

5 **BY MR. EVANS:**

6 **Q** And since this case --

7 **BY THE COURT:** Overruled.

8 **BY MR. EVANS:**

9 **Q** Since this case is a murder during the
10 commission of a robbery, do you think that you might
11 think of your son when you were being asked to
12 decide this case?

13 **A** I thought about it. And it wouldn't have
14 no affect on it, because my son -- he told me that
15 he did do it, and I had no problem with it.

16 **Q** So that issue wouldn't affect you?

17 **A** No.

18 **BY MR. EVANS:** Thank you, ma'am.

19 **BY THE COURT:** Mr. Carter.

20 **BY MR. CARTER:**

21 **Q** Ms. Burnside, if you got picked on the
22 jury, you would be fair to both sides, wouldn't you?

23 **A** Yes, sir.

24 **Q** And despite the fact that you don't like
25 to judge, if you got picked you would, in fact,
26 judge and be fair to both sides; is that correct?

27 **A** Yes, sir, that is correct.

28 **BY MR. CARTER:** Thank you.

29 **BY THE COURT:** Ms. Burnside, you may step

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1 down. And I'll ask you when you return out
2 there, do not talk about, out there with your
3 fellow jurors, what's been discussed in here.

4 **BY JUROR:** Yes, sir.

5 **BY THE COURT:** And it may be a while
6 longer before you have to wait around, and
7 just please be patient. We're moving as fast
8 as we can.

9 **BY JUROR:** Yes, sir.

10 (JUROR LEAVES THE COURTROOM)

11 **BY THE COURT:** Bobbi Davis would be next,
12 No. 47.

13 (JUROR NO. 47, BOBBI DAVIS ENTERS THE
14 COURTROOM)

15 **BY THE COURT:**

16 **Q** If you'll have a seat down here,
17 Ms. Davis.

18 What we're doing is there are some
19 questions we just feel appropriate to ask
20 individually instead of out in front of everybody.
21 And I want to know first if you have heard anything
22 about this case, have any knowledge of the facts of
23 the case or read newspaper, seen T.V. or things like
24 that, anything about this case?

25 **A** Since it started?

26 **Q** Since inception.

27 **A** Well, I've seen articles in the newspaper.

28 **Q** And did those articles cause you to form
29 opinions to as to the guilt or innocence of

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1 Mr. Flowers?

2 **A** Well, when I would read the article,
3 whatever the verdict that had been ruled for the
4 case.

5 **Q** But has -- do you have an opinion already
6 as to Mr. Flowers' guilt or innocence?

7 **A** No.

8 **Q** And would you lay any facts aside and base
9 your decision only on the evidence as presented here
10 in court?

11 **A** Yes.

12 **Q** And if something you read about in the
13 newspaper you do not hear testimony about that in
14 court, would you be thinking, Oh, well, I also
15 remember, you know, something the newspaper said or
16 would you base it only on what's presented here in
17 court?

18 **A** Only on what's presented in court. I
19 really don't remember the details of the articles
20 that I read.

21 **Q** And the next issue -- on a capital murder
22 case, it's the possibility of a two-phase trial.
23 First, the jury decides guilt or innocence. Only if
24 the jury were to find Mr. Flowers guilty would we
25 even get to the second phase. So these questions
26 now apply to the second phase.

27 The State of Mississippi, I understand, is
28 seeking the death penalty in this case and, on the
29 second phase, would be putting on aggravating

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1 factors which they believe would justify the
2 imposition of the death penalty.

3 The defense would be putting on mitigating
4 facts that would, in their view, show that the death
5 penalty is not an appropriate penalty. And so as a
6 juror, you would decide what the appropriate penalty
7 was. And so if the facts justify the imposition of
8 the death penalty and the law allowed it, could you
9 consider that as a sentencing option?

10 A If the facts justified it, yes, I could.

11 Q Also, if he did not get sentenced to
12 death, the sentence would be life without parole.
13 Could you consider that also as a sentencing option?

14 A Yes.

15 Q And so you would listen to the evidence
16 and then reach a determination, but as you're going
17 in, you have an open mind as to both --

18 A Yes. Either way.

19 BY THE COURT: Okay. Thank you.

20 Mr. Evans?

21 BY MR. EVANS: No questions, Your Honor.

22 BY MS. STEINER:

23 Q Good morning, Ms. Davis.

24 A Good morning.

25 Q I think when you and the rest of your
26 family were being -- kind of having a conversation
27 with his Honor about the fact that there's four of
28 y'all here today -- and I believe you have a
29 17-year-old son at home?

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1 **A** I do.

2 **Q** And you and your husband have made
3 arrangements for him to stay with other family?

4 **A** Yes. With other family, yes.

5 **Q** And I know -- and certainly, when y'all
6 are with each other, y'all get along fairly well,
7 you and your husband and your father-in-law and
8 mother-in-law; is that correct?

9 **A** Yes.

10 **Q** And you certainly respect their views on
11 issues?

12 **A** I do.

13 **Q** And probably you prefer it, in the family,
14 when you all agree on something; is that correct?

15 **A** I would prefer it, yes.

16 **Q** All right. And as a juror, one of your
17 jobs that His Honor is going to give you a very
18 specific instruction on is to -- your vote, whether
19 for guilt or innocence or regarding penalty -- is
20 your individual vote. And the only thing that can
21 affect it is your -- your personal views of the
22 evidence that's before you and your personal
23 assessment without influence other than a deliberate
24 conversation with other jurors -- you understand
25 that?

26 **A** Yes.

27 **Q** I assume -- and that often involves
28 disagreement?

29 **A** I understand.

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1 Q Thank you. You indicated that you had
2 read newspapers and T.V.; is that --

3 A I've never seen anything on television
4 about the case, no.

5 Q Never seen T.V. And I believe you're
6 taking an Internet course so you're Internet savvy?

7 A (Nodding head).

8 Q Had you seen anything about this case on
9 the Internet?

10 A No.

11 Q All right. When you -- since you got your
12 summons in April -- certainly between then and now,
13 there have been several newspaper stories. Did
14 you --

15 A I have not read anything in several years
16 on the case.

17 Q Oh, okay. Did you just do that because
18 you knew this was the case you had a summons in?

19 A No, I just -- I don't read the paper
20 daily.

21 Q All right. We have had several pretrial
22 hearings in this matter, and some of them occurred
23 in one of the general -- you know, weren't in the
24 courtroom. And so people having business in another
25 state office may have either attended or -- or, you
26 know, walked in on the meeting thinking it was
27 something they meant to do. And did you -- I think
28 it was the extension building across the street. Do
29 you do business there? Did you attend a --

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1 **A** No.

2 **Q** Did you happen to come in on a hearing
3 being held in this case?

4 **A** No. I've never been in the extension
5 office.

6 **Q** Okay. His Honor would have at the head of
7 the table and there would have been lots of people
8 sittings in the room?

9 **A** No.

10 **Q** And there were several bystanders who came
11 in, and I just -- so you were not there.

12 You indicated -- you said -- and I didn't
13 really hear this -- about the newspaper hearings and
14 when you read a newspaper article that at the time
15 you would read it, you would agree with something.
16 And I didn't hear what you said what it was you
17 agreed back in the day --

18 **A** When I would read the article -- well,
19 I've probably read two. It was during other trials.
20 And it would be giving the verdict from those
21 trials.

22 **Q** All right.

23 **A** Is what I had read.

24 **Q** And so on the basis of what you read, you
25 kind of agreed that the verdict that this jury gave
26 was guilty or not guilty, you said, Well, that's
27 probably the right verdict?

28 **A** Yes. I read what -- I believed what I
29 read in the paper from the verdict.

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1 Q All right. So that --

2 A I took it to be fact.

3 Q Say again?

4 A I took the article to be fact.

5 Q All right. And you -- and you took it as
6 fact that the verdict in the prior trials was
7 rendered guilty, that that was a just -- that was
8 the correct verdict?

9 A I took it as -- at the time of the trial,
10 if they had found him guilty, I took that as fact.
11 And then if it would have been not guilty, I would
12 have taken that as fact as well.

13 Q All right. But here -- as you sit here
14 today, what you've read about the case in two prior
15 trials in prior years, both -- you take those --
16 those were both guilty verdicts from Winona,
17 Mississippi; is that correct?

18 A I -- yes. I take that the trials were
19 found guilty in previous trials.

20 Q All right. And that, as far as you know,
21 you take that as fact? As you walk in this door,
22 the fact you know there have been two prior guilty
23 verdicts in this matter; correct?

24 A I do know that there have been prior
25 guilty verdicts.

26 Q And that's a fact that you walk into this
27 courtroom with?

28 A Well, I mean, I know that that has
29 happened, yes.

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1 Q And you don't have any opinion today --

2 A I don't have any opinion one way or the
3 other.

4 Q Now, His Honor asked you -- basically,
5 advised you the two sentences that the state
6 legislature has prescribed in this instance for the
7 crime of capital murder. And one of them is life
8 without possibility of parole. And one of them is,
9 if additional factors other than the guilt of the
10 defendant -- the Court will instruct you on -- are
11 proven by the State -- the death penalty. You
12 understand that?

13 A I understand that.

14 Q All right. And now you've said you
15 could -- do you think those are both severe
16 penalties?

17 A Yes. I think both of those are severe.

18 Q All right. And you've indicated you could
19 consider both. Is that correct?

20 A Yes.

21 Q Now, with respect to considering the
22 punishment of whether or not the death penalty
23 should be imposed, considering life in prison
24 without parole, the judge has used the words
25 aggravating circumstances and mitigating
26 circumstances. We've talked about what the State
27 proves as aggravating circumstances.

28 Mitigating circumstances would be anything
29 in any of the evidence before you in a sentencing

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1 phase that you've heard in court or observed about
2 the defendant, not merely -- it could include the
3 circumstances of the crime, and some of the
4 aggravating factors on which the Court could
5 instruct you -- will instruct you could also include
6 circumstances as the crime. Do you understand that?

7 **A** Yes.

8 **Q** All right. And if the circumstances of
9 the crime -- you know, you will have found him
10 guilty of the crime beyond a reasonable doubt, if
11 you would even reach this situation.

12 **A** Okay.

13 **Q** If -- if the circumstances of the crime --
14 strike that. You say -- even if it is a brutal
15 crime which you have found him to have deliberately
16 committed, can you consider life in prison without
17 parole as a sentence?

18 **BY MR. EVANS:** Your Honor, I object,
19 because she is asking her to go ahead and
20 assume and make up her mind at this time that
21 it is a brutal crime. That is one of the
22 factors that we will be arguing, but it would
23 be inappropriate for her to take that into
24 consideration at this point.

25 **BY MS. STEINER:** Your Honor, under
26 *Morgan* --

27 **BY THE COURT:** I'll overrule. I mean,
28 she's being asked if she can consider that,
29 and that's all she's being asked at this

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1 point.

2 **BY MS. STEINER:**

3 **Q** Could you consider life in prison without
4 parole? Could anything mitigate his sentence to
5 life in prison without parole if the State, as
6 Mr. Evans says he will, has persuaded you that the
7 crime -- and again, you will have already found
8 Mr. Flowers guilty beyond a reasonable doubt, and
9 you may, on the basis of the State's argument, agree
10 that it is a brutal crime. Could you -- if that
11 is -- could you consider anything to mitigate that
12 crime and enter -- consider a sentence of life
13 without parole if you also believed those things?

14 **A** Yes.

15 **Q** All right. Now, you understand that
16 mitigation can be his background and his behavior
17 prior to ever being arrested for this crime? Do you
18 have any problems considering factors like that?

19 **A** I mean, if that's brought up in the
20 trial -- I mean, yeah.

21 **Q** All right. And it can also include things
22 that happened after his arrest in the years he spent
23 in jail. Can you consider that, again, in support
24 of mitigation of a sentence of life without parole?

25 **A** Yes.

26 **Q** And if you -- and you understand it's your
27 individual decision?

28 **A** Yes. It's my decision.

29 **Q** And not everybody on the jury has to agree

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1 either on mitigation or sentence?

2 **A** I understand.

3 **BY MS. STEINER:** Thank you.

4 **BY THE COURT:** You may step down,
5 Ms. Davis. And don't -- when you go out --
6 talk about what you discussed in here.

7 **BY JUROR:** Okay. Thank you.

8 (JUROR LEAVES THE COURTROOM)

9 **BY THE COURT:** I want to just note the
10 total inconsistency of the Defense counsel on
11 the previous two jurors. They didn't get
12 asked about mitigation, about whether they
13 could consider mitigating factors or anything
14 like that. And this one did. And there's
15 certainly nothing from Ms. Davis' response
16 that justified anymore questions than
17 Ms. Cunningham and Ms. Burnside was asked.
18 And yet, she was asked a whole bunch more
19 questions.

20 So again, I just want to note the
21 inconsistency of what the defense is doing.
22 And again, point out that, you know,
23 different jurors are being asked different
24 questions, and the only way we could have
25 consistency is to do a group voir dire. But
26 we will proceed as we're going still.

27 **BY MS. STEINER:** If the Court please, as I
28 think -- you know, the advocate -- you know,
29 we do not necessarily need to ask every

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1 juror -- not every juror's responses have
2 been the same. The State has asked some
3 jurors questions, not others --

4 **BY THE COURT:** I'll back up and say your
5 entire purpose of your earlier motion was
6 because some of the jurors were not -- you
7 know, were not asked certain things. And I'm
8 just noting that these two were not -- the
9 previous two were not asked these things that
10 you objected to for the Court not getting
11 into yesterday, which I disagree with you on
12 your statement the Court didn't get into
13 them, anyway. But, you know, I -- as I say,
14 I was just wanting to note that there was
15 some great inconsistency in how it was being
16 done.

17 (To the bailiff) If you'll bring
18 Ms. Bates in next, No. 48.

19 (JUROR NO. 48, PAULA JEAN BATES, ENTERS
20 THE COURTROOM)

21 **BY THE COURT:**

22 **Q** Ms. Bates, if you'll come forward and have
23 a seat down here.

24 Ms. Bates, what we're doing now is asking
25 questions of each individual juror. This is just
26 some questions that we felt was appropriate to ask
27 outside the presence of the other jurors.

28 The first concerns the publicity, if any,
29 you might have heard about this case. Have you any

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1 knowledge about this case or have you heard things
2 about the case?

3 **A** Not at all.

4 **Q** Have you read anything in the paper about
5 the case?

6 **A** No, sir.

7 **Q** I know you lived in Corinth. How long
8 have you been in Montgomery County?

9 **A** Almost three years.

10 **Q** Almost three years? And so you have not
11 heard any talk or read or seen anything about this
12 case?

13 **A** No.

14 **Q** Is that --

15 **A** No, sir.

16 **Q** And so as you sit here today, you don't
17 know any facts at all?

18 **A** No, sir.

19 **Q** The next issue involves the possibility of
20 a sentencing phase of the trial. We will only get
21 to a sentencing phase if the State of Mississippi
22 proves Mr. Flowers guilty beyond a reasonable doubt.
23 We would not get into a sentencing phase if he was
24 found not guilty. So this would only be if he was
25 found guilty.

26 If he were to be found guilty, we would
27 then have a sentencing phase where the State is
28 seeking the death penalty. They would put on
29 aggravating factors, which would be facts that they

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1 believe would justify the imposition of the death
2 penalty.

3 Then, the defendant would then be allowed
4 and would put on proof called mitigating factors,
5 which would show reasons why the death penalty in
6 his view would not be the appropriate sentence.

7 After that, the Court will instruct you on
8 the law. And I want to know if you could consider
9 the death penalty as a sentencing option if the
10 facts justified it and the law allowed it?

11 A Yes, sir, I can.

12 Q You can consider it?

13 A Absolutely.

14 Q Also, there -- if he was not sentenced to
15 death, life in prison without parole would be the
16 sentence. Would you also consider that as a
17 sentencing option?

18 A Yes, sir.

19 Q So would you listen to all the facts and,
20 after deliberation with your fellow jurors, then
21 make a determination as to what the appropriate
22 sentence should be if it got to the point where you
23 had -- were called upon to do that?

24 A Yes, sir.

25 BY THE COURT: Mr. Evans, any questions?

26 BY MR. EVANS: No questions, Your Honor.

27 BY MS. STEINER:

28 Q Good afternoon, Ms. Bates. You've
29 indicated that you've only been here for just shy of

INDIVIDUAL VOIR DIRE

1 three years?

2 A Yes, ma'am.

3 Q Approximately, two years ago, there was a
4 prior proceeding in this case here at the same
5 courthouse. Do you recall -- do you read the Winona
6 Times?

7 A Not really. We don't even get it.

8 Q Okay. Do you have a newspaper you read?

9 A No, ma'am.

10 Q Do you use the Internet?

11 A No, ma'am.

12 Q All right. Your -- your husband is a
13 minister. Does he have a church here in Winona?

14 A No, ma'am.

15 Q All right. Is he retired or --

16 A No. We're somewhat missionaries.

17 Q I see.

18 A We go and come.

19 Q I see. Do you spend -- and I believe you
20 have run a children's shelter and children's home in
21 Corinth, Mississippi?

22 A I was assistant director at the children's
23 home in Corinth, Mississippi for four years.

24 Q And so -- in Arkansas?

25 A No. Mississippi. Excuse me. Corinth,
26 Mississippi.

27 Q All right. And is that through your
28 missionary work or was that a civilian job --

29 A No, ma'am. That was a county-run shelter

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1 for the State of Mississippi.

2 Q All right. And did you work with law
3 enforcement people in the course of running the
4 children's shelter?

5 A Not much. More Department of Human
6 Services.

7 Q All right. If the child in the shelter
8 was either the victim of -- did you deal with
9 children who were being sheltered because of their
10 own delinquency or children --

11 A Everything. We had extreme abuse,
12 neglect, rape, you know, everything that you can
13 imagine.

14 Q And did you deal -- when law enforcement
15 were investigating a case of abuse of a child --

16 A No.

17 Q -- did you have to interface with them?

18 A No.

19 Q All right. Now, His Honor asked you
20 about -- do you agree that -- well, the State of
21 Mississippi -- His Honor has -- the legislature of
22 the State of Mississippi provides two sentences
23 equally appropriate for -- for the crime of capital
24 murder should a defendant be convicted.

25 A Uh-huh.

26 Q Life in prison without parole and if, and
27 only if, the State convenes the penalty proceeding
28 and presents evidence in aggravation, the sentence
29 of death. Do you understand that?

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1 **A** Yes, ma'am.

2 **Q** Do you consider both of those serious
3 punishments?

4 **A** Yes, ma'am.

5 **Q** Do you -- when you were answering His
6 Honor's questions and he asked if you could consider
7 the death penalty, you said absolutely.

8 **A** Yes, ma'am.

9 **Q** And when he asked if you could consider
10 the other equally possible sentence, life in prison
11 without parole, I believe you answered yes, sir.
12 That was a less vehement answer.

13 **A** Uh-huh.

14 **Q** Would it be fair to say that with a
15 capital murder that you found someone guilty of --
16 if you were getting to a penalty phase, it means Mr.
17 Flowers has been found guilty of four capital
18 murders. The State may be arguing they were brutal,
19 and there -- you will have concluded beyond a
20 reasonable doubt that he did that. Is that one of
21 the -- I mean -- is -- okay -- and that -- and they
22 will be asking you to consider the death penalty. I
23 assume you will consider it, under --

24 **A** Yes, sir -- yes, ma'am.

25 **Q** -- the circumstances.

26 Now, the sentence of life in prison
27 without parole is a sentence that -- it's not merely
28 considering it. You will be guided. The Court will
29 instruct you that you must consider evidence in

INDIVIDUAL VOIR DIRE

1 mitigation of the sentence.

2 **A** I understand.

3 **Q** And do you understand that that evidence
4 may have nothing to do with the crime itself?

5 **A** Yes, ma'am.

6 **Q** All right. And it will have -- it might
7 have to do with things about the defendant prior to
8 his arrest?

9 **A** Uh-huh.

10 **Q** The people who knew him. The activities
11 he was involved in.

12 **A** (Nodding head).

13 **Q** And it could even include evidence of
14 matters since his arrest. Can you consider those in
15 mitigation of a crime of which you have already
16 concluded he is guilty beyond a reasonable doubt;
17 and if you have agreed with the State's
18 characterization of that crime -- it was a brutal
19 crime -- could you consider other factors unrelated
20 to the crime?

21 **A** Yes, ma'am. I will be open to.

22 **Q** Okay. And so that is no -- you're not
23 telling -- when you said absolutely, I -- I got the
24 sense that you really thought that was the better
25 penalty for a brutal crime?

26 **A** I do.

27 **Q** All right. And in fact, if he's -- if he
28 is convicted and found guilty beyond a reasonable
29 doubt of the crime of capital murder, you will walk

INDIVIDUAL VOIR DIRE

1 into that penalty phase already believing that the
2 better punishment would be the death penalty. Is
3 that correct?

4 **A** Yes, ma'am, probably so.

5 **BY THE COURT:** Okay. You may step down,
6 Ms. Bates. And when you go back out there,
7 don't talk about it with anyone what you've
8 discussed in here.

9 **BY JUROR:** All right.

10 **BY MR. EVANS:** Your Honor, before we go
11 any further --

12 **BY THE COURT:** Let Ms. Bates step out
13 first.

14 (JUROR LEAVES THE COURTROOM)

15 **BY MR. EVANS:** Judge, before we go any
16 further, I've got a case I would like for the
17 Court to review on the question I was asking
18 a while ago, if you don't mind.

19 **BY THE COURT:** I'll take it up.

20 Also, the bailiff passed me a note,
21 and I meant to note it when the person
22 finally showed in, but No. 95 finally did
23 drag in here at 9:25.

24 **BY MR. EVANS:** Yes, sir.

25 **BY THE COURT:** So Juror 95 did finally --
26 two days in row that Juror 95 has been
27 extremely late.

28 Let's recess for a few minutes.

29 (FOLLOWING A BRIEF RECESS, PROCEEDINGS

CARPENTER - DIRECT

WERE CONTINUED IN OPEN COURT, OUTSIDE THE
HEARING AND PRESENCE OF THE PROSPECTIVE
JURORS, TO-WIT:)

BY THE COURT: I believe No. 50

Mr. Lester --

BY MR. EVANS: Your Honor, before we do
that, I have a person here that I would like
to put on the stand in response to some
questions that I asked one of the jurors, to
make a record, if I may. It's a Ms. Crystal
Carpenter.

BY THE COURT: You may. Well, where is
she?

BY MR. HOPPER: I'll get her.

BY THE COURT: Is this Ms. Carpenter?

BY MR. EVANS: Yes, sir. And she may need
to be sworn.

(WITNESS IS SWORN BY THE COURT)

BY MR. EVANS: If you would, come around
and have a seat up here, Ms. Carpenter.

BY MR. CARTER: What's her name, again?
Crystal Carpenter?

BY THE COURT: Correct. I mean, I'll have
her state her name for the record. State
your name for the record, please.

BY THE WITNESS: Crystal Carpenter.

DIRECT EXAMINATION

BY MR. EVANS:

Q Ms. Carpenter, where do you work?

CARPENTER - DIRECT

1 **A** Advanced Distributor Products in Grenada.

2 **Q** And is that known as ADP?

3 **A** It is.

4 **Q** How long have you worked there?

5 **A** Almost 18 years.

6 **Q** And what is your job title there?

7 **A** Quality control clerk.

8 **Q** You work in the office?

9 **A** I do.

10 **Q** Did somebody from my office contact you in
11 relationship to where two individuals worked at ADP?

12 **A** They did. John Johnson did this morning.

13 **Q** All right. Do you know a person by the
14 name of Tashia Renee Small Cunningham?

15 **A** I do.

16 **Q** Where does she work?

17 **A** On the Raw 2 line.

18 **Q** The Raw 2 line?

19 **A** Uh-huh.

20 **Q** Do you know a person by the name of
21 Sherita Baskin?

22 **A** I do.

23 **Q** Where does she work?

24 **A** On the Raw 2 line.

25 **Q** How close in relationship to each other is
26 their work stations?

27 **A** Probably about nine or 10 inches.

28 **Q** Nine or 10 inches?

29 **A** Uh-huh.

CARPENTER - DIRECT

1 Q So they work side by side?

2 A They do. Like I said, some days, you
3 know, if somebody's not there, they might have to
4 move up and down. But that's their regular jobs.

5 Q And do they have to converse with each
6 other each day during -- because of their work?

7 A Yes, sir, they do.

8 Q And explain that if you would, briefly.

9 A Well, I mean, we all have to communicate
10 together up there. But, I mean, with them working
11 side by side, you know, if there's a problem, like,
12 with a label or something like that, they have to
13 communicate with one another.

14 BY MR. EVANS: Nothing further, Your
15 Honor.

16 BY THE COURT: Anything?

17 BY MR. CARTER: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. CARTER:

20 Q How long have they been working side by
21 side?

22 A Oh, however long they've been there. I'm
23 sure most of them's been there probably about at
24 least seven or eight years at the most or maybe a
25 little bit more.

26 Q And do they always work on the same
27 project or task, each one of them? I don't know how
28 the job operates, but I'm assuming -- it's an
29 assembly line. Is that what you're saying?

CROSS - CARPENTER

1 A It is.

2 Q Is there some product coming down the
3 line?

4 A It is the same product every day.

5 Q Each has to do something to it?

6 A Right.

7 Q And you've observed them -- personally
8 observed them on a daily basis?

9 A I do. Like I said, unless, like somebody
10 might be out and, you know, they might have to move
11 another one down the line or something, but that's
12 where their regular jobs are. Because I have to go
13 by there every day.

14 Q Are there records kept as to the
15 particular location of every person?

16 A It is.

17 Q On every day?

18 A It is.

19 Q Do you have those with you?

20 A No. It will be found in human resource.

21 Q Can you provide them? Can you get them
22 and provide them to substantiate your testimony?

23 A I can.

24 Q And would you do that for us?

25 A I will.

26 Q Okay. And when could we -- could that be
27 available?

28 A I'll have to contact human resources as
29 soon as I walk out of here.

CROSS - CARPENTER

1 **Q** Okay. And so your testimony is -- how
2 many people -- what did you call it -- Raw 2?

3 **A** Raw 2 line.

4 **Q** Raw 2 line. How many persons are on that
5 line?

6 **A** It's probably anywhere from, I'd say, 25
7 to 35.

8 **Q** Okay. And each person is assigned like a
9 particular spot that they have to be in? Or can
10 they be at the different place on the line?

11 **A** No. They are assigned to a particular
12 spot. Like I said, if somebody is out and they're
13 running, maybe, a smaller unit or something, then
14 they can move the person down, you know, on the up
15 flow or the down flow.

16 **Q** Okay. And you are sure that as of this
17 Monday, or last Friday, they were, in fact, working
18 next to each other?

19 **A** Right.

20 **Q** Okay. And the records reflect -- the
21 record will reflect that just as your personal
22 having observed them doing that?

23 **A** Right.

24 **BY MR. CARTER:** Okay. One moment.

25 (PAUSE)

26 **BY MR. CARTER:** No further questions, Your
27 Honor, except that we object to the district
28 attorney's office going down to -- well, I'll
29 have to do it without the --

OBJECTION - JURORS OUT

1 **BY THE COURT:** Ms. Carpenter, you may step
2 down, and you're free to go.

3 (WITNESS LEAVES THE COURTROOM)

4 **BY MR. CARTER:** Your Honor, I just want to
5 go on the record objecting to the district
6 attorney's office going to people's jobs and
7 contacting their supervisors and -- during
8 the voir dire, before voir dire is even
9 concluded. And with the intention of trying
10 to get information out in the street, out in
11 the public that certain witnesses are
12 potentially lying. And we further --

13 **BY THE COURT:** Juror, not witness. It's
14 juror.

15 **BY MR. CARTER:** Juror. I'm sorry.
16 Particular jurors are lying. And we further
17 object to any ruling being made as to whether
18 or not this juror is lying until we see some
19 records made in the ordinary course of
20 business to substantiate her personal
21 testimony.

22 **BY MR. EVANS:** Your Honor, I had received
23 evidence or I had received communications
24 that this juror worked next to Ms. Baskin. I
25 asked her in front of the whole panel if she
26 worked next to her. She denied it, said she
27 worked on the far end of the line. To make
28 sure there was no misunderstanding, I
29 clarified that on individual voir dire and

OBJECTION - JURORS OUT

1 asked her if she worked next to her. She
2 flat denied it. Said that she did not. I
3 think it's my obligation to the Court instead
4 of me just asserting that I think she works
5 to her -- next to her to put on proof if that
6 is, in fact, true, which I elicited to do.

7 This juror was not contacted. She
8 had no knowledge that they were contacted. I
9 did not have the place contacted for any
10 purpose other than to ask one question, where
11 did they work in relationship to each other.
12 I would ask that this juror be brought back
13 into Court and asked again if she understands
14 the oath and if she works next to her.

15 **BY THE COURT:** I think this juror's
16 already said under oath what her response is,
17 and I don't see any need to go further on
18 this issue at this time.

19 **BY MR. EVANS:** I would ask that at this
20 point she be struck for cause.

21 **BY MS. STEINER:** Your Honor, two
22 observations. One, in respect to my prior
23 concerns expressed by the district attorney
24 having repeatedly raised in the public view
25 the specter of the D.A.'s office
26 investigating and charging with perjury on
27 the basis of there were two jurors charged in
28 open court the last time.

29 I believe this is part and parcel of

OBJECTION - JURORS OUT

1 that same effort, and we believe it is
2 improper for the reasons said and further
3 cited in support of our prior motions that
4 the State be precluded from engaging in any
5 sort of death qualification of jurors and to
6 strike the death penalty because the
7 heightened scrutiny and standards applicable
8 in the death penalty case require, for all
9 the reasons Mr. Carter says, you know,
10 scrupulous attention to lack of misconduct
11 and I believe -- interference with the
12 process by the district attorney, and I
13 believe this is -- this sort of thing is in
14 support of that prior motion as well.

15 **BY MR. EVANS:** Your Honor, and obviously,
16 the Defense doesn't want the jurors to tell
17 the truth and to find out what the truth is,
18 but the State wants truthful answers from
19 every juror that is here.

20 **BY MR. CARTER:** So do we.

21 **BY THE COURT:** Well, voir dire, I think,
22 means to speak the truth. And if I've got
23 jurors that aren't speaking the truth during
24 voir dire, then I think it's appropriate to
25 come forward and present proof of that.
26 Whether now is the time to do it or whether
27 we should have waited till conclusion of voir
28 dire is, you know, subject to question.

29 But if either of you have notion that

OBJECTION - JURORS OUT

1 somebody has not been truthful, then I
2 will -- you know, I think you've got a
3 responsibility as an officer of the court to
4 come forward with that.

5 I don't think at this time that's
6 grounds for cause. I think certainly, you
7 know, the State can preempt orally. But I
8 mean, we've got the sworn testimony of
9 Ms. Cunningham, and we've got Ms. Carpenter's
10 sworn testimony. And at this point -- I
11 mean, I can't have collateral issues relating
12 to all the jurors. But as I say, I think
13 that would be grounds for a preemptory strike
14 if the State chooses to exercise one at some
15 point.

16 (To the bailiff) Bobby Lester.

17 (JUROR NO. 50, BOBBY LESTER, ENTERS THE
18 COURTROOM)

BY THE COURT:

19 **Q** Mr. Lester, if you'll come forward and
20 have a seat.

21 Mr. Lester, we're now asking questions of
22 each juror outside the presence of the other jurors.
23 And I believe from previous statements you've made
24 that you maybe have some knowledge about the case or
25 have heard about the case --

26 **A** Yes, sir.

27 **Q** -- so if you would now, just tell us
28 what -- how you came to hear about the case and
29

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1 things like that.

2 **A** I was working in Winona at the Bank of
3 Winona when the incident occurred. Shortly -- I'd
4 say minutes after it happened, we had -- people
5 began to come into the bank, people crying, people
6 telling us that there had been an incident down
7 there, that Ms. Tardy had been murdered. And, of
8 course, that's where it all began. And community
9 talk and the local newspaper publications, just --
10 that's basically where I've heard about it.

11 **Q** And have those things caused you to form
12 an opinion as to the guilt or innocence of
13 Mr. Flowers?

14 **A** We have been talking about this now for 14
15 years and hearing about it, and the cases have gone
16 on and on. I suppose, you know, if I said that I
17 did not have an opinion of some kind, I'd be being
18 untruthful to you. But if the question is if I --
19 am I stuck on an opinion? My opinion is just from
20 what I've heard people say. I've never heard any --
21 any facts, I guess.

22 **Q** Well, could you, if you were called as a
23 juror, lay any opinion aside that you might have
24 formed and base your decision only on the evidence
25 and on nothing else but evidence presented here in
26 this court?

27 **A** Yes, sir, I could.

28 **Q** And could you lay aside anything that you
29 might have read in the paper, heard about, gossip in

INDIVIDUAL VOIR DIRE

1 the street and anything else and base your decision
2 just on the evidence in court?

3 **A** Yes, sir, I could.

4 **Q** If you had read something in the past or
5 heard some gossip out in town about the case but
6 that's not proven in court, would that come into
7 your play or your consideration at all when
8 deliberating?

9 **A** No, sir.

10 **Q** Also, the situation is if the State of
11 Mississippi obtains a conviction on the first part
12 of the case, there would be a second phase. The
13 first phase is guilt or innocence is decided. If
14 he's found not guilty, the case ceases. It's over.
15 If he was found guilty, then we would go onto a
16 second phase. It's called the sentencing phase. At
17 that time, the jury would be called upon to make a
18 decision as to the appropriate sentence. The
19 appropriate sentence could be the death penalty or
20 life without parole. The State will be putting on
21 aggravating factors, which would show in the State's
22 mind why the death penalty would be appropriate.

23 The Defense would put on mitigating
24 factors, which would be in their minds reasons why
25 the death penalty should not be imposed or would not
26 be appropriate.

27 Could you consider -- would you listen to
28 the evidence and all the facts and the law given to
29 you by the Court and would you consider both of

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

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1 these options?

2 A Yes, sir.

3 Q And would you, before you hear anything,
4 be leaning toward either option?

5 A No, sir.

6 Q So you're telling me that you will keep an
7 open mind and consider both options equally prior to
8 hearing any testimony?

9 A Yes, I would.

10 BY THE COURT: Mr. Evans?

11 BY MR. EVANS: No questions.

12 BY MS. STEINER:

13 Q Good morning, Mr. Lester.

14 A Morning.

15 Q I believe in response to His Honor's
16 question, you said you were working at -- this is
17 Bank of Winona?

18 A Yes, ma'am.

19 Q How -- how far from the Tardy Furniture
20 Store was Bank of Winona?

21 A Couple of blocks.

22 Q All right.

23 A Two or three blocks.

24 Q All right. But within a few minutes of
25 the incident happening there --

26 A Yes.

27 Q -- people who were so personally affected
28 by the deaths of one or more of these people, that
29 they were in tears --

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1 A Yes.

2 Q -- were speaking to you personally about
3 those --

4 A To whoever would listen to them.

5 Q Right. And you were among them?

6 A Yes.

7 Q This broke your heart, I'm sure, as it did
8 these peoples.

9 A It shocked me.

10 Q And I believe you said you'd been friends
11 for years with Ms. Rigby's husband. Is that
12 correct?

13 A Yes.

14 Q So you felt his pain. I would imagine, Oh
15 my God, I want to be there to pray with Bennie when
16 he hears this?

17 A I don't know that I felt that exactly.
18 But yes, I was concerned for all the families.

19 Q All right. And you have that knowledge
20 from the minute of the pain of your friend
21 Mr. Bennie Rigby?

22 A Uh-huh.

23 Q Are you in his church?

24 A No.

25 Q Do you participate with his singing in any
26 of his events?

27 A No. I have sung at events that he has
28 sung at, but I've never sung with him that I can
29 recall.

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1 Q Would that include the event in Kosciusko
2 as a fund raiser for the reward fund in this case?
3 Did you perform at that one?

4 A For what?

5 Q A few months -- a month or two after this,
6 there was a fund raiser which Mr. Rigby's gospel
7 group performed, raising funds for a reward --

8 A Oh, no. No.

9 Q -- fund to assist in this investigation?

10 A No.

11 Q Did you attend that?

12 A No.

13 Q You didn't perform that? Now, I believe
14 you've said you've known the Tardy family your whole
15 life. That would include Ms. Bertha.

16 A Yes. Knew more Roxanne. She was a year
17 older than I was in the school.

18 Q All right. And you graduated with her
19 from school?

20 A No. I graduated from another school, but
21 still in town.

22 Q All right. Was that Mr. Tom Tardy? Was
23 he at your school? I'm trying to figure out who you
24 graduated with.

25 A I'm a year younger than Roxanne.

26 Q Okay.

27 A I've never met Mr. Tom Tardy.

28 Q Okay. And was Bank of Winona where
29 Tardy's Furniture did its banking?

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1 **A** Yes.

2 **Q** And that Sherry -- Sharon Martin was the
3 window clerk?

4 **A** That name --

5 **Q** Bailey, I'm sorry. Sherry Bailey --
6 Sharon Bailey was the window clerk that morning.

7 **A** No. They must have had an account at
8 another bank as well.

9 **Q** All right.

10 **A** Because she's never worked for us.

11 **Q** All right. And did you attend Ms. Rigby's
12 funeral?

13 **A** No, I did not.

14 **Q** All right. Did you have bank employees
15 who you gave leave to, to attend Ms. Rigby's
16 funeral?

17 **A** I don't recall. I feel like probably so,
18 yes.

19 **Q** Same for Ms. Tardy's funeral and
20 Mr. Golden's funeral?

21 **A** Like I -- I don't -- I do not recall that,
22 but it would be possible that I did, yes.

23 **Q** All right. And that was certainly
24 something after your experience that day, you were
25 not going to say, "Sorry, I need you --

26 **BY MR. EVANS:** Your Honor, I object. That
27 is not proper, unless she can show there is
28 some connection with this defendant. It's
29 nothing improper about letting employees go

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1 to funerals.

2 **BY MS. STEINER:** Your Honor, I'm asking
3 only about the funerals of the victims and
4 his role with respect to facilitating
5 attendance.

6 **BY THE COURT:** Well, I'll -- ask it, but
7 I'll ask you to get to the issues that were
8 the purpose of individual voir dire,
9 because -- I'll let you wrap this line up,
10 but move on to that, because we had the
11 opportunity when we were group voir diring to
12 ask these questions.

13 **BY MS. STEINER:** Your Honor, in light of
14 the Court's admonishment that we were not to
15 go into knowledge about the events and since
16 mitigation and victim impact testimony are
17 part of the events that will be considered,
18 we felt that these were the things that the
19 Court wished us to reserve for individual
20 voir dire. And that is why we were pursuing
21 them and intend to continue pursuing them --

22 **BY THE COURT:** I told you to wrap it up,
23 and that he could answer this question.

24 **BY MS. STEINER:**

25 **Q** Now, Mr. Lester, you did testify that you
26 have formed an opinion on the basis of your 14 years
27 of hearing about this case; is that correct?

28 **A** Yes.

29 **Q** You've also testified that people -- it's

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1 been dragging -- we want it over with. Is that
2 correct?

3 **A** I'm sorry?

4 **Q** Didn't you say something about the case
5 has gone on and on. I believe you said that in
6 response --

7 **A** I may have said that.

8 **Q** All right. So you would like it to be
9 over with. Is that correct?

10 **A** I would like for it to be over with, yes.

11 **Q** All right. And if you serve as a juror,
12 that desire is going to walk into the jury room with
13 you?

14 **BY MR. EVANS:** Your Honor, I object. That
15 has nothing to do with whether -- I think
16 everybody wants it to be over with. But that
17 has nothing to do with whether this juror can
18 be fair and impartial and base his decision
19 on the evidence. It's irrelevant.

20 **BY THE COURT:** I sustain the objection. I
21 mean, you can rephrase, if you would like,
22 but I....

23 **BY MS. STEINER:**

24 **Q** If you are deliberating on this jury, your
25 desire to have -- shared with, quote, everyone as
26 Mr. Evans has said, to get this over with, will walk
27 in that jury room with you; is that correct?

28 **A** To find justice and to -- to bring an end
29 to -- to this for everyone, yes.

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1 Q So if you're voting one way and 11 of your
2 fellows are voting another way, you know that if you
3 keep holding out on your one vote, it won't be over.
4 Is that correct?

5 A I realize that.

6 Q On guilt? Now -- and your desire to have
7 it over with will be there when you're deciding
8 whether to change your vote? Is that --

9 A My desire to have it over with has nothing
10 to do with my desire to make sure that justice is
11 done in this case.

12 Q And you have an opinion as to what justice
13 would be in this case; is that correct?

14 A I have no idea, because I haven't heard
15 the facts other than what I've -- just hearsay on
16 the street.

17 Q I thought you told His Honor both when we
18 had everybody else here --

19 A Uh-huh.

20 Q -- and then this morning that you had
21 formed an opinion?

22 A I had formed an opinion, based on the
23 hearsay I've heard on the street.

24 Q And as you walk into that jury room,
25 before you've heard any evidence, you -- that
26 opinion is one way or the other -- I'm not going to
27 ask you what it is -- and right now, you believe
28 that justice would be done if -- as far as you know,
29 nothing changes, in the way that your opinion is

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1 now; is that correct?

2 **A** The judge asked me if I could lay my
3 opinion aside and listen to facts and make what I
4 thought was a fair decision based on the facts that
5 I hear, and I can.

6 **Q** I'm not asking you that question --

7 **BY MR. EVANS:** Your Honor, he is answering
8 her question.

9 **BY MS. STEINER:**

10 **Q** I am simply asking, as you sit here today,
11 you have an opinion, is that correct, about what
12 would be justice in this case?

13 **A** I can't say about what would be justice in
14 this case. I have an opinion on -- or maybe a --
15 over time you develop your own idea of what may have
16 happened.

17 **Q** And you sat in group voir dire and several
18 people with opinions weren't here when -- when you
19 came back on Monday morning --

20 **A** Uh-huh.

21 **Q** -- and when you came back on Tuesday
22 morning --

23 **A** Uh-huh.

24 **Q** -- and you, like them, share an opinion --
25 have an opinion as you sit here now.

26 **A** I have an opinion.

27 **Q** All right. Now, His Honor began -- His
28 Honor inquired about your ability to consider the
29 two punishments for capital murder established by

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1 the State of Mississippi.

2 **A** Yes, ma'am.

3 **Q** Now, on your jury questionnaire, you
4 checked the box that said you strongly favored the
5 death penalty?

6 **A** For crimes that merit it.

7 **Q** I -- well, absolutely. You can't impose
8 it for crimes that don't.

9 **BY MR. EVANS:** Your Honor, I object to
10 these crazy questions. He's answered it. It
11 did not call for any extra comments.

12 **BY MS. STEINER:**

13 **Q** His Honor will -- His Honor will be and
14 the State will ask for and we will anticipate that
15 the jury will be instructed that one of the two
16 sentences for -- that this jury may consider the
17 punishment of death -- the death penalty and the
18 punishment of life in prison without parole.

19 Now, I believe when His Honor said as you
20 sit here, you don't favor one over the other; is
21 that -- was that your answer?

22 **A** Favor -- I don't favor one over the other?

23 **Q** Yes. Do you favor the -- one of those
24 punishments, as you sit here now, over the other --
25 let's assume the person has been -- you have
26 found --

27 **BY MR. EVANS:** Again, Your Honor, that is
28 inappropriate questioning. It is not the
29 proper question.

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1 **BY THE COURT:** I don't think hypotheticals
2 are appropriate during voir dire, and that's
3 apparently what you're --

4 **BY MS. STEINER:** Well, allow me to
5 rephrase.

6 **BY MS. STEINER:**

7 **Q** As His Honor said, we don't even get to
8 considering what the punishment has been until a
9 jury has determined unanimously, you sitting as
10 juror, will have to determine that Curtis Flowers
11 was guilty of at least one -- and in this case, you
12 could consider up to four separate capital murders;
13 you understand that?

14 **A** Yes.

15 **Q** You could have -- you wouldn't be
16 considering penalty unless and until you had made
17 that finding.

18 **A** Yes.

19 **Q** You will have made that finding, and you
20 will have arguments from the State that any capital
21 murders of which you have found beyond a reasonable
22 doubt Mr. Flowers is guilty of were brutal and you
23 have -- and you will probably hear testimony in
24 addition from people who were personally affected,
25 your friend, among others, Bennie Rigby about his
26 grief and the loss and his anger.

27 Now, at that point, you found Mr. Flowers
28 guilty, deliberately committing what the State would
29 characterize as four brutal murders. You may have

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1 heard your friend Bennie Rigby --

2 **BY MR. EVANS:** Your Honor, I object.

3 She's trying to tell him what he is going to
4 hear and have to rely on. He is going to
5 have to listen to the evidence that comes out
6 in court, listen to the Court's instructions
7 and make his determination of what's
8 appropriate at that time based upon that.
9 And for her to sit up here and try to argue
10 to him what he's going to hear is completely
11 inappropriate.

12 **BY MS. STEINER:** If the Court please --

13 **BY MR. CARTER:** That's an invalid
14 objection Mr. Evans is making. And the State
15 is trying to instruct him --

16 **BY THE COURT:** I think Ms. Steiner is
17 asking the questions, and she can argue the
18 objection. It's appropriate for her to make
19 the argument, not you. And I'm sure she can
20 speak for herself.

21 **BY MS. STEINER:** Your Honor, I agree with
22 Mr. Carter and was opening my mouth to say I
23 believe that is an invalid objection, as the
24 State well knows. This is the evidence that
25 will be faced, and we are entitled under
26 *Morgan* to voir dire about how a juror will
27 deal with mitigation in light of that, and
28 these are proper questions, and --

29 **BY THE COURT:** I'll allow you to ask

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1 questions. And I'm not -- and this is your
2 style of questioning -- and I don't mean
3 to -- I'm not admonishing you, but your
4 questions sometimes get so long that I get
5 confused, and I don't -- and I'm not saying
6 that to offend you, but --

7 **BY MS. STEINER:** So do I, Your Honor.

8 **BY THE COURT:** And you know, if you could
9 maybe shorten the length of them, it might be
10 helpful sometimes to a witness because, as I
11 say, I get confused sometimes.

12 **BY MS. STEINER:** Your Honor, I have my
13 great-great-grandfather, my great grandfather
14 and my grandfather were all preachers, and
15 they all wrote sermons, and their sentences
16 were even longer. I believe I inherited it.
17 I'm sorry. Let me step back.

18 **BY MS. STEINER:**

19 **Q** You will be in the jury room. If you are
20 even asked to consider these two penalties,
21 Mr. Flowers -- you will have found him guilty of at
22 least one capital murder. You understand that?

23 **A** (Nodding head).

24 **Q** You understand that you will, at the point
25 at which you begin thinking about what -- which of
26 those two sentences is appropriate have heard --
27 well, you will have heard aggravating factors
28 relating to the crime that -- one of which will
29 likely be a particularly brutal and heinous crime.

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1 **A** Yes.

2 **Q** You will have heard your friend, Bennie
3 Rigby, testify probably -- they intend -- they put
4 him as a witness here -- probably about the grief
5 and pain he and his children have suffered. You may
6 even hear from some of his boys, who I think you
7 know. Is that correct? You know who his boys --
8 you know --

9 **A** I know who they are.

10 **Q** You raised your hand --

11 **A** I know who they are.

12 **Q** -- that you were acquainted with them. At
13 that point, after you've heard all of that,
14 Mr. Flowers will stand up and put on matters in
15 mitigation of sentence, asking you to consider the
16 life sentence without parole. And they may have
17 nothing to do with the crime. Do you understand
18 that?

19 **A** Yes.

20 **Q** At that point, isn't it fair to say you
21 would think the death penalty was justice in this
22 case?

23 **BY MR. EVANS:** Again, I object. She's
24 trying to put forth part of the facts that
25 are there and get him to make a decision on
26 what sentence he would give at this point and
27 that is inappropriate.

28 **BY MS. STEINER:** I am not asking him what
29 sentence he would give. I'm asking what

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1 would be first in his mind --

2 **BY MR. EVANS:** She's asking for him to
3 pledge a verdict, which is improper.

4 **BY MS. STEINER:** I'm asking him whether he
5 could -- let me rephrase that.

6 **BY MS. STEINER:**

7 **Q** At that point, would your mind be open to
8 fully consider facts about Mr. Flowers' family and
9 his childhood there, how he was family man?

10 **A** Yes.

11 **Q** Your mind -- you could consider those?

12 **A** I would consider that.

13 **Q** You would not prefer the death penalty at
14 that point?

15 **A** No.

16 **Q** Would you prefer life -- would -- would --
17 you would not be -- you would have an open mind with
18 respect to life without parole?

19 **A** I would have an open mind.

20 **Q** Could you vote for life without parole
21 under those circumstances?

22 **BY MR. EVANS:** Your Honor, again, unless
23 the Court is going to allow us to go into
24 this line of questioning, it's improper for
25 the Defense to go into it.

26 **BY MS. STEINER:** I thought you had
27 submitted the Court a --

28 **BY MR. EVANS:** The Court hasn't ruled on
29 it yet. I don't know what the ruling is.

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1 **BY THE COURT:** Well, I think he's answered
2 the question already.

3 **BY MS. STEINER:** Thank you, Mr. Lester.

4 **BY THE COURT:** Mr. Lester, you may step
5 down. And when you go back out, don't talk
6 to anybody about what you've been asked in
7 here.

8 (JUROR LEAVES THE COURTROOM)

9 **BY THE COURT:** The next one will be
10 Mr. Huggins.

11 (JUROR NO. 51, BURRELL HUGGINS, ENTERS
12 THE COURTROOM)

13 **BY THE COURT:**

14 **Q** Come forward, Mr. Huggins, and have a seat
15 down here. Mr. Huggins, if you'll have a seat,
16 please.

17 There are questions we're asking
18 individually outside the presence of other jurors
19 because we just felt that was the appropriate
20 procedure to follow.

21 First concerns knowledge about the case.
22 Have you heard things about this case or facts about
23 it or read things about it or seen it on T.V.?

24 **A** On T.V., since '96. I mean, like I told
25 the lawyer the other day, I work construction.

26 **Q** And you're out most of the time from what
27 you said previously.

28 **A** 47 years, that's the total. My wife had
29 to raise the children. I've heard about it on the

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1 news and what have you. But like I said, as far as
2 knowing Mr. Flowers or the people involved, I don't
3 really know them.

4 Q And are -- can you lay aside anything you
5 might have heard and base your decision only on the
6 evidence as presented here in court?

7 A Sure, I can.

8 Q And do you have any opinion already about
9 the case?

10 A No, sir. Not really, no. I can be
11 honest. I was brought up to be honest.

12 Q Well, that's what we want, Mr. Huggins,
13 and I appreciate that.

14 The next question concerns the possibility
15 of the sentencing phase. What happens in a capital
16 murder is if Mr. Flowers is found not guilty,
17 there's not a second phase. If he were to be found
18 guilty of capital murder, then we would go to a
19 second phase, which would be the sentencing phase.
20 At that time, the jury would decide what the
21 appropriate punishment would be. The sentencing
22 options would be life in prison without parole or
23 the death penalty.

24 Now, in support of the death penalty, the
25 Court anticipates that the State of Mississippi
26 would put on what's called aggravating factors,
27 which would be factors they believe would justify
28 the imposition of the death penalty.

29 And Mr. Flowers -- the Court anticipates

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1 his attorneys would put on mitigating facts, which
2 would be reasons why, in their view, the death
3 penalty would not be appropriate. So if the facts
4 justified it and the law allowed it, could you
5 consider the imposition of the death penalty?

6 **A** Yes, sir.

7 **Q** And if the facts justified it and the law
8 allowed it, could you -- and would you consider life
9 in prison without parole?

10 **A** I would.

11 **Q** And as you sit here today, will you
12 consider both of those options?

13 **A** Yeah, I'd consider them.

14 **Q** And you do not have any -- do you have any
15 fixed opinion right now --

16 **A** No, sir.

17 **Q** -- on what the sentence should be?

18 **A** No, sir. I haven't heard any of the
19 evidence. I don't know.

20 **BY THE COURT:** Okay. Well, thank you,
21 Mr. Huggins.

22 Mr. Evans, have you got any
23 questions?

24 **BY MR. EVANS:** Very briefly, Your Honor.

25 **BY MR. EVANS:**

26 **Q** Good morning, Mr. Huggins.

27 You understand that there can be two
28 phases to the trial. The first phase deals strictly
29 with guilt. And in the first phase, you shouldn't

INDIVIDUAL VOIR DIRE

1 even consider what the penalty should be. Do you
2 understand that?

3 **A** I understand that.

4 **Q** And the only time you can consider and
5 think about what the appropriate penalty would be,
6 would be after both sides put on all of their
7 evidence?

8 **A** Yes, sir.

9 **Q** Then you would decide based upon that
10 which penalty would be appropriate.

11 **A** I can handle that.

12 **Q** And you can consider either penalty and,
13 depending on the evidence, go either way?

14 **A** (Nodding head).

15 **BY MR. EVANS:** Nothing further, Your
16 Honor.

17 **BY MS. STEINER:**

18 **Q** Morning, Mr. Huggins.

19 **A** Good morning.

20 **Q** Your Honor -- His Honor inquired about the
21 death penalty and your ability --

22 **A** Yeah.

23 **Q** -- to consider both penalties, either
24 penalty established by the legislature of the State
25 of Mississippi. Do you agree with the law that
26 makes both of those equally viable penalties?

27 **A** Yeah.

28 **Q** I can't hear --

29 **A** Do what now?

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1 **Q** Do you agree with the act of the state
2 legislature that says when someone is found guilty
3 of capital murder beyond a reasonable doubt, either
4 a life penalty without parole or -- life sentence
5 without parole or the death penalty is an
6 appropriate sentence?

7 **A** Yes. Right.

8 **Q** Now, on your questionnaire, you checked A,
9 you strongly agreed with the death penalty. Is that
10 your opinion?

11 **A** If the evidence leads to it.

12 **Q** All right.

13 **A** I mean, you know, eye for eye. Tooth for
14 tooth.

15 **Q** Say again?

16 **A** An eye for eye. Tooth for tooth.

17 **Q** Eye for eye.

18 **A** I'm just old fashioned with it.

19 **Q** Right. An eye for an eye, a tooth for a
20 tooth --

21 **A** I mean, if he's not guilty, he's not
22 guilty.

23 **Q** Okay. You wouldn't give him the death
24 penalty if he wasn't guilty?

25 **A** No, ma'am.

26 **Q** All right. But once it comes to
27 deliberating punishment, an eye for an eye, a tooth
28 for a tooth, a life for a life. Is that your
29 philosophy?

INDIVIDUAL VOIR DIRE

1 **A** (Nodding head).

2 **Q** So if you found him guilty beyond a
3 reasonable doubt of -- which you will, if you're
4 considering penalty -- if you find him guilty beyond
5 a reasonable doubt of deliberately having murdered
6 Bertha Tardy or Carmen Rigby or Mr. Golden -- Robert
7 Golden or Bobo Stewart -- if you find that he
8 deliberately killed -- took the lives of those four
9 people in a capital murder, if you found him guilty
10 beyond a reasonable doubt, you would want a life for
11 a life; is that correct?

12 **BY MR. EVANS:** Your Honor, I object. That
13 is not the proper question.

14 **A** Pro life for life?

15 **Q** You would want -- your -- eye for an
16 eye -- you would want a life for a life?

17 **BY MR. EVANS:** Your Honor --

18 **BY THE COURT:** I'll sustain the
19 objection --

20 **A** Not necessarily. I haven't heard any of
21 the evidence.

22 **BY MS. STEINER:**

23 **Q** Okay. But if -- I'm not talking about --

24 **A** You're not trying to trick me up.

25 **Q** I'm not trying to trick you. You haven't
26 decided whether or not he's guilty yet?

27 **A** I haven't. No, ma'am. Like I said, I
28 haven't heard.

29 **Q** Right. But I'm talking --

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1 **A** I don't even know the people.

2 **Q** I'm talking about the penalty phase here.

3 **A** Yes, ma'am.

4 **Q** Where Ms. -- excuse me.

5 (PAUSE)

6 **BY MS. STEINER:** Thank you, Your Honor.

7 **BY MS. STEINER:**

8 **Q** Now, mitigation -- His Honor talked about
9 mitigation. His Honor will instruct you on what can
10 be considered mitigation. And under the law, His
11 Honor will be instructing you it can be anything
12 supported by the evidence in front of you. It can
13 have to do with the crime itself, but it doesn't
14 have to. Could you -- having found him guilty,
15 could you consider matters that have nothing to do
16 with the crime in deciding what sentence to impose?

17 **A** Yeah.

18 **Q** Okay. Could you consider -- well, let me
19 step back. The State will have to prove aggravation
20 before you can even consider the death penalty. You
21 understand that?

22 **A** I do.

23 **Q** You understand that the defendant has the
24 right to put on evidence, anything he wants that he
25 thinks shows his character or his conduct or --
26 before or after the crime. You understand -- or the
27 alleged crime, which you will have convicted him.
28 And you would be prepared, and that evidence must be
29 considered?

INDIVIDUAL VOIR DIRE

1 **A** (Nodding head).

2 **Q** You understand that?

3 **A** I understand that.

4 **Q** And that -- could you, after you found him
5 guilty, consider that evidence?

6 **A** Yeah.

7 **BY MS. STEINER:** Thank you, Your Honor. I
8 have no further questions.

9 **BY THE COURT:** Mr. Huggins, you may step
10 down. When you go out, don't talk with your
11 fellow jurors about what was asked in here.

12 **BY JUROR:** Absolutely.

13 **BY THE COURT:** Next one will be Ms. Jones.

14 (JUROR LEAVES THE COURTROOM. JUROR NO.
15 53, FLANCIE JONES, ENTERS THE COURTROOM)

16 **BY THE COURT:**

17 **Q** Ms. Jones, if you'll come forward, please.
18 What we're doing now is asking questions of
19 individual jurors that we felt was appropriate to
20 ask privately instead of out in front of your fellow
21 jurors.

22 And first, I want to know if you have any
23 knowledge about this case, if you've heard about it
24 through the years or read anything, seen it on T.V.,
25 the radio or Internet or anything?

26 **A** Nothing. Nothing close because I've
27 always worked the third shift. So for 17 years,
28 I've worked at Heat Craft, which I quit in '07. But
29 during this time, I worked nights. I slept days. I

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1 only got up to get my husband off to work or to
2 interact with my children off the bus.

3 Q Right.

4 A Very little. As far as conversating with
5 anybody about it, I didn't have time for that. Now
6 I do -- I am an avid gardener. So between that
7 time -- any time I had to work in my garden -- and
8 then a T.V. person -- I'm not a T.V. person. So
9 it's not a lot I heard. It's just that -- you know
10 how you hear people talking about it, but as far as
11 being interested and conversating about it, I just
12 never really conversated to anybody about it,
13 because -- it might not even sound right to you, but
14 I'm a country girl. I live on a farm. Certain
15 things do things to certain people, and that didn't
16 do it to me because I'm a -- I guess I can't say a
17 loner, but I just don't think (inaudible).

18 BY THE COURT REPORTER: I'm sorry. What?

19 A I'm not a -- I kind of keep to myself as
20 far as the way I live. I live on a farm, so I do
21 the things that people on a farm do. But as far as
22 going from house to house and telephoning and
23 whatever, I don't do that.

24 Q And if you did hear or the thing -- I
25 mean, you know, I don't even want you to tell us
26 what you heard. But can you lay aside anything you
27 might have heard about the case and listen to the
28 evidence here in court and base your decision only
29 on the evidence and on nothing else but the

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1 evidence?

2 **A** Nothing else. (Nodding head.)

3 **Q** The next question concerns the possibility
4 if it got to the point where there was a sentencing
5 phase. What happens in a capital murder case is a
6 jury first decides the guilt or innocence of the
7 person that's on trial. If it got to the point
8 where the jury found that person not guilty -- not
9 guilty, it would be over. There would not be a
10 second phase.

11 But if the jury found that person to be
12 guilty, then we would get into the second phase,
13 which is called the sentencing phase. At that time,
14 the jury would determine what the jury believed to
15 be the appropriate sentence in the case.

16 The State of Mississippi, I understand, is
17 seeking the death penalty in this case. The
18 possible penalties, if it got to that point, would
19 be life in prison without parole or the death
20 penalty.

21 The State of Mississippi would put on
22 aggravating factors, which are factors that they
23 believe would justify the imposition of the death
24 penalty. Then Mr. Flowers, through his attorneys,
25 would put on proof called mitigating factors which,
26 in his view, would be reasons why the jury should
27 not impose the death penalty. So will you -- will
28 you consider -- or can you consider both of those
29 sentencing options?

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1 **A** (Nodding head).

2 **Q** And do you -- having heard nothing about
3 the case at all and no proof on mitigating or
4 aggravating, do you have an open mind and an equally
5 open mind as to both possibilities at this point?

6 **A** I have an open mind.

7 **Q** And you could consider both of those as
8 possible sentences?

9 **A** I could consider both.

10 **BY THE COURT:** Okay. Thank you.

11 **BY MR. EVANS:**

12 **Q** Good morning, Ms. Jones.

13 **A** Good morning.

14 **Q** Ms. Jones, you are related to Hazel Jones;
15 is that right?

16 **A** She's my sister-in-law.

17 **Q** Okay. And you are related to Angela
18 Jones?

19 **A** She's my niece.

20 **Q** Okay. And she is the defendant's sister?

21 **A** That's something new. I didn't know that
22 till you told me yesterday.

23 **Q** Okay. Knowing now that she is his sister
24 and knowing now that Hazel Jones is his aunt, would
25 that affect you? Would you be thinking about that
26 if you were picked as a juror in this case?

27 **A** It would not affect me because we do not
28 have any type of relationship. We can have a family
29 reunion. They don't show up at the family reunion.

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1 Q So you could completely --

2 A I could completely.

3 Q -- set that aside. I noticed yesterday
4 you were about 30 minutes late. Why were you late?

5 A Because I'm used to working nights and
6 getting up in the morning is a big deal. I'm used
7 to working nights, and my body has kind of gotten --
8 I guess you have to work nights to understand it.
9 That's the only reason I was late, because I ended
10 up staying awake at night.

11 Q All right. And I think you've said that
12 you knew, in addition to Hazel Jones and Angela, you
13 know Archie, Sr. -- Archie Flowers, Sr.?

14 A No, not that I know. No. I told you
15 yesterday that if you told me that's him, that's the
16 only way I would know him. I don't know him.

17 Q Okay. Correct me if I'm wrong. I thought
18 that that was what you had said. I may have written
19 it down wrong. You stated that you knew Connie
20 Moore?

21 A I used to work at a place where they said
22 she was getting married. And this particular guy
23 that worked there, she was -- she was going to marry
24 him. But as far as knowing her, no, I don't know
25 her.

26 Q Okay. Nelson Forrest?

27 A I went to school with a lot of Forrests,
28 so I don't know which one is which.

29 Q And Danny Joe Lott?

INDIVIDUAL VOIR DIRE

1 **A** Well, I went to church with -- I think
2 with his uncle when I was little. That's the only
3 reason I know his name.

4 **Q** Okay. And I think on your questionnaire,
5 you said you were strongly against the death
6 penalty.

7 **A** I guess I'd say anything to get off.

8 **Q** Okay. Well, are you saying that you
9 didn't tell the truth?

10 **A** No, that's not that. It's just that if I
11 didn't have to be here, I wouldn't want to be here.

12 **Q** Well, I want to know when you put down you
13 were strongly against the death penalty --

14 **A** I was trying to not be -- I -- really and
15 truly, I don't want to be here. I'll say it like
16 that.

17 **Q** All right. May I finish my question?

18 **A** Okay.

19 **Q** When you put down that you strongly didn't
20 believe in the death penalty, were you being
21 truthful?

22 **A** No. Because I was sitting up in the bed
23 that night, and I had to fill out that paper and get
24 it back to you. And I was late the first day
25 because I couldn't find the paper. And I know if
26 I'd lost it, I'd never get it back to you.

27 **BY MR. EVANS:** Your Honor, I don't have
28 any further questions.

29 **BY MR. CARTER:**

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1 **Q** One moment, Your Honor. Ms. Jones, you
2 testified earlier that you could be fair to both
3 sides. Is that correct?

4 **A** That's correct.

5 **Q** And you testified that you could consider
6 both options of punishment.

7 **A** Yes, I can.

8 **Q** And if you got picked for a jury -- served
9 as a juror, you would make every effort to get here
10 and to be awake and to participate as full as you
11 can?

12 **A** Yes. Yes.

13 **Q** And there's no reason, as far as
14 transportation wise and that kind of stuff, that you
15 couldn't be here, is there?

16 **A** No.

17 **Q** So you could be here. And you don't have
18 any doubt that you could be fair to both sides; is
19 that correct?

20 **A** I have no doubt.

21 **Q** And you'd consider whatever's presented
22 from the witness stand.

23 **A** I could.

24 **Q** Thank you.

25 **A** I'm sorry about being late. It was
26 unintentional.

27 **BY MR. CARTER:** Thank you.

28 **BY THE COURT:** Ms. Jones, you may step
29 down now. And when you walk out with your

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1 fellow jurors, don't talk about with them
2 what was talked about in here.

3 **BY JUROR:** Okay. All right. Thank you.

4 **BY THE COURT:** Yes, ma'am. Thank you.

5 (JUROR LEAVES THE COURTROOM)

6 **BY THE COURT:** Ms. Box, No. 54.

7 (JUROR NO. 54, PATRICIA BOX, ENTERS THE
8 COURTROOM)

9 **BY THE COURT:**

10 **Q** If you'll have a seat, please, ma'am.
11 Ms. Box, what we're doing now is we're asking
12 questions outside the presence of the other jurors
13 because we just felt it would be appropriate to do
14 that.

15 And first, I want to know about knowledge
16 of the case. I know you said you lived, at one
17 time, across the street from Ms. Tardy, I believe.
18 And you know Roxanne, and you've seen -- see her
19 occasionally. So just tell us -- have you heard
20 facts about this case?

21 **A** Just -- just from hearing it on the news.
22 I've never sat through any of the trials.

23 **Q** And have you read about it in the paper
24 or --

25 **A** Yes.

26 **Q** -- or -- and seen it in the radio?

27 **A** Yes.

28 **Q** -- any T.V. or Internet?

29 **A** Just maybe if there was a brief report on

INDIVIDUAL VOIR DIRE

1 T.V. Not on the Internet.

2 Q And has anything you saw, read, or heard
3 caused you to form an opinion as to the guilt or
4 innocence of Mr. Flowers?

5 A No.

6 Q And do you have any fixed opinion about
7 this case as it stands today?

8 A No.

9 Q And can you lay aside anything that you
10 might have seen, heard or read and base your
11 decision only on the evidence as presented here in
12 court?

13 A Yes, sir.

14 Q And the next issue concerns the possible
15 sentencing phase. What happens in a capital murder
16 is first the jury decides guilt or innocence. If
17 they find Mr. Flowers not guilty -- if the jury
18 finds him not guilty, the proceedings conclude.
19 They're over.

20 If the jury were to find him guilty beyond
21 a reasonable doubt, then we would go to the second
22 phase. At that time, the jury would decide what the
23 jury believed to be the appropriate punishment. The
24 jury would have the option of sentencing him to
25 death. If the jury found death was not appropriate,
26 then life in prison without parole would be the
27 sentence.

28 The State will put on what's called
29 aggravating factors, which is reasons the State

INDIVIDUAL VOIR DIRE

1 believes the death penalty would be appropriate.

2 You understand that?

3 **A** (Nodding head).

4 **Q** The Defense would then put on mitigating
5 factors, which are reasons the Defense believes the
6 death penalty would not be appropriate.

7 As you sit here today, would you listen to
8 the facts and the instructions of law and consider
9 both of those options?

10 **A** Yes, sir.

11 **Q** So you're not going to, right now,
12 preclude the consideration of either of those; is
13 that correct?

14 **A** No.

15 **BY THE COURT:** Okay. Thank you, Ms. Box.

16 **BY MR. EVANS:**

17 **Q** Good morning, Ms. Box.

18 **A** Good morning.

19 **Q** Do you understand that in the first phase
20 of the trial, the penalty doesn't even come into
21 question?

22 **A** Yes.

23 **Q** The jury should not even consider the
24 penalty?

25 **A** (Nodding head).

26 **Q** Are you telling us that you could come in
27 with an open mind, not consider or lean toward
28 either penalty, listen to the evidence, and base
29 your decision of guilt strictly on the evidence that

INDIVIDUAL VOIR DIRE

1 you hear?

2 A Yes, sir.

3 Q And your decision of what penalty should
4 be strictly on the evidence that you hear in court
5 and nothing else?

6 A Yes, sir.

7 BY MR. EVANS: Nothing further, Your
8 Honor.

9 BY MS. STEINER:

10 Q Good morning, Ms. Box.

11 A Good morning.

12 Q I believe in response to one of His
13 Honor's questions you reiterated that you -- I think
14 you said this from the first -- you were
15 across-the-street neighbors of Ms. Bertha Tardy?

16 A Uh-huh.

17 Q And was that also her husband or was it
18 before he was widowed and she married him? Was
19 it --

20 A It was -- it was before they married.

21 Q All right. When she was still just the
22 manager of his store?

23 A Uh-huh.

24 Q And did you -- and I can't remember -- did
25 you talk with her in a neighborly way or --

26 A Just pretty much spoke when we saw each
27 other.

28 Q All right. And did you attend her
29 funeral?

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1 A I did not.

2 Q All right. I think also you said here you
3 knew Ms. Rigby?

4 A I mean, I know who she is. I did not know
5 her personally.

6 Q Okay. Do you recall -- you were actually
7 also a juror in the jury venire in 2008?

8 A Right.

9 Q And at that point, I think you testified
10 that you knew her to talk to or acquainted --
11 knew -- just like --

12 A I just know who she is.

13 Q And you actually had a closer -- much
14 closer personal acquaintance with Mr. Stewart's
15 brother?

16 A Oh, I knew both of them when they were in
17 school.

18 Q When they were in school. What was your
19 reaction when you personally learned that your
20 friend and acquaintance --

21 A It was a horrible thing.

22 Q Did you attend his funeral?

23 A I did not.

24 Q Send a condolence to his family?

25 A I -- I'm not -- I don't remember.

26 Q You don't remember?

27 A I don't remember. I don't think so.

28 Q You could have?

29 A I don't think so.

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1 Q All right. And have you run into either
2 Bobo's brother or his father, Mr. Randy Stewart,
3 since then and expressed your condolences?

4 A Unh-unh.

5 Q When you read the name in the paper, do
6 you still get that sad feeling?

7 A Of course.

8 Q And you're going to be hearing a lot here
9 today about that. Is that -- I mean, not just --
10 you know, you've said you can set aside -- you know,
11 you'll just hear what you hear --

12 A Right.

13 Q -- in the courtroom. But your heart's
14 still going to break because a friend of yours and
15 the brother of another friend of yours, you're going
16 to be hearing about his death.

17 A (Nodding head).

18 Q You're going to be shown photographs of
19 the place he died. You understand that?

20 A Uh-huh.

21 Q And possibly even of him in death?

22 A (Nodding head).

23 Q And that feeling in your heart, that loss
24 of a personal friend, is going to happen no
25 matter -- you'll sit in that jury and you're not
26 just going to feel like a stranger seeing a crime
27 scene. That can be disturbing enough.

28 A Uh-huh.

29 Q But you'll be seeing a crime scene.

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1 You'll be seeing blood spilled by a friend of yours.
2 And you will be in that jury room with that in your
3 heart when you see those pictures -- with the jury
4 in this room; is that correct?

5 A (Nodding head).

6 Q Is that a yes?

7 A I'm sorry.

8 Q You nodded your head.

9 A Okay. I'm --

10 Q Will you be -- you'll have those feelings
11 in your heart?

12 A Oh, yes.

13 Q Now Ms. Box, you answered His Honor's
14 questions. As you sit here, you do not disagree
15 with the fact that the State of Mississippi makes
16 life without the possibility of parole an equally
17 appropriate death sentence -- sentence -- sentence
18 for the crime of capital murder --

19 A Uh-huh.

20 Q -- to the death penalty?

21 A (Nodding head.)

22 Q Do you have any quarrels with that law?

23 A No.

24 Q Do you consider those punishments equally
25 severe or do you -- do you consider those both to be
26 severe punishments?

27 A I would. Yes, I would consider them both.

28 Q All right. And you said you could
29 consider either.

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1 **A** Yes.

2 **Q** As you sit here today. Now, you
3 understand that at the penalty phase, you won't be
4 considering those in the abstract. You will be
5 considering that you will have found Mr. Flowers
6 guilty of the deliberate, intentional, brutal murder
7 of your friend, Bobo Stewart. You understand that?

8 **A** Yes.

9 **Q** If you were even considering penalty?

10 **A** (Nodding head).

11 **Q** You will also possibly have found him
12 guilty of up to four other -- three other people's
13 deaths, two of whom -- one of whom, your neighbor,
14 Ms. Tardy, and one of them your passing
15 acquaintance, Ms. Rigby?

16 **A** (Nodding head).

17 **Q** You understand that?

18 **A** Yes, ma'am.

19 **Q** Beyond a reasonable doubt, you will walk
20 in -- if you are considering penalty, you will
21 already have decided those things; you understand
22 that?

23 **A** Yes, ma'am.

24 **Q** At that point, of course, you will -- does
25 that make a difference in your -- if you hear that
26 evidence, will you have the same neutral attitude?

27 **A** Yes, ma'am.

28 **Q** Do you understand what mitigation is that
29 His Honor -- then -- you understand --

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1 **A** Yes.

2 **Q** -- His Honor talked about mitigation? You
3 understand that can have -- you can have mitigation
4 that has nothing to do with facts of the crime which
5 the individual's been found guilty; do you
6 understand that?

7 **A** (Nodding head).

8 **Q** And well, I -- let me also add in here the
9 State will probably be presenting testimony from
10 your friend Bobo Stewart's father, Randy, about his
11 loss, possibly from other people who knew and loved
12 Mr. Stewart, like you cared for him.

13 And again, isn't it fair to say that the
14 crime -- the fact that your friend had died and his
15 father and other family members have talked to you
16 about their loss, would incline you towards the
17 death --

18 **BY MR. EVANS:** Your Honor, I disagree with
19 that comment. She said that she had not
20 talked to them about their loss.

21 **BY MS. STEINER:** I'm talking about the
22 evidence in the courtroom may --

23 **BY MR. EVANS:** But that's not what the
24 question was, and I object to the question.

25 **BY MS. STEINER:** Forgive me.

26 **BY MS. STEINER:**

27 **Q** You've said you would rely on the evidence
28 in the courtroom?

29 **A** Yes, ma'am.

INDIVIDUAL VOIR DIRE

1 Q We've talked about how you would react to
2 evidence, pictures of your friend, Bobo Stewart.
3 And I'm saying now, penalty phase when you are
4 considering punishment -- in addition, you will
5 possibly have heard the State has given notice it
6 intends to put on testimony from your friend Bobo
7 Stewart's father and perhaps other family members,
8 and you will have heard that. Can you -- you know,
9 at that point, would you not want to avenge your
10 friend Bobo's life with a sentence of death?

11 A I'm -- no. No. I mean, that....

12 Q Now you have indicated that you -- I
13 think -- you know John Johnson?

14 A (Nodding head).

15 Q He was -- Mr. Seals Holloway, was that
16 your father?

17 A My grandfather.

18 Q Your grandfather. And Mr. Johnson
19 actually -- I don't think he immediately succeeded
20 your grandfather, but he subsequently became chief
21 of police here?

22 A Right.

23 Q And we -- obviously, you can't talk to the
24 lawyers in this case. But I assume when you're in
25 the hallway and you see Mr. Johnson, y'all are
26 polite to each other -- and have you been -- have
27 you been chatting with him at all?

28 A No.

29 Q All right.

INDIVIDUAL VOIR DIRE

1 **A** I --

2 **Q** I see all of y'all out there. I'm not
3 allowed to make eye contact. But I do know that
4 y'all just don't sit there. Y'all don't -- jurors
5 talk to each other --

6 **BY MR. EVANS:** Your Honor, I object. This
7 is completely inappropriate.

8 **BY THE COURT:** I think we need to move on.

9 **BY MS. STEINER:** All right.

10 **BY MS. STEINER:**

11 **Q** Have -- you have been chatting with other
12 jurors; is that correct?

13 **A** Yes, ma'am.

14 **Q** Has what's been going on in the courtroom
15 come up at all?

16 **A** Not really, no.

17 **Q** Not really. Tell me about that --

18 **A** Just -- just seats are hard.

19 **Q** Say what?

20 **A** The chairs are hard out there.

21 **Q** Okay. You've been complaining about how
22 hard the chairs are?

23 **A** Yeah.

24 **Q** Have y'all gone to lunch together,
25 anything like that or --

26 **A** I haven't.

27 **Q** All right. Do you know of anybody who
28 has?

29 **A** Oh, I'm sure several. But I mean, I

INDIVIDUAL VOIR DIRE

1 don't -- I don't really know a lot of those people.

2 **BY MR. EVANS:** Your Honor, this is
3 completely irrelevant --

4 **BY THE COURT:** It is irrelevant. I mean,
5 you know, there's no prohibition about a
6 juror eating lunch with another juror. The
7 only prohibition is against discussing the
8 case, and they are sitting out there as a
9 group together. And they haven't been told,
10 like when I was in kindergarten, to play the
11 quiet game. They haven't been told that they
12 can't talk. They've just been told they
13 can't talk about the case.

14 **BY MS. STEINER:** Thank you, your Honor.
15 One moment.

16 (PAUSE)

17 **BY MS. STEINER:** That's all I have, Your
18 Honor.

19 **BY THE COURT:** Ms. Box, you may step down.
20 If you will, when you get out there, don't
21 talk about anything that's been asked of you
22 in here.

23 (JUROR LEAVES THE COURTROOM)

24 **BY THE COURT:** If you'll bring in
25 Mr. Scott in next.

26 (JUROR NO. 57, STEVE SCOTT, ENTERS THE
27 COURTROOM)

28 **BY THE COURT:**

29 **Q** Mr. Scott, if you'll come down and have a

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1 seat, please.

2 Mr. Scott, what we're doing now is we're
3 asking questions of individual jurors just because
4 we felt it was appropriate to ask these privately
5 instead of out in front of the entire group.

6 And the first question I want to know is
7 have you heard anything about this case? Do you
8 have any knowledge of this case?

9 A Well, what was on the street, you know.

10 Q Can you speak up? You're soft spoken, and
11 I know the lawyers need to hear what you're saying.

12 A Well, out on the streets, I heard a couple
13 of things about the case.

14 Q And was that -- was that recently or was
15 that back in '96?

16 A Well, I wasn't here in '96, you know.

17 Q When did you move into the county?

18 A It was in 2000 -- I think it was 2004.

19 Q So you've been here -- you were gone for a
20 lot of time. You weren't here between '96 and '04?

21 A No, this is not my hometown.

22 Q Where did you grow up?

23 A I grew up in Alabama, but I lived in
24 Georgia.

25 Q And has anything you heard, you know, talk
26 or read or seen caused you to form any opinion as to
27 the guilt or innocence of Mr. Flowers.

28 A No, sir.

29 Q And if you sat on the -- as a juror on

INDIVIDUAL VOIR DIRE

1 this case, would you disregard anything you heard
2 and base your decision only on the evidence as
3 presented here in court?

4 **A** Yes, sir.

5 **Q** And on nothing else but the evidence here
6 in court?

7 **A** Yes, sir.

8 **Q** The next question refers to the sentencing
9 phase of the trial, if it got to a point where there
10 was a sentencing phase. What happens in a capital
11 murder case is the jury hears all the evidence of
12 the case and decides whether the person is guilty or
13 not guilty. If you found Mr. Flowers innocent, the
14 trial's over. There's not a second phase. But if
15 he was found guilty, then the next part would be a
16 sentencing phase where the jury would then be called
17 upon to decide what the jury believed to be the
18 appropriate punishment. The State of Mississippi is
19 seeking the death penalty. The State of Mississippi
20 will be putting on proof called aggravating factors
21 which, in their minds, show why the death penalty
22 should be imposed or is appropriate.

23 Then the Defense would put on mitigating
24 facts. That would be facts the Defense believes
25 would show that the death penalty is not an
26 appropriate sentence, and you would be instructed on
27 the law after you have heard all of those facts.
28 And could you listen -- or would you listen to the
29 law and the facts and then decide what the

INDIVIDUAL VOIR DIRE

1 appropriate sentence would be?

2 **A** Yes, sir.

3 **Q** And can you consider both of those as
4 sentencing options?

5 **A** Well, if they're going to put him on the
6 death penalty, you know, I don't want to do that.
7 But, you know, I can listen to it. But like putting
8 somebody to death, I don't want to do that one.

9 **Q** Could you consider that as a sentencing
10 possibility?

11 **A** No.

12 **Q** And are you saying that you just could not
13 even consider that -- I mean, you're not being asked
14 to commit to any sentence, but are you saying you
15 could not even consider that as a possibility?

16 **A** No, sir.

17 **BY THE COURT:** Mr. Evans, any questions?

18 **BY MR. EVANS:**

19 **Q** Good morning, Mr. Scott.

20 **A** Good morning.

21 **Q** And even though at the first phase, you
22 wouldn't get into what the penalty was, your beliefs
23 are just so strong against the death penalty that
24 you couldn't even consider it --

25 **A** Right.

26 **Q** -- as a possible penalty for anything?

27 **A** Right.

28 **BY MR. EVANS:** Nothing further, Your
29 Honor.

INDIVIDUAL VOIR DIRE

1 **BY MR. CARTER:**

2 **Q** Mr. Scott, you got a questionnaire; is
3 that correct?

4 **A** Sir?

5 **Q** Did you get a questionnaire that you had
6 to fill out about this trial?

7 **A** Yes, I did.

8 **Q** And did you answer the questions?

9 **A** Yes, I did.

10 **Q** And I think on the questionnaire, if I'm
11 wrong -- correct me if I'm wrong -- you said -- you
12 gave your views on the death penalty, and you said
13 you could consider the death penalty, and you could
14 consider life without possibility of parole?

15 **A** Life without possibility of parole, yes.

16 **Q** But on your questionnaire, I believe you
17 said you could consider the death penalty, too.
18 Now, well --

19 **A** I don't -- I don't know. I don't remember
20 putting that. I might have. But I can't remember
21 what I put.

22 **Q** So you might have been confused about it
23 if you said that; is that what you're saying?

24 **A** Yes, sir.

25 **Q** Okay. Now, you understand that the State
26 of Mississippi -- not the prosecutors, but the
27 Mississippi legislature -- has deemed life without
28 possibility of parole and the death penalty as the
29 appropriate sentences for a person convicted of

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1 capital murder. And the State of Mississippi is --
2 not the prosecutor -- but the State of Mississippi
3 is satisfied with either one, satisfied if you vote
4 either way. And do you realize that whatever
5 decision you make is your decision and not anybody's
6 decision?

7 **A** Right.

8 **Q** And now I understand you're uncomfortable
9 about the death penalty.

10 **A** Right.

11 **Q** And maybe even more than discomfort. But
12 I'm at least hearing discomfort, and I'm trying to
13 be clear on what else I might hear. So you've
14 obviously said you're uncomfortable with it. But
15 what I'm trying to find out is could you, if you got
16 picked as a juror, listen to the evidence during the
17 first phase and deliberate Mr. Flowers' guilt or not
18 guilt. Could you --

19 **A** I could listen to it.

20 **Q** Right. And you could listen to it and
21 render a decision in the first phase. Correct?

22 **A** Yes, sir.

23 **Q** And also, you could go to the second
24 phase, and you could listen to the evidence --

25 **A** Right.

26 **Q** -- presented. And are you telling us that
27 when you listen to the evidence during the second
28 phase that no matter what Mr. Evans and his group
29 presented to you, you absolutely couldn't even

INDIVIDUAL VOIR DIRE

1 consider the death penalty as an option?

2 **A** That's right.

3 **BY MR. CARTER:** Okay. No further
4 questions.

5 **BY THE COURT:** Mr. Scott, you may step
6 down. And as you step down and go back out,
7 don't talk with your other jurors what was
8 talked about in here.

9 (JUROR LEAVES THE COURTROOM)

10 **BY THE COURT:** Ms. Branch is next, No. 58.

11 (JUROR NO. 58, EMILY BRANCH, ENTERS THE
12 COURTROOM)

13 **BY THE COURT:**

14 **Q** Ms. Branch, if you'll come forward and
15 have a seat. What we're doing now, Ms. Branch, is
16 asking a few questions outside the presence of the
17 other jurors just because we felt it appropriate to
18 ask some things privately.

19 And first of all, I want to know if you
20 have any knowledge about this case or heard anything
21 about this case?

22 **A** Very little. I was -- I didn't even live
23 here when it happened, and I was nine, I think, so I
24 really don't know anything.

25 **Q** How long have you lived now in the county?
26 Do you know?

27 **A** I think I moved here in '98.

28 **Q** And, I mean, other than the -- I guess you
29 heard that maybe it happened or that something

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1 happened. But other than that, have you heard any
2 facts at all about the case?

3 **A** No.

4 **Q** And could you lay aside anything you might
5 have heard outside the courtroom and base your
6 decision only on the evidence that's presented here
7 in court?

8 **A** Yes, sir.

9 **Q** The next questions will refer to what we
10 would say is the sentencing phase. The way the
11 trial works is the jury would first decide guilt or
12 innocence of Mr. Flowers. If the jury found
13 Mr. Flowers not guilty, the proceedings would be
14 over, and we would not even get to the second phase.

15 But if the jury found him guilty, then we
16 would have the sentencing phase. At that time, the
17 State of Mississippi would be seeking the death
18 penalty. The State would put on what's called
19 aggravating factors, which is factors that the State
20 believes would justify the imposition of the death
21 penalty.

22 Mr. Flowers, through his attorneys, would
23 put on proof called mitigating factors, which would
24 be things that in their view would justify or would
25 show that the death penalty is not appropriate.

26 At that time, the jury would then decide
27 what the appropriate punishment is. And if he did
28 not receive the death penalty, the sentence would be
29 life without parole. So can you consider both of

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1 those as sentencing options?

2 **A** Yes.

3 **Q** And do you have -- do you, at this point,
4 without knowing anything, favor one of those options
5 over the other?

6 **A** No.

7 **Q** So you will wait till all the evidence is
8 heard and the facts and instructions of law before
9 you make that determination if you're selected?

10 **A** Yes, sir.

11 **BY THE COURT:** Okay. Thank you.

12 Mr. Evans?

13 **BY MR. EVANS:** No questions.

14 **BY MS. STEINER:**

15 **Q** Good afternoon.

16 **A** Afternoon.

17 **Q** Ms. Branch, His Honor has -- you've said
18 you have no quarrel with the fact that the State of
19 Mississippi gives two options, either the death
20 penalty or life without parole --

21 **A** Right.

22 **Q** -- as a sentence. Do you consider both of
23 those serious punishments?

24 **A** Yeah.

25 **Q** Do you -- and His Honor talked about
26 mitigation. Do you understand that the evidence
27 that you may hear on mitigation not only has to --
28 mitigation of sentence, that would be evidence that
29 you would hear in this courtroom that might make you

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1 think that -- or that all -- even -- you would
2 understand you wouldn't even be hearing this
3 evidence unless you found Mr. Flowers guilty beyond
4 a reasonable doubt.

5 **A** Right.

6 **Q** And the evidence that you would hear in
7 mitigation might not have anything to do with the
8 actual crime?

9 **A** (Nodding head).

10 **Q** He would have been found guilty of a
11 murder -- a capital murder. The State would have
12 proved aggravators. And you would then be
13 considering anything that might -- to be used in
14 considering a sentence less than death, life without
15 parole. Do you understand that?

16 **A** Uh-huh.

17 **Q** And that might have to do with Mr. Curtis'
18 life before his arrest, his family and social
19 relationships with his family and in the community.
20 Do you understand that?

21 **A** Uh-huh.

22 **Q** Could you consider that --

23 **A** Yeah.

24 **Q** -- as evidence of mitigation? It may have
25 to do with his life after his arrest on this crime.
26 Could you consider that?

27 **A** Well, I mean, like for the case --

28 **Q** No, no -- his life. You know, he's been
29 here for these 16 years, and you may hear about who

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1 he was while he was in prison under arrest for this.

2 **A** Okay. Yeah.

3 **Q** Can you consider that?

4 **A** Yeah.

5 **Q** All right. And His Honor will instruct
6 you also that, you know, your vote at both phases is
7 your vote?

8 **A** Uh-huh.

9 **Q** You don't -- in the first phase on guilt,
10 he will give you a very specific instruction that
11 you are supposed to deliberate with your fellow
12 jurors and -- and the circumstances under which you
13 can and should be -- can be persuaded and may be
14 persuaded and under which you may decline to be
15 persuaded and come to a unanimous verdict.

16 When you are considering mitigation, he
17 will give you an instruction that any mitigation
18 that you think has been put in evidence before you,
19 you may decide that all on your own. You don't have
20 to agree or -- if you feel something's mitigation,
21 you're entitled -- you don't have to get other
22 people to agree with you to think it's valid. Do
23 you understand that?

24 **A** Yes, I do.

25 **Q** And that if -- you respect other people in
26 the same way. If someone thinks one thing's
27 mitigation and you don't, you can respect them and
28 not -- and agree to disagree with them.

29 **A** Uh-huh.

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1 **Q** And the decision based on what is
2 mitigation and what the sentence is your own
3 personal decision and you don't have to get other
4 people to agree with you on that decision. You
5 understand that?

6 **A** I do.

7 **Q** And can you do that independently?

8 **A** Yes.

9 **Q** And I see that you are a presently a
10 student at State; is that correct?

11 **A** Well, I just finished there --

12 **Q** Well, congratulations.

13 **A** -- thank you. And I got accepted into OTA
14 school, so I start that in August.

15 **Q** Oh, okay. Congratulations on that.

16 **A** Thank you.

17 **Q** And you are, I know -- I've been both a
18 teacher and a student in my life. And I know that
19 when you're sitting in the student chair -- well,
20 part of what you're doing is being respectful of
21 your teacher. And if she says something, even if
22 you disagree with it, sometimes you say, Well, I
23 disagree, but I'm not going to say anything because
24 she's my teacher. I mean, and generally --

25 **BY MR. EVANS:** Your Honor, unless there's
26 some relevance to this, I object.

27 **BY MS. STEINER:**

28 **Q** You've just finished being a student. You
29 understand that if you're selected for this jury,

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1 you're going to have people who are your parent's
2 age, your teacher's age, people with positions that
3 ordinary you, as a young person, might be inclined
4 to give deference to.

5 Can you, even if there's someone on this
6 jury who, if you were in their classroom or at their
7 work place and they were your boss, could you stand
8 up and realize you are a complete equal and you are
9 not required to give deference to someone just
10 because in the world outside this jury room, they
11 have a position that you would be required to give
12 deference to?

13 **A** Yes.

14 **BY MS. STEINER:** All right. Thank you
15 very much.

16 **BY THE COURT:** Ms. Branch, you may step
17 down. And as you return out there, don't
18 talk with anyone about what was asked of you
19 in here, please.

20 **BY JUROR:** Okay.

21 (JUROR LEAVES THE COURTROOM)

22 **BY THE COURT:** I think we'll recess now
23 for lunch. If you'll just call all the
24 jurors in and just -- so I can announce we're
25 going to recess for lunch.

26 (THE FOLLOWING PROCEEDINGS WERE HAD IN
27 OPEN COURT WITH THE PROSPECTIVE JURORS
28 PRESENT, TO-WIT:)

29 **BY THE COURT:** Ladies and gentlemen, at

COURT RECESSES FOR LUNCH

1 this time, we're going to recess for lunch.
2 I'll ask you during this recess, like I have
3 throughout the trial, not to talk about the
4 case with anyone or among yourselves or talk
5 to any of the potential witnesses or parties
6 involved in the case. And with that, ladies
7 and gentlemen, we'll be back at one o'clock,
8 and we'll resume this individual questioning
9 at that time.

10 (FOLLOWING THE LUNCH RECESS,
11 PROCEEDINGS CONTINUED IN OPEN COURT WITH
12 THE COURT, THE COURT REPORTER, ALL
13 COUNSEL, THE DEFENDANT AND THE CIRCUIT
14 CLERK PRESENT, OUTSIDE THE HEARING AND
15 PRESENCE OF THE PROSPECTIVE JURORS,
16 TO-WIT:)

17 **BY THE COURT:** I believe Ms. Copper is the
18 next one, No. 62.

19 **BY MR. EVANS:** Is 59 already off?

20 **BY THE COURT:** I'm sorry. We haven't
21 talked to Ms. Nail. It's Ms. Nail. I'm
22 sorry. I looked at the wrong place on my
23 list. So No. 59, Ms. Nail.

24 (JUROR NO. 59, JULIA ANN NAIL, ENTERS
25 THE COURTROOM)

26 **BY THE COURT:**

27 **Q** Ms. Nail, what we are asking -- what we're
28 doing now is asking questions out -- you know, of
29 individual jurors that are not in the presence of

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1 each other, because we just felt it was appropriate
2 to ask some without having everybody else in here.
3 The first question concerns knowledge you had about
4 the case or anything. Have you heard about the case
5 through the years?

6 **A** Not very much.

7 **Q** Did you hear about it when it first
8 happened?

9 **A** Yes, sir.

10 **Q** And do you remember anything much about
11 what you may have heard?

12 **A** No, sir, I don't.

13 **Q** And have you kept up with the case in the
14 newspaper or read about it?

15 **A** No, sir.

16 **Q** Internet or --

17 **A** Just people talking about it in general,
18 I've heard that.

19 **Q** And this talk that you've heard from
20 different ones, has that caused you to form an
21 opinion as to the guilt or innocence of Mr. Flowers?

22 **A** No, sir.

23 **Q** And will you lay aside anything that you
24 might have heard and just base your decision
25 strictly on the evidence as presented here in open
26 court?

27 **A** Yes, sir.

28 **Q** The next issue concerns a possible
29 sentencing phase. If it got to the point -- first

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1 of all, it would not get to a sentencing phase
2 unless the jury found Mr. Flowers guilty of the
3 crime. If he's found not guilty, the proceedings
4 conclude, and the case is over.

5 However, if he were to be found guilty,
6 then we would get to the sentencing phase. And, at
7 that time, the jury would decide the punishment the
8 jury deemed to be appropriate. The State would put
9 on aggravating factors, which are factors that would
10 indicate, in the State's belief, that Mr. Flowers
11 should be sentenced to death.

12 Mr. Flowers, through his attorneys, would
13 then put on proof, called mitigating proof, that
14 would be reasons why they felt the death penalty was
15 not an appropriate sentence. And at that time, the
16 jury would then decide what the appropriate sentence
17 was. If he was not sentenced to death, the sentence
18 would be life in prison without parole. So I want
19 to know if the facts justify it and the law allowed
20 it, could you impose the death sentence if you felt,
21 after the facts, that it was an appropriate
22 sentence?

23 **BY MS. STEINER:** Your Honor, I believe the
24 question that Your Honor has been asking --
25 otherwise, is consider imposing a death
26 sentence.

27 **BY THE COURT:** Well, I'm sorry, I did
28 not -- if I misstated that, I certainly did
29 not intend to ask that, so I appreciate you

INDIVIDUAL VOIR DIRE

1 bringing that up.

2 **BY THE COURT:**

3 **Q** Could you consider the imposition of a
4 death sentence if the facts justified it and the law
5 allowed it?

6 **A** Yes.

7 **Q** So you consider it? Could you also
8 consider the imposition of life without parole?

9 **A** Yes.

10 **Q** And would -- as you sit here today,
11 without having heard any facts or know anything
12 about the case or what aggravators or mitigators
13 they might put on, will you -- are you looking at
14 those both equally right now?

15 **A** Yes sir.

16 **Q** In other words, you don't favor one
17 possible penalty over the other?

18 **A** No, sir.

19 **BY THE COURT:** Thank you, Ms. Nail.

20 **BY MR. EVANS:**

21 **Q** How are you doing, Ms. Nail?

22 **A** All right.

23 **Q** I just got a couple of questions for you.

24 **A** Yes, sir.

25 **Q** As the Court's told you, this could be a
26 two-phase trial. If the Defendant is convicted,
27 we'll go into a second phase. But in the first
28 phase, the jury does not even consider what penalty
29 should be appropriate; you understand that?

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1 **A** Yes, sir.

2 **Q** The jury would have to come in with an
3 open mind and leave both options open. Could you do
4 that?

5 **A** Yes, sir.

6 **Q** All right. And in the second phase, we
7 expect that the judge will instruct the jury on what
8 aggravating factors they can consider and what
9 aggravating -- what mitigating factors the jury can
10 consider. If the judge tells you what aggravating
11 factors to consider and what mitigating factors you
12 could consider, could you consider all of those?

13 **A** Yes, sir.

14 **Q** So you could listen to both sides, listen
15 to what the judge tells you and base your decision
16 on which penalty would be appropriate only at that
17 time; is that right?

18 **A** Yes, sir.

19 **Q** And you would not come into court leaning
20 one way or the other?

21 **A** No, sir.

22 **BY MR. EVANS:** Nothing further, Your
23 Honor.

24 **BY MS. STEINER:**

25 **Q** Good morning, Ms. Nail.

26 **A** Hello.

27 **Q** I believe -- when His Honor was asking
28 you -- you said you heard people talking about this
29 case over the years; is that correct?

INDIVIDUAL VOIR DIRE

1 **A** That is correct.

2 **Q** I believe when you were talking to the
3 judge, when everybody else was in the room and you
4 were standing up with your paddle, you said that
5 actually through your mother you knew Ms. Bertha?

6 **A** My mother knew her. I had just seen her
7 once or twice. I did not know her personally.

8 **Q** All right. And so none of the talk that
9 you heard was from Ms. Bertha or --

10 **A** Oh, no, ma'am.

11 **Q** Not Ms. Bertha. From any members of
12 Ms. Bertha's family?

13 **A** No, ma'am.

14 **Q** You know -- was your mother living when
15 Ms. Bertha died?

16 **A** No, ma'am.

17 **Q** Was the family connection such that you
18 all -- you or any of your brothers or sisters sent
19 condolence cards to Mr. Tardy?

20 **A** No, ma'am.

21 **Q** You didn't go to the funeral?

22 **A** No, ma'am.

23 **Q** If you could say, where are the places
24 around that you heard people talking?

25 **A** Just at work.

26 **Q** At work. Which work place was that?

27 **A** At Steele -- not Steele Apparel. It was
28 B&L at that time.

29 **Q** All right. And you worked on -- you

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1 worked there with the --

2 **A** No. Out in the floor.

3 **Q** All right. Were you a supervisor or were
4 you --

5 **A** I was at one time, yes.

6 **Q** All right. So that was -- was that -- is
7 that factory here? I'm not from Winona.

8 **A** No, ma'am. They are no longer in
9 business.

10 **Q** All right. But they were located here in
11 Montgomery County.

12 **A** Yes, ma'am.

13 **Q** And you hear talk on the floor at the time
14 it happened?

15 **A** Yes, ma'am.

16 **Q** And how long did you stay working there?

17 **A** Until it closed.

18 **Q** Which was?

19 **A** I believe about eight years.

20 **Q** It was eight years ago it closed?

21 **A** No. It's been closed about 12 or so.

22 **Q** Okay. So it closed in '98?

23 **A** Somewhere along in there.

24 **Q** I'm not very good with arithmetic.

25 **A** I'm not either.

26 **Q** So but -- this -- as the Court has
27 informed you when everybody was in the room, this
28 happened in July of 1996. So for that first two
29 years, did that take you through the first trial

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1 that was held in this matter?

2 **A** Unh-unh. I didn't hear too much about it
3 then, because I moved to Grenada.

4 **Q** Okay.

5 **A** And I didn't see the same people.

6 **Q** All right. All right. So -- but the
7 people down here in Montgomery County were pretty
8 much talking about it that whole two years?

9 **A** Oh, yes, ma'am.

10 **Q** Did anything they say cause you to form an
11 opinion with respect --

12 **A** No, ma'am --

13 **Q** -- to the facts?

14 **A** -- because I did not know, you know,
15 anything about it. Just what I had heard.

16 **Q** Were you -- did you -- were you aware of
17 any proceedings in this matter --

18 **A** No, ma'am.

19 **Q** -- that occurred prior to this one?

20 **A** No, ma'am.

21 **Q** Have you not read anything?

22 **A** No, ma'am.

23 **Q** You don't read the newspapers?

24 **A** No, ma'am.

25 **Q** All right. You're not an Internet junkie?

26 **A** No, I'm not.

27 **Q** All right. When you got an invitation
28 from the Court to be here this week, did you do
29 anything, try and find out what the case was about?

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1 **A** No, ma'am.

2 **Q** All right. Now, on your questionnaire,
3 His Honor's asked you about the death penalty and
4 life in prison without parole.

5 **A** Yes, ma'am.

6 **Q** As he's told you, the legislature of the
7 State of Mississippi has seen fit to give a jury an
8 option to impose -- I mean, it says either of these
9 sentences is appropriate for the crime of capital
10 murder. Do you have any quarrel with that?

11 **A** No, ma'am.

12 **Q** You -- on your questionnaire you checked
13 A, you strongly favor the death penalty.

14 **A** No, I meant to mark that out. Life
15 without parole --

16 **Q** Oh, okay.

17 **A** -- is what I would prefer.

18 **Q** But you can consider the death penalty.

19 **A** Yes, ma'am.

20 **Q** All right. And if the Court -- you
21 haven't heard the facts in this case?

22 **A** No, ma'am.

23 **Q** Now, you don't make a decision with
24 respect to sentence at all until after he has been
25 found guilty beyond a reasonable doubt. You
26 understand that?

27 **A** Yes.

28 **Q** And at that point, you could consider the
29 death penalty?

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1 **A** Yes.

2 **Q** And you could consider life in prison
3 without parole?

4 **A** Yes, ma'am.

5 **Q** Now, you will be instructed by the Court
6 with respect to considering very specific
7 aggravating circumstances. Can you -- and can you
8 consider those and deliberate with your jurors on
9 finding those?

10 **A** Yes, ma'am.

11 **Q** And with respect to mitigating
12 circumstances, which His Honor, I think, has
13 characterized as evidence that the defendant may put
14 on. It could also be any evidence that you have
15 before you in the courtroom that you think suggests
16 a death penalty might not be the most appropriate
17 sentence. And that will not necessarily have to do
18 with the actual crime or crimes, of which you would
19 have found the defendant guilty; do you understand
20 that?

21 **A** Yes, ma'am.

22 **Q** And it may have to do with the defendant's
23 life before this happened. It may have to do with
24 defendant's life since he's been arrested for this
25 crime. It may have to do with -- you know, you may
26 hear from family members about these things. And
27 can you keep an open mind and consider what they're
28 saying --

29 **A** Yes, ma'am.

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1 Q -- before you make a decision?

2 A Yes, ma'am.

3 Q And you may also hear from people -- it's
4 not an aggravating factor. It's not put on by the
5 Defendant. You may hear from family members of any
6 of the four -- anybody who you've convicted -- if
7 you get to it, a family member of anybody who's
8 relative was one of the people murdered. Would
9 that -- could you hear that and keep an open mind
10 with respect to --

11 A I doubt very seriously I would see any of
12 those people.

13 Q I understand that. But as His Honor has
14 explained, you will have evidence here in court.

15 A Oh, I see.

16 Q And you may hear them testifying
17 concerning --

18 A Oh, yes, ma'am.

19 Q -- their loved ones. Could you still keep
20 an open mind with respect to hearing Mr. Flowers'
21 evidence --

22 **BY MR. EVANS:** Again, this is improper,
23 because she can't say what she would do after
24 she's heard the evidence.

25 **BY MS. STEINER:** I'm only asking if her
26 commitment to keep an open mind with respect
27 to both sentences, that she has given the
28 Court as she sits here today, will persist
29 after she has heard the kinds of evidence she

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1 has heard which --

2 **BY MR. EVANS:** And it shouldn't persist at
3 that point.

4 **BY THE COURT:** Well, I sustain the
5 objection. Because at some point, she's
6 going to have to make a decision. And after
7 she's heard the proof, she couldn't have an
8 open mind as to both.

9 **BY MS. STEINER:** I understand.

10 **BY MS. STEINER:**

11 **Q** Can you up -- at -- when you walk back in
12 that jury room, follow the Court's instructions and
13 consider both penalties on the basis of what you
14 have heard?

15 **A** Yes, ma'am.

16 **Q** And you can listen to the evidence in
17 mitigation?

18 **A** Yes, ma'am.

19 **Q** And whatever evidence the State has
20 offered --

21 **A** Yes, ma'am.

22 **Q** -- either in aggravation or from the
23 victim family?

24 **A** Yes, ma'am.

25 **BY THE COURT:** You may step down. And
26 when you go back out and sit down, please
27 don't talk about with anybody out there what
28 you've discussed in here.

29 **BY JUROR:** Yes, sir.

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(JUROR LEAVES THE COURTROOM)

BY THE COURT: I need No. 62, next,
Ms. Copper.

(JUROR NO. 62, DIANE OWENS COPPER,
ENTERS THE COURTROOM)

BY THE COURT:

Q Ms. Copper, if you'll come on down and
have a seat.

You look a little nervous. Don't be
nervous. Have a seat, ma'am. And what we're doing
is we are asking each juror certain questions that
we didn't want to ask out in front of everybody.
And we're just -- you know, felt like that it would
be better because people might be more comfortable
speaking without a big group out there. And so
there was a couple of questions that we were asking
about.

First concerning possible knowledge that
you had about the case, if any. So have you read
anything about the case or seen anything on the T.V.
or newspaper or radio or talked to anybody or really
have any knowledge about the case?

A Well, this time?

Q Yes, ma'am. Well, I mean, at any time
since it happened in 1996.

A I read a little article about it. I think
that was in last week's paper or something.

Q Okay. You read it in last week's paper?

A Yeah. Kind of glanced.

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1 Q Okay. And have you -- I guess, did you
2 hear about it back in '96 when it first happened?

3 A Yes, sir.

4 Q And have you heard any talk through the
5 years about the case or any -- seen it in the
6 newspaper and things?

7 A Yes, sir.

8 Q Has anything you saw, read or heard caused
9 you to form an opinion as to the guilt or innocence
10 of Mr. Flowers?

11 A I don't -- could you --

12 Q Repeat the question?

13 A Right.

14 Q Right now, you have not heard any evidence
15 at all.

16 A Right.

17 Q You know, you have not heard one -- you
18 know, any evidence.

19 A Right.

20 Q But without hearing any evidence at all,
21 right now, have you already got an opinion as to
22 whether he's guilty or not guilty?

23 A No.

24 Q And these things that you might have heard
25 at some point in the past, can you put those things
26 aside and not consider them but only consider the
27 evidence that's presented here in court?

28 A Yes.

29 Q And so you won't let anything you've heard

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1 influence your decision if you're a juror?

2 **A** Right.

3 **Q** Okay. Next, concerns the possibility of
4 the possible sentence. If Mr. Flowers is found not
5 guilty, we do not get into anything concerning a
6 possible sentence. But if he were to be found
7 guilty, then at that time, the jury would decide
8 what the jury felt the appropriate punishment would
9 be. The options are life in prison without parole
10 and the death penalty.

11 If the jury did not impose the death
12 penalty, then there's an automatic sentence of life
13 without parole. And I want to know if -- could you
14 consider both of those options as sentencing options
15 if you were sitting as a juror?

16 **A** Yes.

17 **Q** And before hearing any proof at all, have
18 you got any -- are you leaning one way or another or
19 can you just consider both of those equally as we
20 stand here today?

21 **A** You're speaking of those two options?

22 **Q** Right. Life in prison without parole or
23 the death penalty.

24 **A** Right. Yes.

25 **Q** Okay. And you understand we wouldn't even
26 get to that phase unless he was convicted of the
27 crimes for which he's charged.

28 **A** Right.

29 **BY THE COURT:** Okay. Mr. Evans, have you

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1 got any questions?

2 BY MR. EVANS: Yes, sir.

3 BY MR. EVANS:

4 Q Good evening, Ms. Copper.

5 A Good evening.

6 Q How are you doing?

7 A Fine. A little nervous.

8 Q Well, that's -- there's nothing to be
9 nervous over. We just got a few questions to ask
10 you.

11 A Okay.

12 Q Now, I noticed that you told us the other
13 day that you lived on Harper Street at one time?

14 A Yes, sir.

15 Q And that you knew where Archie and Lola
16 and some of the Flowers lived over there down the
17 street from there?

18 A Yes, sir.

19 Q That y'all lived on the same street.

20 A Not on the same street. Because they --
21 they live on Cade Street, and I lived on Harper
22 Street.

23 Q Don't they live at the corner of Cade and
24 Harper?

25 A Well, I guess. I'm not -- I -- you know,
26 my street is Harper and then its -- as it go
27 around -- that's where I assume it was Cade Street.
28 I'm not positive.

29 Q Okay. And you've stated that you worked

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1 with the defendant's sister at Shoe World?

2 A That's correct.

3 Q And which sister was that?

4 A Cora.

5 Q How long did y'all work together?

6 A Probably a year or two.

7 Q Okay. You worked with the defendant's
8 father?

9 A Yes, sir.

10 Q How long did you work with him?

11 A Estimating, probably -- possibly about the
12 same, one to two years.

13 Q Okay. And I want to make sure my notes
14 are right, because we can all write down things
15 wrong. You stated that you knew his father Archie
16 Flowers.

17 A Yes, sir.

18 Q You know his brother, Archie, Jr.?

19 A Yes, sir. I know his brother.

20 Q You know his mother Lola?

21 A Yes, sir, I do.

22 Q You know witnesses in this case, Hazel
23 Jones?

24 A Yes, sir, I know her.

25 Q You know Kittery Jones, a witness in this
26 case?

27 A Yes, sir, I know him.

28 Q And you know Danny Joe Lott, a witness in
29 this case?

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1 **A** Yes, sir.

2 **Q** And I think it was yesterday and my notes
3 show that you said that the fact that you know all
4 of these people could affect you and you think it
5 could make you lean toward him because of your
6 connections to all of these people. Is that
7 correct?

8 **A** It -- it's possible.

9 **Q** Okay. That would be something that would
10 be entering into your mind if you were on the jury,
11 wouldn't it?

12 **A** Yes, sir.

13 **Q** And it would make it to where you couldn't
14 come in here and, just with an open mind, decide the
15 case, wouldn't it?

16 **A** Correct.

17 **BY MR. EVANS:** Okay. Nothing further,
18 your Honor.

19 **BY MR. CARTER:** What did she say?

20 **BY JUROR:** Correct.

21 **BY MR. CARTER:**

22 **Q** Ms. Copper, now you said you could put
23 aside anything that you heard about the case up
24 until now. Is that correct? In other words, any
25 information you heard in the neighborhood or from
26 the community or you might have read from an article
27 or saw on T.V., you could put all that aside because
28 you know that it's not supposed to be used on the
29 trial. Is that correct?

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1 **A** Correct.

2 **Q** You could put that aside. Now, this --
3 you know a lot of people in this case and -- but
4 there's nothing -- is there anything about any of
5 these people that so important to you, like
6 Mr. Flowers, Cora or those other people that you
7 know, is there anything them that's so significant
8 or so strong that you would not use your own
9 judgment if -- and would be hamstrung or be -- or
10 lose your own personal judgment as a result of
11 knowing them?

12 That's probably confusing. Is it? It
13 probably is. It's confusing to me.

14 What I'm trying to find out is just as you
15 could put aside all the information you heard before
16 about this case, could you not also put aside the
17 fact -- if you got picked as a juror, put aside the
18 fact that you have met Mr. Flowers, that you know
19 some other people in these cases and be fair to the
20 Tardys, the Stewarts, the Goldens, and Rigbys, and
21 make whatever decision or vote that you're going to
22 make based on the evidence and the evidence only.
23 Could you do that?

24 **A** I feel like I could. But, you know, it --

25 **Q** Is what you're saying --

26 **A** Of course, it would make me, you know,
27 feel uncomfortable. But if I had to do it, you
28 know, I got to do what I got to do.

29 **Q** Okay. So you're saying that -- thank you.

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1 You're saying that you'll be uncomfortable. You'd
2 prefer not to -- I get the impression you're saying
3 that you'd rather not be a juror. But if you got
4 picked to be one, you would take the responsibility
5 seriously, and you would follow the law and the
6 rules that the Court give you, and you would put
7 aside anything that you are required to put aside
8 and make your evidence and make your vote based on
9 just the evidence you hear in the courtroom. Is
10 that fair to say?

11 **A** Yes, sir. That's correct.

12 **BY MR. CARTER:** Thank you. Thank you,
13 ma'am.

14 **BY JUROR:** You're welcome.

15 **BY THE COURT:**

16 **Q** I just got -- will you follow wherever the
17 evidence leads in this case? Will you listen to the
18 evidence and base your verdict on
19 the evidence?

20 **A** Yes, sir.

21 **Q** And if the evidence showed Mr. Flowers
22 guilty, would you find him guilty? I mean, could
23 you find him guilty if the evidence showed he was
24 guilty?

25 **A** Yes, sir.

26 **Q** And if the evidence showed or the State
27 failed to prove his guilt beyond a reasonable doubt,
28 could you find him to be not guilty?

29 **A** Yes, sir.

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1 **Q** Then you're telling me, again, that you're
2 going to the listen to the evidence and will wait
3 and base your decision strictly on the evidence and
4 no outside factors; is that correct?

5 **A** That's correct.

6 **BY THE COURT:** Okay. Thank you. You may
7 step down. And when you go back out, don't
8 talk about what we talked in here about with
9 anybody out there about.

10 **BY JUROR:** Yes, sir.

11 **BY THE COURT:** Okay. Thank you,
12 Ms. Copper.

13 (JUROR LEAVES THE COURTROOM)

14 **BY THE COURT:** No. 63, Mr. Hargrove.

15 (JUROR NO. 63, JAMES HARGROVE, ENTERS
16 THE COURTROOM)

17 **BY THE COURT:**

18 **Q** If you'll come forward, Mr. Hargrove, and
19 have a seat down here. What we're doing now is
20 asking questions of the individual jurors outside
21 the presence of the other jurors, because we just
22 feel like it was appropriate to have some questions
23 without having everybody else listening. I see you
24 lived in Greenwood at some point?

25 **A** Yes, sir. We moved up here in 2003.

26 **Q** Okay. You've been here since 2003?

27 **A** Yes, sir.

28 **Q** Because that was the next question I was
29 going to ask is if you have heard anything about

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1 this case or have any knowledge of the case or
2 anything?

3 **A** What little bit I have seen in newspapers.
4 And I do not watch local news, so....

5 **Q** And was that the Winona Times or some
6 other newspapers?

7 **A** It was Common Wealth. And I have seen
8 some in Winona Times.

9 **Q** And has anything that you read in the
10 paper caused you to form an opinion as to
11 Mr. Flowers' guilt or innocence?

12 **A** No, sir.

13 **Q** And if you were selected and served as a
14 juror in this case, would you lay aside -- could you
15 and would you lay aside anything you might have
16 heard outside of court or read, and base your
17 decision strictly on the evidence here presented in
18 court?

19 **A** Yes, sir.

20 **Q** Next question: If Mr. Flowers were found
21 guilty, we would have a sentencing phase. If he's
22 found not guilty, the trial is over. But if he were
23 to be found guilty, we would go to the next step,
24 which would be the sentencing phase.

25 At that time, the State of Mississippi
26 would be seeking the death penalty. The State would
27 put on aggravating factors that would show the
28 State's belief why Mr. Flowers should be sentenced
29 to death.

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1 Mr. Flowers would put on mitigating facts
2 that would show reasons in his view why the death
3 penalty would not be an appropriate sentence. The
4 jury then would be instructed by the Court, and the
5 jury ultimately would decide the appropriate
6 punishment. So the punishment would be death or
7 life without parole. Could you consider both of
8 those as sentencing options?

9 **A** Yes, sir.

10 **Q** And as you sit here today, would you favor
11 one side over the other -- I mean, one option over
12 the other?

13 **A** No, sir.

14 **Q** So you will listen to the evidence and
15 then make that decision; is that correct?

16 **A** Yes, sir.

17 **BY THE COURT:** Mr. Evans?

18 **BY MR. EVANS:**

19 **Q** Good evening.

20 **A** Yes, sir.

21 **Q** In the second phase of this trial, if the
22 jury finds the Defendant guilty, both sides can put
23 on factors as the judge was telling you. The State
24 puts on aggravators. The Defense puts on mitigators
25 or things that they think would justify a sentence
26 of life. And the judge will instruct you on what
27 factors you can look at for each side, what you can
28 and can't do.

29 Are you telling us that you could come in

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1 here with a complete open mind, not make any
2 decision before you hear both sides, hear the
3 judge's law and then make a decision of which
4 sentence would be appropriate?

5 **A** Yes, I can.

6 **BY MR. EVANS:** Nothing further, Your
7 Honor.

8 **BY MS. STEINER:**

9 **Q** Good afternoon, Mr. Hargrove.

10 **A** Afternoon.

11 **Q** You -- you -- you work at Delta
12 Distributing Company --

13 **A** Yes, sir.

14 **Q** -- nearby? Is that firm up in Greenwood?

15 **A** Yes, ma'am.

16 **Q** So you commute back and forth to
17 Greenwood?

18 **A** Yes, ma'am, every day.

19 **Q** Do you -- does Delta Distributing have
20 customers down here in Montgomery County?

21 **A** Yes, ma'am.

22 **Q** As the vice president, I assume, you're an
23 executive and stay in the office. Is that correct?

24 **A** Yes, for the most part.

25 **Q** Did you rise through the ranks? Did you
26 begin as a sales person or that sort of thing?

27 **A** It goes back to washing trucks as a kid.
28 It's a family business.

29 **Q** Oh, okay. This is your family business?

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1 **A** Yes, ma'am.

2 **Q** And did you wash trucks -- did you ever do
3 sales calls or delivery calls on folks down here in
4 Montgomery County?

5 **A** Yes, ma'am, I did. And I do realize that
6 at -- Mr. Archie Flowers?

7 **Q** Uh-huh.

8 **A** He used to work at Kelly's Stop & Go.

9 **Q** Okay.

10 **A** If that's the same one. And I was making
11 deliveries there in the late '80s, early '90s. So I
12 do know who Mr. Archie is, but we are not
13 acquainted. So yes, I did make deliveries to where
14 he did work.

15 **Q** All right. So you've meet Mr. Archie
16 Flowers through a business acquaintance --

17 **A** Yes, ma'am, 20 some-odd years ago.

18 **Q** -- in the '80s -- before any of this ever
19 happened?

20 **A** Yes, ma'am.

21 **Q** And you have -- have you ever had any
22 conversations with him about this?

23 **A** No, ma'am. Not since probably 1990 or so.

24 **Q** Did you have -- well, in 1990, these
25 events had not happened?

26 **A** No. Since then, no.

27 **Q** Would any conversations you had with
28 Archie prior to these events, if -- could you put
29 any information from those conversations aside --

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1 **A** Yes, ma'am.

2 **Q** -- if he should be a witness in this case?

3 **A** Yes, ma'am.

4 **Q** -- and testify here? He has been listed
5 as a potential witness.

6 **A** Well, I was not sure who he was. That was
7 so long ago. I had to make a call to find out and
8 make sure that was him, so....

9 **Q** Did you -- I assume, Delta Distributing is
10 beverages?

11 **A** Yes, ma'am. Mainly Anheuser Busch
12 products.

13 **Q** Okay. So you wouldn't be delivering that
14 to furniture stores?

15 **A** No, ma'am.

16 **Q** Did you -- I don't believe any of the --
17 Robert Golden -- I -- I'm trying to remember if any
18 of the other victim -- any of the -- Mr. Flowers
19 worked -- you recall meeting him. Do you recall
20 running into Ms. Ballard, her husband or Mr. and
21 Mrs. Rigby?

22 **A** Frank Ballard and I were acquainted. He
23 was the manager of Ragtime in Grenada in the late
24 '80s, early '90s. And he was bar manager, and I was
25 delivery, so that was strictly casual business
26 acquaintance.

27 **Q** You were acquainted late '80s, early '90s
28 and then mid '90s -- well, 1996, I assume you read
29 that his wife had died in a shooting?

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1 **A** Well, I read about that, but didn't put
2 two and two together until we moved up here in 2003.
3 I did not know that that was the same family.

4 **Q** How did you come to put that together in
5 2003?

6 **A** We were -- we still do attend Moore
7 Memorial United Methodist.

8 **Q** Oh, so you go to church with Mr. Rigby --

9 **A** Well, we did. I'm more or less inactive
10 now.

11 **Q** But at some point, between when you first
12 came here, you moved your church membership to
13 Greenwood down --

14 **A** That's when I first became reacquainted
15 with Frank and that's when I first met Roxanne.

16 **Q** In 19 --

17 **A** That would have been in 2003.

18 **Q** 2003. And were you aware of prior
19 proceedings in this matter that happened in 2004 and
20 2008?

21 **A** Well, after I moved up here, yes. I was
22 aware of that happening here but did not keep up
23 with any of the details of it.

24 **Q** In the church, in fellowship, in Sunday
25 school, you were attend -- when did you become
26 inactive in the church that the Ballards attend?

27 **A** Probably about a year and half ago.

28 **Q** Was that before or after the 2008
29 proceeding?

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1 **A** Probably before. It was a little before.

2 **Q** Okay. But in 2004, you were an active
3 member of the church?

4 **A** Yes.

5 **Q** And I'm sure the church provided
6 fellowship to Mr. and Ms. Ballard --

7 **BY MR. EVANS:** Object to leading. She can
8 ask him questions.

9 **BY THE COURT:** Well, this is voir dire,
10 but so....

11 **BY MS. STEINER:** Your Honor, yeah, I
12 believe that the Davis case says either
13 advocate can lead. I'm just trying to get --

14 **BY MS. STEINER:**

15 **Q** Quickly, and I don't want to put words in
16 your mouth.

17 **A** Yes, ma'am.

18 **Q** Do you recall at church with Mr. and
19 Ms. Ballard as it was running up to the proceeding,
20 were they seeking fellowship and support in the
21 church from the members --

22 **A** I can't really speak to that, because I
23 didn't pay that close attention to relationships in
24 the church.

25 **Q** You did not. Did you have any
26 conversations -- were they in your Sunday school
27 class?

28 **A** No, I don't attend Sunday school. Just
29 worship services.

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1 **Q** Okay. And did they ask for prayer? I
2 don't know if --

3 **A** I don't recall any support being
4 solicited. There may have been.

5 **Q** Could you set all that aside if you -- if
6 Ms. Roxanne came and testified here?

7 **A** Yes, ma'am.

8 **Q** All right. Would you want to give -- she
9 may be a witness in either or both phases the
10 judge's discussed. Would your church membership
11 with Ms. Roxanne make you wish to -- would it make
12 you want to be able to believe her?

13 **A** No. No more credence than anyone else.

14 **Q** Next Easter when your wife drags you back
15 to church or if you do choose to become more active
16 in the church, if your verdict in this case were not
17 guilty, could you go into church and greet her in
18 Christian fellowship to the same degree as if --

19 **A** Absolutely. If the facts supported an
20 acquittal, then I would be very comfortable with my
21 decision.

22 **Q** When you say the facts support an
23 acquittal, what do you mean by that?

24 **BY MR. EVANS:** Your Honor, I object. That
25 is completely inappropriate. There are no
26 facts yet, and his answer is very clear.

27 **BY THE COURT:** I sustain, because I mean
28 he hadn't heard any facts so I don't think --

29 **BY JUROR:** May I rephrase? If the facts

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1 that are presented in court support an
2 acquittal, then I would be able to do that,
3 yes.

4 **BY MS. STEINER:**

5 **Q** And did you hear -- you feel like some
6 facts would have to be brought forward to support an
7 acquittal --

8 **BY MR. EVANS:** Your Honor, I object.

9 **BY THE COURT:** Overruled.

10 **A** As explained by the judge, the case has to
11 be presented by the State of Mississippi. The
12 burden of proof lies with them. And that's very
13 simple at what I would rely on. They have to make
14 their burden of proof.

15 **BY MS. STEINER:**

16 **Q** I understand that. But would you want
17 facts in addition to what the State puts to support
18 an acquittal?

19 **A** I'm not really sure.

20 **BY MR. HILL:** How would he know?

21 **BY MR. EVANS:** Your Honor, he has answered
22 this question.

23 **BY MS. STEINER:** If the Court please, I
24 think it's a different question.

25 **BY THE COURT:** Let me ask it and clear it
26 up. Would you require Mr. Flowers to put on
27 any proof at all in the case? I mean, so you
28 understand the burden of proof is at all
29 times on the State of Mississippi --

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1 **BY JUROR:** Yes, sir.

2 **BY THE COURT:** -- they've got to prove him
3 guilty beyond a reasonable doubt?

4 **BY JUROR:** I understand that. You've
5 explained it.

6 **BY THE COURT:** He doesn't have to prove
7 anything.

8 **BY JUROR:** Correct. I understand that.

9 **BY THE COURT:** And so would you be
10 thinking that he ought to have to prove
11 something?

12 **BY JUROR:** No, sir.

13 **BY THE COURT:** Okay.

14 **BY MS. STEINER:**

15 **Q** Now, you had -- when you were having a
16 conversation with His Honor about being able to
17 consider the sentences of life in prison without
18 parole and the sentences of the death penalty, you
19 understand that the State -- the legislature of the
20 state of Mississippi has stated in the law that
21 either of those two sentences is an appropriate
22 sentence. Do you understand that?

23 **A** Yes, ma'am.

24 **Q** Do you -- and I'm not talking about this
25 case. I'm saying as you sit here, you checked you
26 generally favor the death penalty on your
27 questionnaire. Is that an accurate --

28 **A** That is what I checked.

29 **Q** Is that an accurate statement --

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1 **A** Yes, ma'am.

2 **Q** -- of where you stand about that?

3 **A** Yes, ma'am.

4 **Q** And you understand -- and His Honor has
5 said that, as you sit here today, obviously -- I
6 think your response was, I have no opinion one way
7 or the other as to which would be the appropriate
8 sentence in this case; is that correct?

9 **A** In this case, correct.

10 **Q** All right. Do you, in general, feel the
11 death penalty is probably the superior punishment
12 for a quadruple murder of four people?

13 **BY MR. EVANS:** Your Honor, again, I
14 object --

15 **BY MS. STEINER:** With aggravating
16 circumstances.

17 **BY MR. EVANS:** That is not an appropriate
18 question.

19 **BY JUROR:** I'm confused.

20 **BY THE COURT:** Well, he said he didn't
21 understand it, and I don't either.

22 **BY MS. STEINER:** Okay. I apologize,
23 Judge.

24 **BY MS. STEINER:**

25 **Q** If you are even considering penalty in
26 this matter, you will have found Mr. Flowers guilty
27 of up to four capital murders. That's deliberate,
28 intentional murder in the course of the crime of
29 robbery as charged here. You understand that?

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1 **A** Yes, I do.

2 **Q** And he won't be not guilty. He won't be
3 insane. There won't be anything that would have
4 made you return a different verdict than guilty of
5 capital murder. Do you understand that?

6 **A** Yes, ma'am.

7 **Q** And having returned that verdict and
8 having had the State characterize it as brutal, are
9 you telling me today that you would not lean towards
10 the death penalty under those circumstances?

11 **A** I would have to base my decision today or
12 in this case on the facts as presented in this
13 courtroom by the State of Mississippi.

14 **Q** All right. And I think His Honor
15 explained that the State will be here proving
16 aggravating factors?

17 **A** Right.

18 **Q** In fact, as the Court will instruct you,
19 you will have to find unanimously, beyond a
20 reasonable doubt with the other jurors, that at
21 least one aggravating factor exists. And those
22 aggravating factors that the Court will instruct you
23 on, we would expect they all have to do with the
24 actual crime with which they've charged and at the
25 point you're deliberating sentence, you've convicted
26 Mr. Flowers.

27 Now, he's also talked about mitigating
28 evidence, evidence that would suggest that a life
29 without parole sentence -- I don't know if I asked

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1 you this: You'd consider both of those serious
2 punishments?

3 **A** Yes, ma'am.

4 **Q** All right. In order -- one of the
5 things -- the mitigating evidence in this case can
6 include things to do with the crime. You understand
7 that?

8 **A** Yes, sir.

9 **Q** But it need not. And it -- could you --
10 if there's -- in the situation where you found him
11 guilty and are hearing the evidence, consider
12 mitigating evidence that did not deal with the
13 crime, but dealt instead with Mr. Flowers' life and
14 background and his family life, his life before
15 coming here, his community life before being
16 arrested. Could you consider that as mitigating
17 evidence?

18 **A** I suppose I could.

19 **Q** You suppose you could. You looked a
20 little doubtful.

21 **BY MR. EVANS:** Your Honor, I think that --

22 **A** You're confusing on the question.

23 **BY MR. EVANS:** I think if the Court
24 instructs him that those are mitigators to
25 consider, he could follow the Court's
26 instructions.

27 **BY THE COURT:** He just said he didn't even
28 understand the question.

29 **BY JUROR:** I understand what he said, and

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1 that would be correct.

2 **BY MS. STEINER:**

3 **Q** You understand what --

4 **A** Right. Phrase it differently.

5 **Q** -- what the district attorney said. So
6 that's the district attorney's opinion. I'm asking
7 you yours.

8 **A** Well, I would assume you would be
9 presenting the mitigation as far as the Defense, so
10 yes, I would consider your argument in that.

11 **Q** But you were just a little doubtful when I
12 said it may not have anything to do with the crime.

13 **A** I'm a little confused as if it doesn't
14 have anything to do with the crime as to why it
15 would be presented in court.

16 **Q** Well, the Court will instruct you on the
17 law.

18 **A** Okay. Then I can handle that.

19 **Q** And I believe when the Court asked about
20 that. But you do -- as you sat here today, you
21 just -- you could see no reason why anything like
22 that would have anything to do with this crime or
23 the sentence?

24 **BY MR. EVANS:** I object, Your Honor.

25 **BY MR. HILL:** She's asking him to make a
26 conclusion on the evidence, Your Honor.

27 **BY THE COURT:** I sustain.

28 **BY MS. STEINER:**

29 **Q** Have you -- I believe you said --

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1 similarly, things that have nothing to do with the
2 activities of this crime, but may have to do with
3 Mr. Flowers's life as he has lived it since his
4 arrest --

5 **A** (Nodding head).

6 **Q** -- could you consider that as mitigation
7 after you've convicted him of the crime? Again, it
8 had nothing to do with the crime.

9 **A** What would you be mitigating?

10 **Q** The sentence -- thank you. Mitigation
11 talks about the sentence, to make that selection
12 between life in prison without -- to mitigate the
13 death penalty, to consider life in prison without
14 parole.

15 **A** Okay. I follow you. Yes.

16 **Q** All right. Now, the other thing the Court
17 will instruct you on is that, although you must be
18 unanimous on finding the aggravators, if you're
19 looking at the mitigating circumstances or the death
20 penalty -- or the appropriateness of the death
21 penalty, that is left to individual conscience. If
22 nine other jurors find something a mitigator but you
23 don't, you're not required to join them. You can
24 hold your opinion. And they're entitled to hold
25 theirs. Do you understand that?

26 **A** Yes, ma'am.

27 **Q** Can you respect that?

28 **A** Yeah.

29 **Q** And conversely, if you say that mitigates

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1 this crime for me, you're allowed to keep that
2 opinion and they have to respect that, too?

3 **A** Yeah.

4 **Q** And you can agree to disagree on that?

5 **A** Yes, ma'am.

6 **Q** You understand that? And respect each
7 other's opinions?

8 **A** My job makes me do that on a regular
9 basis.

10 **Q** Oh, is that -- I hope you're not
11 deliberating things as serious --

12 **A** No, nothing such as this.

13 **Q** But as the president of a distributing
14 company -- vice president.

15 **BY MS. STEINER:** Thank you. I have
16 nothing further.

17 **BY THE COURT:** You may step down. If
18 you'll just, when you go out, not talk about
19 what you've discussed in here with anyone
20 outside.

21 **BY JUROR:** Yes, sir.

22 (JUROR LEAVES THE COURTROOM)

23 **BY THE COURT:** From here on, I'm giving
24 each side five minutes to ask questions of
25 individual jurors after they have been
26 questioned by the Court. We are getting
27 repetitive with everybody that I've heard
28 today so far. To avoid repetitiveness and to
29 get directly to points that need to be made

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1 or questions that need to be asked, I believe
2 five minutes will be an appropriate length of
3 time for both sides to ask questions. And so
4 that's going to be my ruling from here on.

5 (To the bailiff) You may bring
6 Ms. Woods in next. That would be No. 65.

7 (JUROR NO. 65, JUANITA WOODS, ENTERS
8 THE COURTROOM)

9 BY THE COURT:

10 Q Ms. Woods, if you'll come on down and have
11 a seat.

12 Ms. Woods, what we're doing now is asking
13 individual questions of jurors because there are
14 some questions we don't want to ask out in front of
15 all the others. And so first, we're asking if you
16 heard about the case, have any knowledge about the
17 case, read about the case or anything like that?

18 A I heard things, but I haven't really read
19 anything as far as paperwise.

20 Q Were you living here back in 1996?

21 A Unh-unh.

22 Q I know you work --

23 A In Kilmichael.

24 Q Okay. You work in Eupora?

25 A Uh-huh.

26 Q And how long have you worked there?

27 A Be a year in June.

28 Q Okay. So you -- I didn't know -- I
29 thought you might have spent all your working life

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1 over in Eupora --

2 **A** Unh-unh. I'm originally from Kilmichael.

3 **Q** Okay. From Kilmichael. Did -- was it
4 just people out in town talking or did you read it
5 in the newspapers --

6 **A** No. I don't very seldom read papers. I
7 just hear bits and pieces, you know, over the years.

8 **Q** Now, has anything that you read or heard
9 caused you to form an opinion as to the guilt or
10 innocence of Mr. Flowers?

11 **A** I haven't really formed an opinion.

12 **Q** Okay. So you don't have any formed
13 opinion at all.

14 **A** No, I don't have an opinion.

15 **Q** Now, would you lay aside what you might
16 have heard outside the Court and base your decision
17 only on the evidence as presented here in Court and
18 on nothing else?

19 **A** As I said before, I just -- I'm not
20 comfortable doing that.

21 **Q** Yeah. I understand -- nobody -- you know,
22 nobody really wants the job. You know, it's a tough
23 job, and I understand that nobody really wants to do
24 it. But would you lay aside anything you might have
25 heard and just listen to the evidence if you were
26 selected and follow the evidence to wherever it may
27 lead and not have any decision based on things
28 you've heard outside the Court?

29 **A** I could do that.

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1 **Q** The next question involves the possibility
2 of the sentence, if Mr. Flowers were to be
3 convicted. It would be the sentencing phase. Only
4 if Mr. Flowers was found guilty on the first part of
5 the trial would we even get to the second part. If
6 he was found not guilty, that's it. It's over.

7 But if we were to get to the second part
8 of the trial, the jury would decide what the
9 appropriate punishment should be. The State of
10 Mississippi is seeking the death penalty. They
11 would be putting on aggravating factors or -- which
12 are facts that they believe would justify a jury
13 imposing the death penalty.

14 Mr. Flowers, through his attorneys, would
15 be putting on mitigating facts. That's things that
16 they believe would justify the jury in not imposing
17 the death penalty. The law of this state allows the
18 imposition of the death penalty. If the death
19 penalty is not imposed, then the sentence is life in
20 prison without parole. Could you consider both of
21 those as sentencing options and possibilities?

22 **A** No, sir.

23 **Q** Which one could you not consider?

24 **A** Well, since both of them is -- but
25 actually based on what -- what would actually happen
26 to him, I couldn't. I mean, within myself, I
27 couldn't.

28 **Q** Are you saying you couldn't even
29 deliberate on a sentence -- either of the sentences?

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1 **A** No, sir.

2 **Q** And is -- what -- what is that thought
3 based on, just not -- I mean --

4 **A** I just don't believe in that.

5 **Q** Don't believe?

6 **A** I don't believe in it. I mean, it's -- to
7 me, it's judging in a sense. But then taking
8 what -- being as a juror, that information, you
9 still would have to -- your say-so in a sense would
10 be affecting each outcome to me.

11 **Q** Well, could you -- and are you saying --
12 could you consider life without parole?

13 **A** If I was selected, I wouldn't have a
14 choice.

15 **Q** Well, that's right. And I mean, the same
16 way with the death penalty. If you were selected,
17 you wouldn't have a choice but to consider it. But
18 I want to know, could you consider it?

19 **A** It would be hard.

20 **Q** But could you do it if you were required
21 by -- if you were sitting here and required to, could
22 you consider that as a possible sentence?

23 **A** Well, I guess I wouldn't have a choice so
24 I -- yeah, I guess I could.

25 **BY THE COURT:** Okay.

26 **BY MR. EVANS:**

27 **Q** Good evening, Ms. Woods.

28 **A** How are you?

29 **Q** All right. And like we said the other

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1 day, nobody's questioning anyone's beliefs, whether
2 it be personal beliefs or religious beliefs. But if
3 I understand what you're saying right, is it because
4 of your beliefs, you don't think you should sit in
5 judgment on anyone else?

6 **A** No, sir.

7 **Q** And if you were picked as a juror, are
8 those beliefs so strong on that that if you were
9 asked to hear the evidence and deliberate with the
10 jury, that, as I said the other day, you would
11 basically have to tell other jurors "I'm sorry, I
12 just don't think I can deliberate. I can't decide
13 whether somebody's guilty or innocent." Would that
14 be what you would have to do?

15 **A** Yes, sir.

16 **Q** Okay. And that's as far as guilt, period.
17 And as far as the death penalty, are your views so
18 strong on the death penalty that you could never
19 consider the death penalty as an appropriate --

20 **A** Yes, sir. It's that strong. Yes, sir.

21 **BY MR. EVANS:** Thank you, ma'am.

22 **BY MR. CARTER:**

23 **Q** Ms. Woods, I got the impression that you
24 answered one way when -- correct me if I'm wrong. I
25 thought you told the judge that -- I mean, it's
26 pretty obvious you're uncomfortable with this, and
27 you don't want to be a juror. And as the Court told
28 you, everybody understands that.

29 But I thought you ultimately wound up

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1 saying that if you got picked, that you would
2 consider both options and that you would do the job;
3 you would deliberate, although you would be
4 uncomfortable. You would listen to the evidence,
5 and you would deliberate although you would be
6 uncomfortable. Is that what you told the Court?

7 **A** Well, from what I gathered that he said,
8 if I was chosen -- to that point, if I was chosen,
9 that means I didn't have a choice.

10 **Q** Right.

11 **A** So as far as trying to come to a verdict,
12 I don't think I could do it, but....

13 **Q** And when you're talking about come to a
14 verdict, you're talking about the first phase as to
15 innocence or guilt?

16 **A** Well, as far as -- as far as I know the
17 death penalty, I couldn't do that. Not comfortable
18 with either one.

19 **Q** So you're not comfortable with life or
20 death?

21 **A** Not really. No, I'm not.

22 **Q** Right. And are you also saying -- I want
23 to be clear -- that you're not even comfortable
24 voting guilty or not guilty?

25 **A** I'm not comfortable with that, either.

26 **Q** Not comfortable with that either. Okay.
27 But if you got picked, you wouldn't deliberate. You
28 wouldn't listen to the evidence, and you wouldn't
29 deliberate?

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1 **A** Well, I mean, if I'm in that same room, I
2 would have to listen to it.

3 **Q** Okay.

4 **A** But for me to just say that I could just
5 say, Well, he's guilty or he's not guilty, I
6 don't -- it's just --

7 **Q** It would be difficult but --

8 **A** Very. Very.

9 **Q** And it would be difficult, and you're
10 saying you would do it -- you would do what you are
11 asked to do or you wouldn't do it?

12 **A** I mean, everything sound so confusing.
13 But like I said again, I mean, if I was put in that
14 position where I didn't have a choice and they chose
15 me to be there, if it -- I guess if it came to that
16 point where he would get life imprisonment or death
17 or something like that and being there, I mean, I
18 guess I would sway to the point of life in prison.
19 But for me, the whole choice, I wouldn't want to do
20 it if I had a choice. I'm not comfortable.

21 **Q** Okay. So you're leaning towards life,
22 you're telling me. And you wouldn't even consider
23 death. Is that what you're saying?

24 **A** No, sir.

25 **BY MR. CARTER:** Okay.

26 **BY THE COURT:** Ms. Woods, if you'll step
27 down and go on back out with your fellow
28 jurors. And when you walk out, please don't
29 discuss outside with them what we've talked

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1 about in here.

2 (JUROR LEAVES THE COURTROOM)

3 **BY THE COURT:** Mr. Amason next, No. 67.

4 (JUROR NO. 67, GLEN AMASON, ENTERS THE
5 COURTROOM)

6 **BY THE COURT:**

7 **Q** Come on down here, Mr. Amason, and have a
8 seat.

9 Mr. Amason, what we're doing now is we're
10 asking questions outside the presence of the other
11 jurors about particular facts that we felt like
12 wasn't appropriate to ask out in front of everybody.

13 First, we're getting into knowledge about
14 the case. Have you got any -- have you heard about
15 the case or have any knowledge about the case?

16 **A** No, sir. None -- not anything other than
17 news and so forth.

18 **Q** Do you read about it in the paper?

19 **A** I don't think I necessarily read about it,
20 no.

21 **Q** Did you see it on T.V., radio?

22 **A** No. At that time, I was a good bit
23 younger then and didn't really keep up with things
24 like that.

25 **Q** And through the years, have you heard talk
26 about it or discussed it much or at all?

27 **A** No, sir.

28 **Q** So you just generally know it happened?

29 **A** Yes, sir.

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1 **Q** And that -- can you lay -- if you're
2 selected as a juror, can you lay aside what you've
3 heard and base your decision only on the evidence
4 presented here in court?

5 **A** Yes, sir.

6 **Q** And would -- do you have any fixed opinion
7 right now as to the guilt or innocence of
8 Mr. Flowers?

9 **A** No, sir.

10 **Q** Again, will you wait till all the evidence
11 is presented and then base your decision on the
12 evidence as you hear it in this courtroom?

13 **A** Yes, sir.

14 **Q** The next question considers the possible
15 sentence. If Mr. Flowers is found guilty, then the
16 jury would go to the second phase, which will be the
17 sentencing phase. If he was found not guilty, we
18 would not get to that phase.

19 If he were to be found guilty, then the
20 State would be seeking the death penalty. They
21 would be putting on aggravating factors, which is
22 reasons the State believes Mr. Flowers should be
23 sentenced to death.

24 The Defense would then put on mitigating
25 factors, which would be reasons why they believe the
26 death penalty would not be appropriate in the
27 situation. Then, the jury would ultimately make
28 that decision. Again, if the sentence was not
29 death, it would be an automatic life without parole

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1 sentence. Can you consider both of those sentencing
2 possibilities?

3 **A** Yes, sir.

4 **Q** And as you sit here today, having heard
5 nothing about the case from this Court, do you
6 already have some belief that one sentence should be
7 imposed over the other?

8 **A** No, sir. To me that would depend on the
9 case itself.

10 **Q** And so you're saying you will wait till
11 the case has been presented to you to make that
12 determination?

13 **A** That's correct.

14 **BY THE COURT:** Okay. Thank you,
15 Mr. Amason.

16 **BY MR. EVANS:**

17 **Q** Good evening. As the judge told you --
18 and I want to go a little bit further -- on the
19 aggravators and the mitigators. The aggravators
20 will be the things that we introduce at that phase
21 of the trial that we will be arguing justifies the
22 death penalty.

23 The Defense will be arguing what they call
24 mitigators, and that's reasons that they will be
25 trying to convince the jury that a life sentence is
26 appropriate.

27 Now, my question on that is simply this:
28 Will you listen to what the Court instructs you on
29 what you should consider and only consider what the

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1 judge tells you to?

2 **A** Yes, sir.

3 **Q** And would you base your decision of which
4 penalty would be appropriate only after you have
5 heard the Court's instructions and heard both sides
6 and considered what both sides say?

7 **A** Yes, sir.

8 **Q** And would you openly consider what --
9 anything that the Court allows both sides to put on?

10 **A** Yes, sir.

11 **BY MR. EVANS:** Nothing further, Your
12 Honor.

13 **BY MS. STEINER:**

14 **Q** Good afternoon, Mr. Amason.

15 **A** How are you doing.

16 **Q** You had indicated in response to His
17 Honor's questions that you heard -- well, that you
18 don't -- didn't read anything about this in the
19 newspaper at any time since it happened?

20 **A** If it's been in the local paper, I scan.
21 But I can't say that I just sat and read an article
22 about it. I don't read any articles about anything.
23 I'm sorry. I'm a sports man, and I read the sport
24 section. That's about it.

25 **Q** All right. Now, the Winona paper, you've
26 got to open the paper up and look at the front page
27 before you turn to the sports section --

28 **A** The sports are on the back side.

29 **Q** It's on the back side. Okay.

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1 **A** Yes, ma'am.

2 **Q** And -- but you said you had heard things
3 over the years --

4 **A** I mean, just because I lived in the town.
5 That's what I've heard, you know.

6 **Q** Okay. Where have you heard these things
7 in the town?

8 **A** Well, ma'am, as many times that -- you
9 know, that it's come up or -- I mean, you just hear
10 people talking. I have not sat and carried on a
11 conversation about it with anybody.

12 **Q** What sorts of things have you heard people
13 talking about?

14 **A** Mainly, just -- I mean, just about, We're
15 fixing to do it again. I mean --

16 **Q** How do you feel about fixing to do it
17 again?

18 **A** I think it needs to be done right, if it
19 takes one time or ten times, ma'am.

20 **Q** And do you have an opinion one way or the
21 other on what is the right way -- what is right in
22 this case in getting it done?

23 **A** Well, the right way is -- in my opinion,
24 is to where both sides, no matter what side you're
25 on, everything is taken care of the first time so it
26 can be handled and -- whether it's charges or no
27 charges, it can be -- a decision can be made.
28 Everybody's done their jobs the right way, and it
29 don't have to be done again.

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1 **Q** Okay. I appreciate that. Now, I believe
2 that you said that you go to the same church as
3 Frank and Roxanne Ballard?

4 **A** I do.

5 **Q** Are you active in that church?

6 **A** Yes, ma'am.

7 **Q** Do you go pretty much every Sunday?

8 **A** Yes, ma'am.

9 **Q** When you turned up at church the first
10 Sunday after you got this invitation to go to --
11 come to court this week and be a juror --

12 **A** Yes, ma'am.

13 **Q** -- did you let your fellow church members
14 know that you were --

15 **A** No, ma'am.

16 **Q** All right.

17 **A** Sure didn't.

18 **Q** Did anybody seem to know that?

19 **A** No, ma'am.

20 **Q** All right. Now, I think you said you know
21 there have been several times at your church -- does
22 your church try and give fellowship to the Ballards
23 when one of these trials comes up?

24 **A** I'm not sure, ma'am. I never attended one
25 if they did.

26 **Q** All right. Do you go to Sunday school
27 class with either --

28 **A** No, I do not.

29 **Q** All right. Do you go to a different class

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1 or do you --

2 **A** I'm sorry. But I don't go to Sunday
3 school. I apologize.

4 **Q** But you do go to worship service?

5 **A** Yes, ma'am. Lots of times, I'm an usher,
6 and my job is to greet everybody at the door and
7 speak to them.

8 **Q** So you speak to Frank and Roxanne?

9 **A** Yes, ma'am.

10 **Q** And my husband was an usher in his church.
11 And if somebody had a bereavement or a time of
12 trial --

13 **BY MR. EVANS:** Your Honor, I object to
14 what she or her husband would do.

15 **BY THE COURT:** I sustain.

16 **BY MS. STEINER:**

17 **Q** In the course of being an usher, do you --
18 when you know of a bereavement or a time of trial or
19 a blessed event or something, do you comment to the
20 people about that --

21 **BY MR. EVANS:** Object. It only pertains
22 to these people involved --

23 **BY THE COURT:** I sustain it. It doesn't
24 matter to other people what --

25 **BY MS. STEINER:**

26 **Q** Have you had -- you've had such
27 conversations with Frank and Roxanne?

28 **A** I have never once spoke to Frank or
29 Roxanne anything to do with this.

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1 Q All right. Now I -- forgive me. I've
2 been looking at 156 faces. And when I was pulling
3 into the -- this morning, coming through the
4 security point, there were the deputy -- uniform
5 deputy?

6 A That's correct.

7 Q And there were several men standing around
8 next to his car. And I actually thought they were
9 plain clothes security. And I'm terrible --

10 A Yes, ma'am. That was me.

11 Q You were one of the men standing there?

12 A I was.

13 Q Are you friends with that particular
14 deputy?

15 A I know him. Yes, I do.

16 Q All right. Because I think you've got law
17 enforcement -- your wife is kin to the Johnsons?

18 A Yeah. And I probably spoke to them about
19 as much as I've spoke to you today.

20 Q All right. But you were standing there
21 next to them as they were doing security?

22 A Yes, ma'am. Because when you come
23 through, he said, "Is that a juror I said, "No,
24 ma'am -- no, sir. I believe that's a lawyer."

25 Q That was you?

26 A Yes.

27 Q I have to say I get you and one of the
28 other -- the physical presence of you and one of the
29 other jurors -- so that was -- was there anybody

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1 else standing around there --

2 **BY MR. EVANS:** Your Honor, I object unless
3 there is some relevance to this.

4 **BY THE COURT:** Well, you need to wrap it
5 up because the time limits, you've already
6 passed. So you need to wrap this up with
7 this witness.

8 **BY MS. STEINER:**

9 **Q** Did -- let me -- I'd like to address --
10 I'm sorry. I did not keep my eye on that. Do you
11 know were there other people, also jurors, standing
12 around there with you?

13 **A** Probably so, because we parked over there,
14 and we was talking as we come back. Yes, ma'am.

15 **Q** All right. And they heard you say, No,
16 advising that's one of the lawyers?

17 **A** Well, I mean, it's -- he didn't know
18 who -- you know, I was speaking with him. He didn't
19 know who you were. He said, "Do y'all know who this
20 is?" I said, "I think that's one of the lawyers."

21 **Q** All right. I cut my eyes away, because I
22 wasn't supposed to have an interaction with you.

23 **A** Well, I mean --

24 **Q** Let me ask you: You have said to His
25 Honor that you can consider both life without parole
26 and the death penalty. Is that correct?

27 **A** I can.

28 **Q** Now on your questionnaire, you checked A,
29 you strongly favor the death penalty?

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1 **A** Yes, ma'am. As I told Your Honor here,
2 that when I heard -- when I would hear the case,
3 that's when my decision would be made on which
4 punishment.

5 **Q** I appreciate that. Do you -- he's talked
6 to you about aggravating circumstances, and I -- I
7 just want to make clear that you won't even hear
8 about this unless Mr. Flowers -- you have already
9 found him guilty --

10 **BY THE COURT:** Ms. Steiner, wrap it up
11 with this witness.

12 **A** I understand that.

13 **BY MS. STEINER:**

14 **Q** -- and -- of the murder of four people?

15 **A** I understand that.

16 **Q** And do you understand that he can put on
17 mitigation that has nothing to do with that crime to
18 suggest that he should not receive the death
19 penalty?

20 **A** You have -- you have to say that again.

21 **BY MR. EVANS:** Your Honor, we have been
22 through this. And --

23 **BY MS. STEINER:**

24 **Q** Can you consider matters such as his
25 family background, his life before his arrest on
26 this crime, how he has lived his life since this
27 crime?

28 **A** The judgment would be based on the crime,
29 because I feel like that's what we are here for.

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1 Something that happened at one particular time. Not
2 something that happened beforehand or afterhand.

3 **BY MS. STEINER:** Thank you. I've got
4 nothing further.

5 **BY THE COURT:** But what I want to
6 understand is: Will you listen to all the
7 evidence as presented?

8 **BY JUROR:** Yes, sir.

9 **BY THE COURT:** And during the sentencing
10 phase, will you listen to all the evidence
11 that's presented?

12 **BY JUROR:** Yes, sir.

13 **BY THE COURT:** And will you wait until
14 after you have heard all that and been
15 instructed by the Court before you make a
16 determination as to the appropriate sentence?

17 **BY JUROR:** Yes, sir.

18 **BY THE COURT:** You may step down. We
19 need -- and when you go back, don't talk with
20 anybody else about what's been discussed in
21 here.

22 **BY JUROR:** Yes, sir.

23 (JUROR LEAVES THE COURTROOM)

24 **BY THE COURT:** We need Ms. Ray, No. 68,
25 next.

26 (JUROR NO. 68, JULIA RAY, ENTERS THE
27 COURTROOM)

28 **BY THE COURT:**

29 **Q** If you'll come on down, ma'am, please.

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1 Ms. Ray, we are now asking individual
2 jurors questions outside the presence of other
3 people because we just felt like some of the
4 questions needed to be asked in private and not out
5 in front of everybody.

6 A Yes, sir. But before you start --

7 Q Yes, ma'am?

8 A -- I do need to tell y'all that when you
9 asked if you knew any of the victim's families --

10 Q Yes, ma'am?

11 A -- I do know Bobo Stewart's aunt, you
12 know. I didn't know it until I saw her in the
13 courtroom yesterday.

14 Q And you know Mr. Stewart's aunt?

15 A Uh-huh.

16 Q And who is that aunt?

17 A Please don't ask me.

18 Q Or you just know her when you see her?

19 A Well, we worked at the same place, not
20 doing the same thing, but --

21 Q And how long ago was that?

22 A About 12 years ago. That's the reason I
23 didn't remember.

24 Q Well, I appreciate you bringing it to my
25 attention now. Would the fact that you know his
26 aunt in any way affect you in being a fair and
27 impartial juror?

28 A No, sir.

29 Q And if you were to find Mr. Flowers not

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1 guilty in this case and were to see Mr. Stewart's
2 aunt at some point in the future, would you feel ill
3 at ease seeing her or feel you owed her an
4 explanation for how you had ruled in the case?

5 **A** No.

6 **Q** The next question involves knowledge of
7 the case. Have you heard anything about the case or
8 had any -- you know, read about it?

9 **A** Well, just a little bit of this and that.
10 I remember when the murders happened. I was
11 managing a convenience store in Duck Hill so that
12 was 24/7. And I didn't -- I've never followed any
13 of the trials.

14 **Q** And has anything that you heard about the
15 case in the past caused you to form an opinion as to
16 Mr. Flowers' guilt or innocence?

17 **A** No, sir.

18 **Q** And would you lay aside whatever you heard
19 outside the courtroom and base your decision
20 strictly on the evidence as presented here in court?

21 **A** Yes, sir.

22 **Q** And Ms. Ray, the next question concerns
23 the possibility of a sentencing phase of the trial.
24 If Mr. Flowers is found guilty, we go into a
25 sentencing phase. If he's found not guilty, it
26 stops, and we don't go any further.

27 If he were to be found guilty, then the
28 jury would make a determination as to the
29 appropriate punishment. The State is seeking the

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1 death penalty. The State would put on proof that
2 they believe would justify the imposition of the
3 death penalty, which would be called aggravating
4 factors.

5 The Defense would put on what they call
6 mitigating factors, which could be stuff like his
7 background, family history and things like that that
8 would be reasons the jury might think that the death
9 penalty should not be appropriate or would not be
10 appropriate. But the jury will ultimately decide
11 what the appropriate punishment is. And if he was
12 not given the death penalty, the penalty would be
13 life without parole. Could you consider the death
14 penalty and life without parole as proper -- as
15 sentences in the case?

16 A Yes, sir.

17 Q And as you sit here today, would you
18 automatically tend to favor one type punishment over
19 the other?

20 A No.

21 Q And will you wait till you're instructed
22 on the law by the Court and hear the evidence that's
23 presented at the sentencing phase, if it gets to
24 that, and base your determination on that?

25 A Yes, sir.

26 BY THE COURT: Okay. Mr. Evans.

27 BY MR. EVANS:

28 Q Good evening, Ms. Ray.

29 A Hey.

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1 **Q** In the first phase, are you telling us
2 that there are no outside influences that would
3 interfere with you coming in with an open mind,
4 basing your decision strictly on what you hear and
5 see in court; is that correct?

6 **A** Yes, sir.

7 **Q** And in the second phase, as the judge told
8 you, he will instruct you on what the law is as to
9 what the aggravating circumstances are and what the
10 mitigating circumstances are. We'll be presenting
11 the aggravating circumstances. The Defense will be
12 presenting the mitigating circumstances. And like
13 the judge told you, the mitigating may be anything
14 from his age to his life, things like that. Will
15 you come in with an open mind, consider all of a
16 what's presented to you, both aggravating and the
17 mitigating, and only determine which penalty is
18 appropriate after you've heard all of that?

19 **A** Yes, sir.

20 **BY MR. EVANS:** Nothing further, Your
21 Honor.

22 **BY MS. STEINER:**

23 **Q** Good afternoon. I am -- on your jury
24 questionnaire --

25 **A** Yes, ma'am.

26 **Q** -- when you were asked to share your
27 opinion on -- how you feel about the death
28 penalty -- and everybody's opinion is fine. But you
29 did check A, you strongly support the death penalty?

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1 **A** Yes, sir -- when it's deserved. When it's
2 proved to be deserved, yes, sir -- yes, ma'am.

3 **Q** All right. And you were talking about --
4 Mr. Evans alluded to mitigation evidence. You
5 know -- remember -- you will only be considering the
6 sentence after you have already decided that
7 Mr. Flowers is guilty of at least one and possibly
8 four separate capital murders. Do you understand
9 that?

10 **A** Yes.

11 **Q** And then you will hear mitigation
12 evidence. And some of that evidence, as Mr. Evans
13 said, has nothing to do with this actual crime.

14 **A** Yes, ma'am.

15 **Q** You understand that?

16 **A** Yes, ma'am, I understand.

17 **Q** Can you consider things about his life
18 before the crime?

19 **A** Yes, ma'am.

20 **Q** In mitigation to consider whether or not
21 he deserves the death penalty?

22 **A** Yes, ma'am.

23 **Q** Can you consider things that -- his life
24 as he's lived it since these events as mitigation?

25 **A** Yes, ma'am. I'm sure I could.

26 **Q** Okay. You looked a little surprised that
27 that would be before you.

28 Now, to find him -- to impose the death
29 sentence, you and everybody else in the room must

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1 agree; you understand that?

2 **A** Yes, ma'am.

3 **Q** To find something mitigating in your own
4 heart or mind, that's -- that's your vote. You
5 don't have to agree with anybody else. If you think
6 it's mitigating, you can say that. And if you think
7 it's strong enough to suggest a life without, you
8 can say that. Do you understand that?

9 **A** Yes, ma'am, I understand that.

10 **Q** And everybody -- every other juror --
11 unlike with the death penalty, every juror can keep
12 his or her own opinion.

13 **A** Yes, ma'am.

14 **Q** You would like to have that respected by
15 other jurors, I take it?

16 **A** Yes, ma'am.

17 **Q** And can you respect that in other jurors?

18 **A** Yes, ma'am.

19 **Q** About what mitigation is and the ultimate
20 sentencing decision?

21 **A** Yes, ma'am.

22 **BY MS. STEINER:** Thank you. That's all I
23 have.

24 **BY THE COURT:** Ms. Ray, you may step down.
25 And when you step out, don't discuss with
26 your other jurors what we talked about in
27 here, please.

28 **BY JUROR:** No, they're being real good, so
29 I will, too.

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1 **BY THE COURT:** I appreciate that. Thank
2 you.

3 (JUROR LEAVES THE COURTROOM)

4 **BY THE COURT:** No. 69, Billy Michael
5 Carpenter.

6 (JUROR NO. 69, BILLY CARPENTER, ENTERS
7 THE COURTROOM)

8 **BY THE COURT:**

9 **Q** If you'll come on down, Mr. Carpenter.
10 Mr. Carpenter, what we're doing now is asking
11 questions of the jurors outside the presence of the
12 other jurors because there are some matters we just
13 thought would be appropriate to take up in private.

14 First, I want to know if you've got
15 knowledge about the case -- I know you had said you
16 were around the ball field when young Mr. Stewart
17 was playing ball. And so I assume that you probably
18 heard about the case during -- at back when it
19 happened. Would that be correct?

20 **A** Yes, sir.

21 **Q** And did you read about it in the paper or
22 T.V. or radio? How -- what ways have you heard
23 about the case?

24 **A** Well, I heard it by word of mouth the day
25 it happened. And then the only thing I read was in
26 the Winona Times or what I heard on WONA radio. I
27 don't read the big newspapers or anything.

28 **Q** Could you -- well, has anything you've
29 read caused you to form an opinion as to the guilt

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1 or innocence of Mr. Flowers?

2 **A** No, sir.

3 **Q** And would you lay aside whatever you may
4 have heard and base your decision strictly on the
5 evidence presented here in court?

6 **A** Yes, sir.

7 **Q** And you coached Mr. Stewart in the past.
8 Would the fact that you coached him -- or that you
9 were up there around the same time --

10 **A** I never coached him.

11 **Q** You coached when he was around the ball
12 field --

13 **A** When he was around the ball field.

14 **Q** And would that be a factor in your
15 deliberations as a juror?

16 **A** No, sir.

17 **Q** And the next issue involves a possible
18 sentence. What happens is there could be a
19 two-phase trial if Mr. Mr. Flowers would be found
20 guilty. If he's found not guilty on the first
21 phase, there would not be a second phase. But if it
22 got to the second phase, that would mean he had been
23 found guilty. And then the jury would be
24 determining what punishment would be appropriate.

25 The State of Mississippi is seeking the
26 death penalty in this case. They would put on
27 aggravating factors, which would be, in the State's
28 view, reasons the jury should impose the death
29 penalty.

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1 Mr. Flowers will then put on mitigating
2 facts. That would be things that he believes would
3 show the jury that the death penalty is not
4 appropriate. It could be things like family ties or
5 things that have happened in his life in the past or
6 at any time even after the alleged offense occurred.

7 But the Court will instruct you to listen
8 to the aggravating and mitigating factors and then
9 make the determination. And if the jury did not
10 return the death sentence, then life without parole
11 would be the sentence. Can you consider both of
12 those sentencing options?

13 **A** Yes, sir.

14 **Q** And as you sit here today, do you have
15 any -- do you favor one over the other without
16 having heard any of the evidence?

17 **A** No, sir.

18 **BY THE COURT:** Okay. Thank you.

19 **BY MR. EVANS:**

20 **Q** Good evening. On the second phase, when
21 we get into the penalty, if we -- if the jury finds
22 the defendant guilty -- not only will there be
23 aggravators and mitigators, but the judge will
24 instruct the jury on what they can consider.

25 Can you tell us with an open mind that you
26 will come in, not leaning for one penalty or the
27 other, listen to the Court's instructions and base
28 your decision of whether the penalty should be the
29 death penalty or life without parole only after

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1 honestly considering what both sides say?

2 **A** Yes, sir.

3 **BY MR. EVANS:** Okay. Nothing further.

4 **BY MS. STEINER:**

5 **Q** Good afternoon, Mr. Carpenter. Yesterday,
6 I believe you had a coughing fit. Is that something
7 that is likely to be occurring or distract you
8 during the trial in this matter?

9 **A** Only if I try to swallow this cough drop
10 again.

11 **Q** I see.

12 **A** I had cough drop get hung.

13 **Q** Now, you said actually heard by word of
14 mouth the day that the four people were killed at
15 Tardy.

16 **A** Right. It was.

17 **Q** Was that when you learned that one of the
18 people that had been shot that day was Mr. Bobo --
19 was Bobo Stewart?

20 **A** I didn't hear who it was at all that day.
21 I found out the next day. Of course, it was
22 everywhere the next day.

23 **Q** All right. Now, you said that you had
24 coached a different team or been on the ball field,
25 knew him. And at that time, that hit you hard, I
26 assume, to know he was fatally wounded at that time
27 but not yet dead. Did that --

28 **A** I knew him in passing. I didn't know him
29 like I knew the kids that I coached. I knew him in

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1 passing.

2 Q But I believe you also testified that you
3 knew all the Stewarts, and Randy Stewart and you
4 were baseball dads on that field?

5 A Well, I mean, Randy and I never hung out
6 together. His sister was my age. In high school,
7 we hung out a little bit together.

8 Q All right. And when you found out that
9 Ms. Edie's nephew had been fatally wounded and
10 ultimately died, I assume you offered condolences to
11 her and Mr. Randy?

12 A I did.

13 Q Did you attend the funeral of Mr. Stewart?

14 A I believe I did. I really can't remember.

15 Q Now, in this case, in addition to hearing
16 about the death of your classmate's nephew and your
17 fellow baseball dad, Randy Stewart -- several
18 Stewarts, about the death of their loved one, you're
19 going to conceivably be shown photographs --

20 A (Nodding head).

21 Q -- of the scene where the State will be
22 proving that he was shot. And those feelings are
23 going to come back when that happens, aren't they?

24 A I've never seen those photographs.

25 Q Well, I know you haven't, but I'm just
26 giving you heads up --

27 BY MR. EVANS: Your Honor, he hasn't
28 talked about any feelings yet, so I don't
29 know what feelings she's talking about are

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1 going to come back.

2 **BY MS. STEINER:**

3 **Q** Well, you had feelings of sadness, did you
4 not?

5 **A** As I do when any young child passes away.

6 **Q** And here, you knew the 16-year-old who had
7 died?

8 **A** Like I said, I knew him in passing. I
9 mean, we weren't close or anything like that.

10 **Q** But you attended his memorial service --

11 **A** I think I did.

12 **Q** -- in company with Mr. Randy Stewart, who
13 may be a witness here today?

14 **A** (Nodding head).

15 **Q** And you have not -- but you are likely to
16 be shown an -- and I assume you were a mourner at
17 that funeral. It saddened you for the loss of a
18 young life; is that correct?

19 **A** That's correct.

20 **Q** It saddened you for the loss of a loved
21 one by your classmate, Ms. Edie -- I don't know if
22 she's still a Stewart -- Ms. Edie, his aunt; is that
23 correct?

24 **A** That's correct.

25 **Q** And your acquaintance, your fellow
26 baseball dad, Mr. Randy Stewart, and you mourned
27 with them and you felt their pain and sadness; is
28 that correct?

29 **A** I paid my respects to them, yes, I did.

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1 Q And yes. And you were -- you weren't
2 indifferent to their loss or the loss of this young
3 man. And those were feelings of sadness you had at
4 the time?

5 A I have feelings of sadness for all the
6 families that were involved.

7 Q I appreciate that. Now, you're going to
8 be possibly be shown pictures of certainly a place
9 where blood will be identified by various people as
10 having been blood that was shed by Mr. Stewart. You
11 understand that?

12 A Uh-huh.

13 Q And this is in the guilt phase. Now,
14 the -- because you -- and you say you're -- you feel
15 sorry for all the families. Your sympathy for all
16 the families -- this isn't some unknown's person's
17 blood. This is the people you know and his family
18 that you care about; is that correct? Can you look
19 at those pictures and look at it just as evidence
20 without thinking about who this is?

21 A Absolutely.

22 Q All right. You are -- at the penalty
23 phase, as His Honor --

24 BY MS. STEINER: And Your Honor, I am
25 going to go further but there are multiple
26 areas of inquiry here.

27 BY THE COURT: Well, there's not many
28 more, because -- you know, I'll give you an
29 additional extra minute.

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1 **BY MS. STEINER:** Well, Your Honor, I need
2 to --

3 **BY THE COURT:** Well, I'll give you --
4 you're wasting your time now.

5 **BY MS. STEINER:**

6 **Q** At the penalty phase, it is likely that
7 the State will be putting on testimony as you heard
8 from Mr. Randy Stewart, your fellow baseball dad,
9 the brother of your classmate. And you're telling
10 me -- and you may hear that. And you've told His
11 Honor you could consider mitigating factors in
12 sentencing Mr. Flowers -- Mr. Flowers that would
13 militate against the death penalty in this matter.
14 You understand that?

15 **A** Yes, I do.

16 **Q** And you will be listening to those in the
17 context of also hearing what the State puts in
18 aggravation and impact testimony from Mr. Stewart
19 and other family members; you understand that?

20 **A** I understand.

21 **Q** Those mit -- and they will be talking
22 about the crime and what it did to them. Or to what
23 the loss of their loved one did. If -- now,
24 mitigating evidence can include things that has
25 nothing to do with the crime, having to do with
26 Mr. Flowers --

27 **BY THE COURT:** You've used another minute.
28 You got 30 seconds.

29 **BY MS. STEINER:**

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1 **Q** Can you consider those?

2 **A** I can.

3 **Q** And would you be inclined to weigh more
4 heavily what Mr. Stewart had to say as to what Mr.
5 Flowers' family would have to say?

6 **BY MR. EVANS:** Your Honor, I object. He
7 can't answer that till he's heard what they
8 had to say.

9 **BY MS. STEINER:**

10 **Q** By virtue of your acquaintance?

11 **A** I'll listen to both sides.

12 **Q** And can you fully consider that if you
13 find -- if you are moved by Mr. -- by the victim's
14 testimony, can you consider evidence about Mr.
15 Flowers' life before and after these events?

16 **A** If I'm moved?

17 **Q** If you are moved by this, can you --

18 **A** I can consider both sides.

19 **BY THE COURT:** Okay. That will all,
20 Mr. Carpenter. You may step down now.

21 **BY JUROR:** Thank you, Judge.

22 **BY THE COURT:** When you step down, don't
23 discuss the case -- don't talk about outside
24 what you discussed in here.

25 **BY JUROR:** Yes, sir.

26 **BY MS. STEINER:** If the Court, please, I
27 have another area of inquiry regarding his
28 conduct as a juror that I would like to
29 pursue with him.

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1 **BY THE COURT:** Ms. Steiner, I'll wait till
2 he gets out.

3 (JUROR LEAVES THE COURTROOM)

4 **BY THE COURT:** I imposed a time limit
5 because you're continually asking questions
6 over and over and over. You've asked a
7 number of questions about things that we got
8 into specifically with him during voir dire
9 yesterday. So you're repeating yourself.

10 But not only are you repeating
11 yourself, but you're talking about --
12 stringing about ten sentences together before
13 you even get to a question --

14 **BY MS. STEINER:** If the Court --

15 **BY THE COURT:** -- and that -- that's
16 certainly -- if you choose to ask questions
17 that way, that's fine. But I'm -- I'm not
18 going to sit here and have repeated questions
19 over the same issues, and that's what you're
20 doing. Rather than interpose -- rather than
21 be rude and tell you to move on to other
22 issues, I just decided it was best to impose
23 a time limit.

24 **BY MS. STEINER:** Your Honor, I had
25 requested additional time. There were
26 several --

27 **BY THE COURT:** You got two or three extra
28 minutes from what I had originally said I
29 would give.

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1 **BY MS. STEINER:** If the Court, please, I
2 would proffer that I would like to question
3 him. I believe that he is one of the people
4 standing outside with Mr. Amason and the
5 deputy. And as we now know, it's before this
6 Court that at least Mr. Amason was advising
7 the deputy with respect to who was who in
8 personnel, and I would like to question him
9 about that. And I believe I'm entitled to do
10 so.

11 And Your Honor, I understand the
12 Court's time limits, but my shortcomings as a
13 lawyer should -- cannot under the 6th
14 Amendment be -- prevent this Court from doing
15 a full inquiry --

16 **BY THE COURT:** Well, we can do it this
17 way: We're going to bring everybody in and
18 do the group voir dire now or we're going to
19 have a time limit. Because as I say, you are
20 asking -- you're stringing together
21 paragraph's worth of statements before you
22 ask a single question. And you're pausing
23 and taking forever sometimes to even ask a
24 question.

25 But the worst thing you're doing is
26 constantly asking the same things over again.
27 If -- we will ask him one question -- I
28 really don't even see that it's relevant --
29 if he was talking to the deputy sheriff,

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1 there's no prohibition about talking to
2 anybody that's not involved as a witness in
3 this case.

4 **BY MR. EVANS:** There can't be any
5 relevance to it --

6 **BY THE COURT:** And so I don't even see
7 what -- what's the purpose of this inquiry?

8 **BY MS. STEINER:** Your Honor, if this is a
9 group of jurors discussing the personnel in
10 this case with the security, I think the
11 Court needs to know that. We certainly need
12 to know that as we look at striking this jury
13 for preemptory. We do not have the
14 investigative staff that has asked --

15 **BY THE COURT:** I'll ask Mr. Carpenter this
16 one question, if he talked to anybody -- you
17 know, if you'll bring him in just again for a
18 second.

19 (MR. CARPENTER ENTERS THE COURTROOM)

20 **BY THE COURT:**

21 **Q** Just one brief followup. Somebody said
22 they may have seen you talking with another juror or
23 two out with the deputy sheriff this morning before
24 court or something. Do you remember anything -- any
25 of that happen?

26 **A** I don't think I even said a word. I
27 walked up, and there was three or four people
28 standing by -- by the corner out here. Yes.

29 **Q** And did you just walk by them?

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1 **A** I mean, no, I actually stopped. But I
2 don't think I even said a word to anybody.

3 **Q** So was any discussion about this case
4 taking place with anyone?

5 **A** No, sir. They were talking about farming
6 or cutting trees or something.

7 **BY THE COURT:** Okay. Thank you.

8 **BY MS. STEINER:**

9 **Q** You -- I happened to be in the car driving
10 through at the time. Did anything about -- I wasn't
11 supposed to interact with any of the jurors. I
12 think I did look at you. Did anything about that
13 affect you in any way?

14 **A** No. Like I said, I -- I just walked up.
15 I don't think I even made a comment. They were
16 talking about the timber business. They were had --
17 having trouble selling timber.

18 **Q** But did anything in that interaction --
19 if -- if you didn't like my car or my face or
20 whatever, you're not going to hold that against my
21 client?

22 **BY MR. EVANS:** Your Honor, this is --

23 **A** No.

24 **BY THE COURT:** That will be fine. You may
25 step down.

26 (JUROR LEAVES THE COURTROOM)

27 **BY THE COURT:** No. 72, Ms. Colbert.

28 (JUROR NO. 72, BEATRICE COLBERT, ENTERS
29 THE COURTROOM)

INDIVIDUAL VOIR DIRE

1 **BY THE COURT:**

2 **Q** If you'll come down and have a seat,
3 ma'am. What we're doing now, ma'am, is asking
4 questions outside the presence of other jurors
5 because there are some matters we just felt
6 appropriate to take up privately instead of
7 everyone.

8 First, I want to know about the knowledge
9 of the case. Have you heard anything about the case
10 or know any particular facts of the case?

11 **A** What I have read in the newspaper over the
12 years, and I do -- I am an avid newspaper reader.
13 So I do read our local news as well as the Clarion
14 Ledger.

15 **Q** How about the Internet? You read any --

16 **A** I do.

17 **Q** -- any Internet items?

18 **A** I read Internet news as well.

19 **Q** And I guess you probably heard about
20 the -- or did you hear about the case back at the
21 time when it first happened?

22 **A** I did.

23 **Q** Now, is there anything you've read, heard,
24 seen or discussed with anyone that has caused you to
25 form an opinion concerning the guilt or innocence of
26 Mr. Flowers?

27 **A** I have taken each trial and, I guess,
28 accepted what the verdict was. But not having ever
29 heard all of the evidence that has been presented,

INDIVIDUAL VOIR DIRE

1 you know, I've never felt like I have been privy to
2 all of the facts of the case. So not really, I
3 guess, no.

4 Q So could you lay aside anything you read
5 or heard and base your decision only on the evidence
6 presented here in court?

7 A Most definitely.

8 Q And if you had read something in that
9 paper that doesn't occur during the course of the
10 trial or that you don't hear testimony on during the
11 trial, will you still be thinking about the stuff
12 you might have read in the past or will you --

13 A I can lay that aside and listen to
14 everything that is presented in the courtroom.

15 Q And will you do that?

16 A Yes, sir.

17 Q Next concerns the possibility of a
18 sentencing phase. If Mr. Flowers is found not
19 guilty, the trial is over. If he's found guilty, we
20 move on to the sentencing phase which, at that
21 point, the jury will decide the appropriate
22 punishment. It could be life in prison, if the
23 death penalty is not imposed. So the death penalty
24 or life in prison are the options.

25 Mr. Flowers -- I mean, the State of
26 Mississippi will put on aggravating factors, which
27 is why the State believes the death penalty is
28 appropriate. Mr. Flowers will then be given the
29 opportunity to put on mitigating factors, that being

INDIVIDUAL VOIR DIRE

1 reasons he believes the death penalty should not be
2 imposed, and it can be a number of things concerning
3 his family, history, background and things of that
4 nature. If -- after you have heard all the evidence
5 that's admissible by the Court and been instructed
6 on the law by the Court on all issues, if it gets to
7 the sentencing phase, can you consider all
8 sentencing options?

9 **A** Yes, I can.

10 **Q** And without having heard anything, do you
11 have a tendency or do you favor one potential
12 punishment over another as we sit here right now?

13 **A** I don't.

14 **BY THE COURT:** Thank you. Mr. Evans.

15 **BY MR. EVANS:**

16 **Q** All right. And it's important, as we
17 talked about earlier on voir dire, that a jury come
18 in with the open mind and not let any outside
19 influences interfere with them from people they know
20 or what they may have heard. And I understand
21 you're telling the Court that you can come in with a
22 completely open mind, base your decision of guilt or
23 innocence on only what you hear in court and the
24 evidence that Court allows in court.

25 **A** Yes, sir.

26 **Q** And as far as the sentencing, the judge
27 will instruct you on what the law is, on what
28 aggravating factors that you can consider and what
29 mitigating factors you can consider. Some of those

INDIVIDUAL VOIR DIRE

1 mitigating factors that the defense may offer are
2 things like his age, his life before this crime was
3 committed, his life after this crime was committed,
4 and the Court will instruct you that all of those
5 things should be considered. Will you consider
6 everything that both sides puts on, honestly
7 consider both sides, listen to the Court's evidence
8 before you even start to think about which sentence
9 would be appropriate?

10 **A** Yes, sir.

11 **Q** And could you fairly and honestly impose
12 either sentence if you felt it was justified under
13 the facts of this case?

14 **A** Yes, sir.

15 **BY MR. EVANS:** Thank you, ma'am.

16 **BY MS. STEINER:**

17 **Q** How long after you heard about this case
18 did you learn that it was your -- Ms. Roxanne
19 Ballard's mother who had died?

20 **A** Immediately, when I heard. I -- I was
21 told that.

22 **Q** All right. And did you offer your
23 condolences to Roxanne the next time you saw her?

24 **A** I believe it was probably years that I saw
25 Roxanne after that.

26 **Q** All right. But even years later, you
27 offered your condolences?

28 **A** I did.

29 **Q** Have you attended any of the prior trials?

INDIVIDUAL VOIR DIRE

1 **A** Yes, I have.

2 **Q** Which?

3 **A** I believe it -- I have not attended a full
4 trial, but I have attended a couple of -- maybe
5 trials three and four.

6 **Q** Here in Winona?

7 **A** Here in Winona.

8 **Q** So you did hear some evidence in the prior
9 trials?

10 **A** Yes, I have.

11 **Q** Now, you -- so I'm assuming when you got
12 the invitation to be here this week, you knew what
13 this case was?

14 **A** Yes, I did.

15 **Q** And you already heard some evidence in the
16 case?

17 **A** (Nodding head).

18 **Q** Did you continue to be an avid newspaper
19 reader? Did you read the Clarion Ledger articles on
20 this?

21 **A** I have read -- yes. I have read the
22 Clarion Ledger every day.

23 **Q** And did you have any conversations with
24 Roxanne --

25 **A** Oh, no. Nothing.

26 **Q** All right. Did you get on the Internet
27 and google the case and see what was up on the
28 Internet after you got your summons?

29 **A** I did not.

INDIVIDUAL VOIR DIRE

1 **Q** Did you read the local newspaper coverage?

2 **A** Yes.

3 **Q** By that you mean Tardy -- excuse me,
4 Winona Times and Greenwood?

5 **A** Well, Winona -- I generally read the
6 Winona Times, the Clarion Ledger and The Daily Star
7 from Grenada since I work in Grenada.

8 **Q** And you've indicated that you could
9 consider mitigating evidence and aggravating
10 evidence. Do you understand that in addition, your
11 fellow soccer mom Roxanne Ballard -- she may be
12 testifying at both phases -- but she may up here
13 talking about her feelings for which you previously
14 offered condolences. Will that affect -- after
15 that, will you want to hear anything about
16 Mr. Flowers?

17 **A** I -- what I hear from Ms. Ballard would
18 not impact me. I do not have a close personal
19 relationship with her. I have known her for years,
20 but we're not close so I --

21 **Q** I --

22 **BY MR. EVANS:** Your Honor, she's trying to
23 answer if she'll be allowed to.

24 **BY MS. STEINER:**

25 **Q** My question was could you still hear
26 evidence --

27 **A** Can I still listen to what is presented?
28 Is that what you're asking me?

29 **Q** Yes.

INDIVIDUAL VOIR DIRE

1 **A** Yes, of course.

2 **Q** And can you -- you understand that in
3 mitigation, every juror gets to decide for him or
4 herself what is mitigating and whether or not the
5 sentence should be death or life without. You
6 understand you have the right to whatever opinion
7 you have. You understand your fellow jurors also
8 have their rights. Is that correct?

9 **A** Yes.

10 **Q** And you want them to respect whatever your
11 opinion is?

12 **A** (Nodding head).

13 **Q** Will you respect theirs?

14 **A** Most definitely.

15 **BY MS. STEINER:** Thank you.

16 **BY THE COURT:** You may step down,
17 Ms. Colbert. If you'll just return out there
18 and don't go out and talk with your fellow
19 jurors about what's been said in here,
20 please. We'll take a ten-minute recess.

21 (THE COURT TOOK A BRIEF RECESS)

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1 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
2 AND THE DEFENDANT WERE PRESENT. PROCEEDINGS WERE AS FOLLOWS:)

3 THE COURT: I believe we were -- next would be
4 Number 75. Does that --

5 MR. HOWIE: I think that's right, Your Honor.

6 THE COURT: If you will bring Miss Martin in
7 next.

8 (JUROR NUMBER 75, LINDA MARTIN, ENTERED THE COURTROOM.)

9 If you will come forward, ma'am, and have a seat.
10 Be careful there. You can have a seat, ma'am.

11 JUROR LINDA MARTIN: Okay.

12 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

13 THE COURT: Okay. What we are doing now is we
14 are asking individual jurors questions outside the
15 presence of everybody else, because we just felt it
16 appropriate not to ask certain things out in front of the
17 others.

18 First, I am wanting to know about if you have got
19 knowledge about this case or heard facts about it or read
20 articles in the paper, internet or t.v., news or anything
21 like that about the case.

22 JUROR LINDA MARTIN: Just the local news, the
23 gossip over the years.

24 THE COURT: Local news. That would be the
25 newspaper, radio.

26 JUROR LINDA MARTIN: Radio. Newspaper. Yes,
27 sir.

28 THE COURT: And you have heard just people
29 talking about --

1 JUROR LINDA MARTIN: Um-hum.

2 THE COURT: -- it through the years. And do
3 you work in Winona or --

4 JUROR LINDA MARTIN: Work at Hankins Lumber
5 Company in Grenada.

6 THE COURT: Grenada. So you work out of town.

7 JUROR LINDA MARTIN: Um-hum. We were in Winona
8 at the time that it happened.

9 THE COURT: And has anything that you heard,
10 read or seen caused you to form an opinion as to the
11 guilt or innocence of Mr. Flowers?

12 JUROR LINDA MARTIN: Well, you hear both sides
13 of it so...

14 THE COURT: Well, after hearing both sides have
15 you -- have you already made up your mind or have an
16 opinion on what you believe the truth is or an opinion on
17 the case?

18 JUROR LINDA MARTIN: I have an opinion. Yeah.

19 THE COURT: Well, can you lay aside that
20 opinion and base your decision only on the evidence
21 presented here in court?

22 JUROR LINDA MARTIN: I can.

23 THE COURT: So will you in any way let these
24 ideas or thoughts that you have had in the past come into
25 play --

26 JUROR LINDA MARTIN: No.

27 THE COURT: -- in your deliberations?

28 JUROR LINDA MARTIN: I keep telling myself when
29 I walk through the door, that's out.

1 THE COURT: And if you read something in the
2 past in the paper or heard it on the radio or something
3 and it did not -- you did not hear that in the courtroom,
4 would you be able to filter that out and base your
5 decision only on the things that you heard inside this
6 courtroom?

7 JUROR LINDA MARTIN: I think so, yeah.

8 THE COURT: Any doubt in your mind?

9 JUROR LINDA MARTIN: I don't think so. I --

10 THE COURT: I mean you are saying you don't
11 think so.

12 JUROR LINDA MARTIN: Well, I mean I will listen
13 to the facts that are presented and make my judgment from
14 that.

15 THE COURT: And will these prior knowledge come
16 into play at all?

17 JUROR LINDA MARTIN: No.

18 THE COURT: Also, the next issue concerns the
19 possible sentence that might be imposed. If the jury
20 were to find Mr. Flowers guilty, then the jury would then
21 decide what the punishment should be. They would only
22 reach that if the jury found him guilty. If the jury
23 found him not guilty, there would not be a second phase.

24 If the jury were to find him guilty, then the State
25 would be putting on proof that would show in the State's
26 view why they think he should be sentenced to death.
27 That would be something called aggravating factors.

28 JUROR LINDA MARTIN: Um-hum.

29 THE COURT: Then the defense would put on

1 mitigating factors. That would be reasons they believe
2 he should not be sentenced to death and be things like,
3 you know, his background, history, you know, his life up
4 to now and things like that, whatever they choose --

5 JUROR LINDA MARTIN: Um-hum.

6 THE COURT: -- to put on and whatever the Court
7 allows. As you sit here today, before you have heard any
8 of those facts or are instructed on the law by the Court,
9 can you consider both life in prison without parole and
10 the death penalty as possible sentences in this case?

11 JUROR LINDA MARTIN: Yes.

12 THE COURT: And do you already have some fixed
13 view of what the appropriate sentence should be in this
14 case?

15 JUROR LINDA MARTIN: No.

16 THE COURT: So you will keep an open mind and
17 just wait until the evidence is all heard.

18 JUROR LINDA MARTIN: Yes.

19 THE COURT: Okay. Thank you.

20 Mr. Evans.

21 MR. EVANS: Thank you, Your Honor.

22 Good evening, Miss Martin.

23 JUROR LINDA MARTIN: Hi.

24 MR. EVANS: I think you've said that you heard
25 some stuff for one side and some stuff for the other
26 side; is that right?

27 JUROR LINDA MARTIN: Just the gossip. You
28 know, small town gossip.

29 MR. EVANS: And you know a few folks that were

1 involved in this case.

2 JUROR LINDA MARTIN: Yes, sir.

3 MR. EVANS: And following up on what the judge
4 said, are you telling us that you can completely set all
5 of that aside, not pay any attention, not let any of that
6 enter into your decision in court, come in with a
7 completely open mind, not lean one way or the other, but
8 base guilt or innocence in the first phase strictly on
9 what you see in court and what evidence the Court allows.

10 JUROR LINDA MARTIN: Yes, sir.

11 MR. EVANS: And as for the second phase, the
12 Court will instruct you on the second phase what
13 aggravating factors are appropriate and what mitigating
14 factors you are to consider. Mitigators can be things
15 like how old the defendant is, his life before the crime
16 was committed, his life after the crime was committed.
17 It is basically unlimited as to what they can go into.

18 JUROR LINDA MARTIN: Um-hum.

19 MR. EVANS: Can you tell us that you will go
20 into the second phase with an open mind, listen to the
21 law, consider -- seriously consider what both sides put
22 on before you even consider which penalty would be
23 appropriate?

24 JUROR LINDA MARTIN: Yes, sir.

25 MR. EVANS: And then depending on what was put
26 on, you could make up your mind as to whether it should
27 be the death penalty or life without parole.

28 JUROR LINDA MARTIN: Yes, sir.

29 MR. EVANS: You would have no problem doing

1 that.

2 JUROR LINDA MARTIN: I wouldn't think so. It
3 wouldn't be a easy decision but...

4 MR. EVANS: Yes, ma'am, I understand that.
5 Thank you, Your Honor.

6 MRS. STEINER: Good afternoon, Miss Martin.

7 JUROR LINDA MARTIN: Good afternoon.

8 MRS. STEINER: Did you attend Miss Bertha's
9 funeral at your church?

10 JUROR LINDA MARTIN: No, I did not.

11 MRS. STEINER: Okay. Had you left that church?

12 JUROR LINDA MARTIN: I had moved to a different
13 church by then.

14 MRS. STEINER: Did you attend any of the prior
15 trials in this case?

16 JUROR LINDA MARTIN: No, I have not.

17 MRS. STEINER: Now, you've stated that on the
18 basis of the local news and the gossip -- tell me first
19 where were you when you heard the gossip?

20 JUROR LINDA MARTIN: Gosh, that's been so many
21 years ago. You know, the grocery store, Wal-Mart. You
22 know, just different places.

23 MRS. STEINER: Here in Winona?

24 JUROR LINDA MARTIN: Yes, it was here.

25 MRS. STEINER: It was the talk of the town.

26 JUROR LINDA MARTIN: Yes, ma'am.

27 MRS. STEINER: And each time there is a trial,
28 it is the talk of the town.

29 JUROR LINDA MARTIN: I assume it has. But now

1 for a couple of trials we have been -- our mill moved to
2 Grenada so I haven't heard.

3 MRS. STEINER: Okay. When did your mill move
4 to Grenada?

5 JUROR LINDA MARTIN: It's been seven years ago.

6 MRS. STEINER: That would be 2003.

7 JUROR LINDA MARTIN: Yes. Um-hum.

8 MRS. STEINER: But on the basis of this, you
9 have formed opinion as to the guilt or innocence of Mr.
10 Flowers. I am not asking what it is. I am saying have
11 you formed an opinion.

12 JUROR LINDA MARTIN: I could lean one way.
13 Yes.

14 MRS. STEINER: All right. And you walk -- you
15 are coming through the courtroom door. You are going to
16 try and leave that outside.

17 JUROR LINDA MARTIN: Oh, yes. Yes.

18 MRS. STEINER: But I believe you said you don't
19 think you would have a problem leaving it outside.

20 JUROR LINDA MARTIN: Oh, I, I don't think so,
21 no.

22 MRS. STEINER: Okay. But you have some doubts.

23 JUROR LINDA MARTIN: Not really.

24 MRS. STEINER: All right. Now, on the
25 sentencing, His Honor explained that there are two
26 sentences. State of Mississippi has said either is
27 equally valid for this crime. You understand that at the
28 time you're considering sentence, you have already found
29 Mr. Curtis Flowers guilty of at least one capital murder.

1 You understand that.

2 JUROR LINDA MARTIN: Yes, ma'am.

3 MRS. STEINER: Deliberately murdered somebody.

4 JUROR LINDA MARTIN: Yes, ma'am.

5 MRS. STEINER: And you will have heard facts of
6 the crime that I'm confident the State will argue was
7 brutal. You understand that.

8 JUROR LINDA MARTIN: Um-hum.

9 MRS. STEINER: You will come into this
10 courtroom to consider sentence only with all of those
11 things.

12 JUROR LINDA MARTIN: That's right.

13 MRS. STEINER: And that's a slightly different
14 question from what the judge asked. At that point, can
15 you consider -- the judge talked about mitigation. Can
16 you consider both sentences?

17 JUROR LINDA MARTIN: Oh, yes.

18 MRS. STEINER: Now, you may hear testimony in
19 the courtroom from Mrs. Tardy's daughter, Roxanne, and
20 several other family members. That's not aggravation.
21 That is -- that can't be used as your only basis to
22 conclude that the death penalty is appropriate.

23 JUROR LINDA MARTIN: Yes, ma'am.

24 MRS. STEINER: You understand.

25 JUROR LINDA MARTIN: Yes, ma'am.

26 MRS. STEINER: Now, you said you could listen
27 to mitigation. And I think -- could you listen to
28 mitigation that didn't have anything to do with the facts
29 of the crime?

1 JUROR LINDA MARTIN: Yes.

2 MRS. STEINER: All right. Could you even after
3 you have heard -- and, and could you listen to matters
4 that happened long before this crime ever happened as
5 they pertain to Mr. Flowers and his role in the
6 community?

7 JUROR LINDA MARTIN: Yes.

8 MRS. STEINER: And could you listen to evidence
9 -- and would you consider that to be evidence that
10 would -- you would consider in determining whether a
11 death sentence was necessary in this case or desirable?

12 JUROR LINDA MARTIN: Yes.

13 MRS. STEINER: All right. Could you listen to
14 evidence of after his, his arrest and incarceration?

15 JUROR LINDA MARTIN: Yes.

16 THE COURT: Times up with this juror.

17 MRS. STEINER: I have one follow-up question.

18 THE COURT: One more then.

19 MRS. STEINER: Thank you.

20 Do you understand that on mitigation and opinions on
21 mitigation each juror has his or her own right to his or
22 her own opinion?

23 JUROR LINDA MARTIN: Yes.

24 MRS. STEINER: If somebody disagrees with you
25 on this, can you respect their opinion?

26 JUROR LINDA MARTIN: Oh, yes.

27 MRS. STEINER: And would you ask them to
28 respect yours?

29 JUROR LINDA MARTIN: Oh, yes.

1 MRS. STEINER: But if they don't want to change
2 their mind, you wouldn't try and change their mind.

3 JUROR LINDA MARTIN: Oh, no.

4 MRS. STEINER: Thank you.

5 THE COURT: You may step down. When you go
6 back out there, don't talk with anybody out there about
7 what has been asked of you in here.

8 JUROR LINDA MARTIN: Okay.

9 THE COURT: Mr. King next. Number 76.

10 (JUROR 76, RICHARD KING, III, ENTERED THE COURTROOM.)

11 THE COURT: Mr. King, if you will come forward
12 and have a seat.

13 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

14 Mr. King, we just felt it appropriate to ask some
15 questions outside the presence of the other jurors that
16 were called here today. And I want to know if you have
17 any knowledge of this case or have heard things about the
18 case or read about it in the paper or seen it on t.v. or
19 heard it on radio or internet or anything.

20 JUROR RICHARD KING, III: I have never heard it
21 on the internet, radio or actually never read it on the
22 newspaper.

23 THE COURT: Did you come at some point to hear
24 about the Tardy murders?

25 JUROR RICHARD KING, III: That's correct.

26 THE COURT: And, and how did you hear about it?

27 JUROR RICHARD KING, III: It was just idle
28 talk.

29 THE COURT: Was that from people that were

1 purporting to be knowledgable about the case or, you
2 know, like investigated it or anything like that?

3 JUROR RICHARD KING, III: No investigation.
4 It's just idle talk. I guess thought they probably knew
5 a whole lot. Probably didn't know anything.

6 THE COURT: Now, has what you saw -- I mean has
7 what you have heard in the past caused you to form an
8 opinion as to guilt or innocence of Mr. Flowers?

9 JUROR RICHARD KING, III: So much so. Yes,
10 sir.

11 THE COURT: So it has caused you to form an
12 opinion.

13 JUROR RICHARD KING, III: Yes, sir.

14 THE COURT: Can you lay that opinion aside and
15 be a fair and impartial juror and listen to the evidence
16 and decide just based on the evidence in court?

17 JUROR RICHARD KING, III: No, sir, I don't
18 believe I could, because over the years it's just...

19 THE COURT: And I believe you said yesterday or
20 one day recently that you just felt like you could not be
21 fair to either side, but especially you felt like you
22 couldn't be fair to Mr. Flowers. Is that your view?

23 JUROR RICHARD KING, III: That's correct.

24 THE COURT: And you are saying today you just
25 couldn't be fair.

26 JUROR RICHARD KING, III: Yes, sir.

27 THE COURT: And, and you couldn't lay aside the
28 opinion you already have.

29 JUROR RICHARD KING, III: No, sir. I don't

1 think I could.

2 THE COURT: And the next question pertains if
3 you were to be a juror in this case and were to sit in
4 the case and only if Mr. Flowers were found guilty. Then
5 you would decide what type sentence should be available
6 or appropriate I mean. The possible sentence would be
7 life in prison or the death penalty. If he did not
8 receive the death penalty, that would be a life in prison
9 sentence.

10 The State of Mississippi will put on aggravating
11 factors. Those are reasons the State believes the death
12 penalty should be imposed. Then Mr. Flowers, through his
13 lawyers, would put on proof that would show why in his
14 opinion he felt the death penalty was not appropriate.
15 Again, those are called mitigating factors. They can be
16 anything from his early childhood up through and
17 including his life today.

18 The Court will instruct you on the law and give you
19 a lot of instructions on how to view those aggravating
20 and mitigating factors. But as we stand today without
21 you having heard proof about the case, could you listen
22 to all the evidence and wait until you have been
23 instructed by the Court before you made a determination
24 or considered either life in prison or the death penalty?

25 JUROR RICHARD KING, III: I'm sorry. I really
26 didn't --

27 THE COURT: Can you consider life without
28 parole as a possible sentence if he were convicted?

29 JUROR RICHARD KING, III: Yes, sir.

1 THE COURT: Could you consider the death
2 penalty?

3 JUROR RICHARD KING, III: According to my
4 religion, no.

5 THE COURT: So you could not under any under --
6 well, you tell me.

7 JUROR RICHARD KING, III: No. Under my
8 religion, Your Honor, I couldn't. Not the death penalty.

9 THE COURT: So you are saying under no
10 circumstances.

11 JUROR RICHARD KING, III: No, sir.

12 THE COURT: Even if you felt the facts
13 justified it and the law allowed it.

14 JUROR RICHARD KING, III: Yes, sir.

15 THE COURT: Okay. Thank you.

16 Mr. Evans.

17 MR. EVANS: No questions, Your Honor.

18 MR. CARTER: We don't have any either.

19 THE COURT: If you will step to the back of the
20 courtroom for a second.

21 (JUROR RICHARD KING, III LEFT THE COURTROOM.)

22 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
23 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE.)

24 THE COURT: I think he has already said that he
25 has a fixed opinion and that he couldn't be fair to Mr.
26 Flowers. And you know, we can keep him around if you
27 want, but, you know --

28 MR. CARTER: No.

29 THE COURT: I didn't figure you would want to

1 keep him around, but I will just go ahead and let him go.

2 (THE BENCH CONFERENCE WAS CONCLUDED.)

3 THE COURT: If you will bring him back in just
4 for a second.

5 (JUROR NUMBER 76, RICHARD KING, III, RETURNED TO THE
6 COURTROOM.)

7 THE COURT: Mr. King, we are -- we are going to
8 just let you go ahead and go. And you are excused and
9 you do not have to come back.

10 JUROR RICHARD KING, III: Okay. Thank you,
11 sir.

12 THE COURT: If you will get Miss Williams next.
13 (JUROR 78, BEVERLY WILLIAMS, ENTERED THE COURTROOM.)

14 THE COURT: Miss Williams, if you will come on
15 down, please, ma'am.

16 You can have a seat, please.

17 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

18 JUROR BEVERLY WILLIAMS: Okay.

19 THE COURT: What we are doing now, Miss
20 Williams, is we are asking questions of individual jurors
21 outside the presence of the others, because we just felt
22 that was the best procedure to follow at this point.

23 And first inquiry is about whether you have heard
24 about this case or have any knowledge of the case, read
25 about it, heard it on the t.v. or radio or anything.

26 JUROR BEVERLY WILLIAMS: No. Huh-huh.

27 THE COURT: So. Did you even -- had you even
28 heard that these murders occurred?

29 JUROR BEVERLY WILLIAMS: No, because I wasn't

1 down here.

2 THE COURT: And I believe you had lived in
3 Illinois in the past.

4 JUROR BEVERLY WILLIAMS: Um-hum.

5 THE COURT: How, how long have you been living
6 here?

7 JUROR BEVERLY WILLIAMS: Ever since '05. June
8 '05.

9 THE COURT: And so I think the facts probably
10 would show that this happened in 1996.

11 JUROR BEVERLY WILLIAMS: Um-hum.

12 THE COURT: So you were a long way --

13 JUROR BEVERLY WILLIAMS: Yeah. Yes, sir.

14 THE COURT: -- after -- before you came down
15 here.

16 JUROR BEVERLY WILLIAMS: Um-hum.

17 THE COURT: And so you don't have any knowledge
18 at all about the case.

19 JUROR BEVERLY WILLIAMS: No, I don't.

20 THE COURT: And would you listen to all the
21 evidence in the case and base your verdict on the
22 decision -- on the evidence presented here in court?

23 JUROR BEVERLY WILLIAMS: Yes, I would.

24 THE COURT: And not -- would there -- any
25 inside influences come about you or would you just
26 totally listen only to the evidence?

27 JUROR BEVERLY WILLIAMS: Only to the evidence.

28 THE COURT: And the next area that I want to
29 ask you about is the possibility of the sentence that

1 could be imposed.

2 What happens is if the jury finds Mr. Flowers guilty

3 --

4 JUROR BEVERLY WILLIAMS: Um-hum.

5 THE COURT: -- then we go to the sentencing
6 phase. That's then where the jury decides what the jury
7 believes the appropriate punishment would be.

8 JUROR BEVERLY WILLIAMS: Um-hum.

9 THE COURT: We only go to that phase if the
10 jury finds him guilty. If the jury finds him not guilty,
11 it's over.

12 JUROR BEVERLY WILLIAMS: Um-hum.

13 THE COURT: But if it goes to the second phase,
14 the State is seeking the death penalty in this case.

15 JUROR BEVERLY WILLIAMS: Um-hum.

16 THE COURT: The State would put on proof that
17 they believe would justify the imposition of the death
18 penalty. That would be called aggravating factors.

19 JUROR BEVERLY WILLIAMS: Um-hum.

20 THE COURT: The defense then would put on what
21 they would consider to be mitigating factors. That would
22 be factors why they believe the death penalty should not
23 be imposed --

24 JUROR BEVERLY WILLIAMS: Um-hum.

25 THE COURT: -- or would not be appropriate.
26 And that can be anything about his childhood, up to and
27 including his adulthood and the present.

28 I want to know if you could consider the imposition
29 of the death penalty if you felt the facts justified it

1 and the law allowed it.

2 JUROR BEVERLY WILLIAMS: I believe I could if
3 the evidence showed me that this is what took place.

4 THE COURT: And you would not -- okay.

5 The first phase -- if, if it got to the second
6 phase, the jury would have found that he did commit the
7 crime.

8 JUROR BEVERLY WILLIAMS: True.

9 THE COURT: You understand that?

10 JUROR BEVERLY WILLIAMS: Right.

11 THE COURT: And so if the jury found that he
12 had committed the crime, then could you consider -- you
13 would -- are you telling me --

14 JUROR BEVERLY WILLIAMS: Yes, I would.

15 THE COURT: -- you would consider the death
16 penalty?

17 JUROR BEVERLY WILLIAMS: Yes, I would.

18 THE COURT: And could you also consider the
19 sentence of life without parole?

20 JUROR BEVERLY WILLIAMS: Yes, I could.

21 THE COURT: And would you -- as you sit here
22 today, could you consider those sentences equally right
23 now before you heard any proof?

24 JUROR BEVERLY WILLIAMS: Yes, sir.

25 THE COURT: And you wouldn't be leaning one way
26 or another toward sentence right now; is that correct?

27 JUROR BEVERLY WILLIAMS: True.

28 THE COURT: Thank you.

29 Both of them get to ask you a few questions.

1 MR. EVANS: How are you doing, Miss Williams?

2 JUROR BEVERLY WILLIAMS: Okay.

3 MR. EVANS: I've just got a few questions. So
4 you moved here in 2005.

5 JUROR BEVERLY WILLIAMS: Yes, sir.

6 MR. EVANS: Do you have family here?

7 JUROR BEVERLY WILLIAMS: Yes, I have -- my
8 parents live in Duck Hill.

9 MR. EVANS: And who are they?

10 JUROR BEVERLY WILLIAMS: Dorothy Williams and
11 McKinley Williams.

12 MR. EVANS: Okay. You didn't live here before
13 '05.

14 JUROR BEVERLY WILLIAMS: No.

15 MR. EVANS: Okay. I know we went through a lot
16 of people the other day.

17 JUROR BEVERLY WILLIAMS: Um-hum.

18 MR. EVANS: I know you have sat here for a
19 couple of days now, and you have seen the defendant
20 sitting over here, Curtis Flowers. And you have heard
21 about members of his family. Archie Flowers is his
22 father. Lola Flowers, his sister. Brother and some of
23 his relatives. After hearing that, do you have any
24 connection or know any of them?

25 JUROR BEVERLY WILLIAMS: No, I don't.

26 MR. EVANS: Okay. Have you ever been to where
27 Mr. Flowers has sang in any of his gospel groups?

28 JUROR BEVERLY WILLIAMS: No, I haven't.

29 MR. EVANS: So you have no, no knowledge --

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

Individual Voir Dire

1 JUROR BEVERLY WILLIAMS: No.

2 MR. EVANS: -- that would interfere with you
3 being fair and impartial to both sides.

4 JUROR BEVERLY WILLIAMS: No, I don't.

5 MR. EVANS: And you -- you're telling us you
6 could come in with an open mind. You could listen to the
7 evidence. If the facts were there, you could convict.
8 If the facts were not there, you could vote not guilty.

9 JUROR BEVERLY WILLIAMS: True.

10 MR. EVANS: And you could consider both the
11 death penalty and life without parole.

12 JUROR BEVERLY WILLIAMS: True.

13 MR. EVANS: And either one of them could be an
14 appropriate sentence in this case.

15 JUROR BEVERLY WILLIAMS: True.

16 MR. EVANS: Nothing further, Your Honor.

17 MRS. STEINER: Good afternoon.

18 JUROR BEVERLY WILLIAMS: Hello.

19 MRS. STEINER: His Honor talked about
20 mitigation, and I want to make sure. His Honor will
21 instruct you on what you consider and how to think about
22 it. But unlike aggravation or guilt and innocence, His
23 Honor is going to instruct you that when you consider
24 mitigation, that's your own personal decision.

25 JUROR BEVERLY WILLIAMS: Um-hum.

26 MRS. STEINER: And each other juror, it's his
27 or her own personal decision.

28 JUROR BEVERLY WILLIAMS: Okay.

29 MRS. STEINER: You don't have to come to the

1 same conclusions about if there is mitigation or, or
2 agree on the penalty. Do you understand that?

3 JUROR BEVERLY WILLIAMS: Yes, I do.

4 MRS. STEINER: Can you respect other jurors who
5 may differ from you?

6 JUROR BEVERLY WILLIAMS: Yes, I can.

7 MRS. STEINER: Can you -- do you expect to be
8 respected if they -- do you want the same from them?

9 JUROR BEVERLY WILLIAMS: Yes.

10 MRS. STEINER: And can you be -- deliberate in
11 that agree to disagree respect for each other context?

12 JUROR BEVERLY WILLIAMS: Yes, I can.

13 MRS. STEINER: Now, the judge talked about
14 mitigation that had to do with Mr. Flowers' life outside
15 of this. It may be that there is evidence that has
16 nothing to do with the crime itself regarding mitigation.
17 Can you consider that as fully as you would consider any
18 mitigating factors that talked about the crime itself?

19 JUROR BEVERLY WILLIAMS: Yes, I can.

20 MRS. STEINER: I have nothing further, Your
21 Honor.

22 THE COURT: Miss Williams, you may step down.
23 When you go back out, don't talk with other jurors about
24 what we have talked about in here, please.

25 JUROR BEVERLY WILLIAMS: I sure won't.

26 THE COURT: Thank you.

27 Miss Simmons will be next. Number 80.

28 (JUROR NUMBER 80, BRENDA SIMMONS, ENTERED THE COURTROOM.)

29 THE COURT: If you will come on down, ma'am.

1 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

2 Miss Simmons, what we are doing now is asking
3 questions individually of jurors. We felt that
4 appropriate to do instead of out in front of all the
5 fellow jurors.

6 And first, I am wanting to know about if you heard
7 about the case or have knowledge about the case or read
8 about it or seen things in the news or anything.

9 JUROR BRENDA SIMMONS: I told you I've lived
10 here all my life. And that year that it happened, I
11 worked at Sta-Home. So I knew about it the day that it
12 happened.

13 As far as reading about it, I don't know that I read
14 anything in the newspaper about it. I heard it over the
15 radio, the local radio station. Excuse me. May have
16 caught it on the t.v. stations. But other than that,
17 that is all I know.

18 THE COURT: Were you downtown the date of this
19 incident?

20 JUROR BRENDA SIMMONS: No, sir. I worked -- I,
21 I traveled. I work for home health, and I was not there
22 the day -- I was working, but I was out in the country.

23 THE COURT: And ma'am, has anything you saw,
24 read or heard caused you to form an opinion as to the
25 guilt or innocence of Mr. Flowers?

26 JUROR BRENDA SIMMONS: No, sir.

27 THE COURT: And would you lay aside anything
28 that you have seen, heard or read and base your decision
29 only on the evidence that's presented here in court?

1 JUROR BRENDA SIMMONS: That is correct.

2 THE COURT: And the next question, ma'am, if,
3 if he is found guilty, then there is a sentencing phase.
4 If he is found not guilty, the proceedings are over.

5 Only if he was found guilty would we get to the
6 sentencing phase. But at that point the State would be
7 seeking the death penalty. And they would put on
8 aggravating factors. That would be factors that in the
9 State's view justify the imposition of the death penalty.

10 Mr. Flowers would be putting on mitigating
11 circumstances. That would be reasons that he believes
12 the death penalty would not be an appropriate sentence.
13 That could be anything about his early childhood up to
14 and including his adulthood, you know, to this day.

15 I want to know if you could consider both the death
16 penalty and life without parole as options. Because if
17 he didn't get the death penalty, life without parole
18 would be the sentence.

19 JUROR BRENDA SIMMONS: Yes, sir.

20 THE COURT: And as you sit here today, have you
21 got -- are you leaning either way about what the
22 appropriate sentence would be?

23 JUROR BRENDA SIMMONS: No, sir. No, sir.

24 THE COURT: So will you wait till the
25 instructions of the Court and the facts as they are
26 presented on that issue --

27 JUROR BRENDA SIMMONS: Yes, sir.

28 THE COURT: -- if it should arise?

29 JUROR BRENDA SIMMONS: Yes, sir.

1 THE COURT: Okay. Thank you.

2 Mr. Evans and then defense counsel will ask
3 questions.

4 MR. EVANS: Good evening, Miss Simmons. Miss
5 Simmons, you understand that basically what we are asking
6 if you can do is come into court on the first phase, set
7 aside anybody that you may know, any facts that you have
8 heard, come in here not leaning one way or the other and
9 base your decision only on what is in court. Can you do
10 that?

11 JUROR BRENDA SIMMONS: Yes, sir.

12 MR. EVANS: And as far as the second phase,
13 will you tell us that you will truly listen to everything
14 I put on, everything the defense puts on, weigh all of it
15 out, consider it all and only determine what penalty is
16 appropriate after you have heard that from both sides and
17 the Court's instructions?

18 JUROR BRENDA SIMMONS: Most definitely.

19 MR. EVANS: Nothing further.

20 MRS. STEINER: Good afternoon, Miss Simmons.
21 How specifically did you hear about this the day it
22 happened, if you weren't down at the office?

23 JUROR BRENDA SIMMONS: I came into the office
24 into the afternoon, and I think - I can't be for sure -
25 that we had a staff meeting that day.

26 MRS. STEINER: So you came in that afternoon.
27 When, when did you learn who the people who had been --

28 JUROR BRENDA SIMMONS: Probably --

29 MRS. STEINER: -- at that --

1 JUROR BRENDA SIMMONS: No, it wasn't. I think
2 that it was we were supposed to have a staff meeting, and
3 I did not know it had been canceled. And when I got
4 there they told me. They told me what had happened.

5 MRS. STEINER: And were people -- were emotions
6 running high in the office about that time?

7 JUROR BRENDA SIMMONS: Well, sure. Sure.

8 MRS. STEINER: And did you learn that Benny
9 Rigby, the man that provides music for your church, that
10 his --

11 JUROR BRENDA SIMMONS: Who used to. Who used
12 to.

13 MRS. STEINER: Used to. Was this at the time
14 --

15 JUROR BRENDA SIMMONS: No, ma'am. No, ma'am.

16 MRS. STEINER: Did you -- were you acquainted
17 with Mr. Rigby at the time his wife died?

18 JUROR BRENDA SIMMONS: No, ma'am. No, ma'am.

19 MRS. STEINER: But you said you knew people
20 from the Rigby, Stewart and Golden families.

21 JUROR BRENDA SIMMONS: Not the Golden family.
22 But Bobo was -- my son and Dale, their son, were
23 classmates all the way through school.

24 MRS. STEINER: All right. Did you attend
25 Bo-Bo's funeral?

26 JUROR BRENDA SIMMONS: Yes, ma'am, I did.

27 MRS. STEINER: Did you offer personal
28 condolences to Mr. Stewart?

29 JUROR BRENDA SIMMONS: Yes. To the whole

1 family.

2 MRS. STEINER: To the whole family.

3 JUROR BRENDA SIMMONS: Yes, ma'am.

4 MRS. STEINER: Have you kept up with them
5 afterwards?

6 JUROR BRENDA SIMMONS: No, ma'am.

7 MRS. STEINER: And none of your information
8 about what happened has come from them? Is that --

9 JUROR BRENDA SIMMONS: No, ma'am. No, ma'am.
10 No, ma'am.

11 MRS. STEINER: -- what you are saying? And you
12 were a mourner at that funeral along with them.

13 JUROR BRENDA SIMMONS: Yes, ma'am.

14 MRS. STEINER: And that mourning, that loss
15 stays with you to this day.

16 JUROR BRENDA SIMMONS: Yes, ma'am, it does.

17 MRS. STEINER: And is that a little tearing up
18 I saw?

19 JUROR BRENDA SIMMONS: I'm okay.

20 MRS. STEINER: Now, you've talked to the judge
21 about how you consider guilt -- both punishments.

22 JUROR BRENDA SIMMONS: Yes, ma'am.

23 MRS. STEINER: Life without parole and the
24 death penalty. In addition to the aggravation and
25 mitigating evidence His Honor discussed, the State may be
26 putting on testimony from Mr. Bennie Rigby concerning his
27 and his children's loss and, I believe, some boys are now
28 grown up, that they may come into court. Boys who -- I'm
29 sorry. Strike that. In the Stewart family. Forgive me.

1 Mr. Randy Stewart will be -- may be a witness about what
2 the loss of Bobo has meant to him. Can you -- if you
3 hear that testimony, can you consider anything about Mr.
4 Flowers that could counteract that?

5 MR. EVANS: Your Honor, that is not an
6 appropriate question. Whether anything can counteract
7 anything is not appropriate.

8 MRS. STEINER: If --

9 MR. EVANS: Whether she can properly and truly
10 consider it is the question.

11 THE COURT: I will sustain the objection and
12 give you an opportunity to rephrase.

13 MRS. STEINER: Thank you, Your Honor.

14 Once you have heard that, can you consider anything
15 about Mr. Flowers that doesn't have to do with the crime
16 or explain -- or that, that has to do with the actual
17 murder, other than he is guilty of it beyond a reasonable
18 doubt?

19 JUROR BRENDA SIMMONS: I'm going to share,
20 share this with you, ma'am. I'm a fair and honest person
21 to everybody.

22 MRS. STEINER: I understand that. And the
23 reason I think the judge is here asking you questions is
24 because we all want to be able to act on those
25 principles. But you teared up. You went to the funeral.
26 And you can be fair and honest. But there are just some
27 jurors that -- you know, you may be fair and honest when
28 it isn't someone whose funeral --

29 MR. EVANS: Your Honor, it is not proper for --

1 THE COURT: I agree.

2 MR. EVANS: -- her to argue with this juror.

3 THE COURT: You can ask the juror questions.

4 MRS. STEINER: But in your heart, you are
5 mourning for --

6 JUROR BRENDA SIMMONS: In my heart, I am
7 telling you the truth. I can be fair and honest to
8 everybody.

9 MRS. STEINER: And you are mourning for Bobo
10 Stewart in your heart too.

11 MR. EVANS: Your Honor, I object to her
12 continuing to try to harass this juror.

13 MRS. STEINER: I am not harassing, Your Honor.
14 I'm trying to --

15 THE COURT: Well, it is time to wrap up your
16 questioning, because you have gone about three minutes
17 over with this one already.

18 MRS. STEINER: Can you -- you understand that
19 mitigation is a matter each juror has his or her
20 conscience on mitigation?

21 JUROR BRENDA SIMMONS: Yes, ma'am.

22 MRS. STEINER: And even if you find something
23 not mitigating, another juror may find it mitigating and
24 think it deserves a life sentence. Can you respect the
25 other juror's opinion?

26 JUROR BRENDA SIMMONS: Yes, ma'am. Yes, ma'am.

27 MRS. STEINER: Can you agree to disagree on
28 that?

29 JUROR BRENDA SIMMONS: Yes, ma'am.

1 MRS. STEINER: And even if you can't come to
2 some consensus, you can live with that in the jury room.

3 JUROR BRENDA SIMMONS: Yes, ma'am.

4 MRS. STEINER: Thank you.

5 THE COURT: That will be all, Miss Simmons. If
6 you will step out. When you go back, don't talk about
7 out there with others what has been said in here, please.

8 JUROR BRENDA SIMMONS: Yes, sir.

9 THE COURT: We will need Number 87, Miss Locke
10 next.

11 MR. EVANS: Your Honor, may we approach first?
12 Something I need to bring up.

13 THE COURT: I need the bailiff to be told not
14 to come in.

15 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
16 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE.)

17 MR. EVANS: I don't feel comfortable. Her
18 questionnaire says that she is a convicted felon on
19 probation. I don't know if it is true or not. I noticed
20 that, and I intended to ask her about it. I wanted to
21 bring that to the Court's attention.

22 THE COURT: If she is, she is not qualified as
23 a juror to start with. So that is the very first
24 question I intend to ask.

25 MR. CARTER: Call her back and ask --

26 THE COURT: Not the one that just testified.
27 The one that is coming up next.

28 MRS. STEINER: Thank you. I hadn't read that.

29 THE COURT: No. It is the one that is coming

1 up next. I was going to ask that myself, because
2 certainly an inquiry has to be made.

3 MR. EVANS: I think it would be better if the
4 Court would ask it, instead of either side.

5 THE COURT: I had intended to. By the way,
6 Counsel, if she says she has been convicted --

7 MRS. STEINER: That's a disqualification. We
8 agree.

9 THE COURT: Do you agree to go ahead and excuse
10 her on the spot?

11 MR. CARTER: Yes.

12 MRS. STEINER: Yes. As you did all the others.

13 (THE BENCH CONFERENCE WAS CONCLUDED.)

14 THE COURT: You can bring Miss Locke in now.

15 (JUROR NUMBER 87, MISS BEVERLY LOCK, ENTERED THE
16 COURTROOM.)

17 THE COURT: Miss Locke, if you will come
18 forward and have a seat.

19 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

20 THE COURT: Miss Locke, we are asking all the
21 jurors individual questions about certain matters that we
22 felt was appropriate to bring up outside the presence of
23 other jurors. And one thing I want to understand before
24 we get any further. You have put on your questionnaire
25 that you had been convicted of possession of controlled
26 substance.

27 JUROR BEVERLY LOCKE: I'm glad, because I was
28 going to say I didn't want to waste anybody's time.

29 THE COURT: So have you got a felony

1 conviction?

2 JUROR BEVERLY LOCKE: No, it's a misdemeanor.
3 They dropped it to a misdemeanor.

4 THE COURT: And where did that happen?

5 JUROR BEVERLY LOCKE: Jackson Mississippi at
6 the V.A.

7 THE COURT: So that was something that
8 occurred.

9 JUROR BEVERLY LOCKE: 2005. March.

10 THE COURT: Well, now what -- you had put that
11 you were on probation until 2010. So explain -- what
12 type of probation was that?

13 JUROR BEVERLY LOCKE: Mr. Brandon Cole, the
14 U.S. probation officer out of Oxford, is my probation
15 officer. Timeline -- let me back up. When this incident
16 happened, they released me and put me on pretrial
17 probation. And I was on probation -- pretrial probation
18 almost three years. Then they finally got to my case and
19 that was in October. It will be -- it will be another
20 three years.

21 Anyway, October went to Jackson. They heard my
22 case. Everybody agreed to drop it to a misdemeanor. And
23 my attorney, he says that's -- you need to do that. He
24 said because I could have been in real trouble. But at
25 any rate, they dropped it to a misdemeanor. It was a
26 lady judge. She put me on three years probation, and
27 that will be up October 16 of this year.

28 THE COURT: Was that in the Southern or
29 Northern part of the state that you appeared in court?

1 Like --

2 JUROR BEVERLY LOCKE: It must have been
3 northern, because I think that is -- I meant to bring --

4 THE COURT: What town did you go to?

5 JUROR BEVERLY LOCKE: Town?

6 THE COURT: For court.

7 JUROR BEVERLY LOCKE: Jackson. I had meant to
8 bring you Mr. Cole's card, because I didn't want to waste
9 y'all's time with a lot of the questions if I wasn't
10 eligible for anything.

11 THE COURT: What type sentence was imposed by
12 the Court?

13 JUROR BEVERLY LOCKE: Probation. \$500 and
14 probation.

15 THE COURT: Any jail time imposed?

16 JUROR BEVERLY LOCKE: No. No, sir.

17 THE COURT: The next issues we get into are
18 concerning any knowledge you might have about the Tardy
19 Furniture store incident that happened in 1996. Have you
20 heard anything about this case?

21 JUROR BEVERLY LOCKE: Just what's on the
22 newspaper headlines every so often. And I don't read the
23 newspaper. The only reason I think I really knew
24 anything about it was I moved back here in 1994. If I'd
25 ever met the Tardys, I don't know it.

26 Now, originally, I think somebody asked had any of
27 us when we were brought out here bought anything from
28 Tardy's, and I didn't raise my hand. But I got to
29 thinking. I think I bought a couch from there in '94,

1 '95, when I first moved back. And anyway, I was working
2 at the hospital the day that happened. And, of course,
3 they came up and locked the hospital down. So that is
4 how I knew about that. And I didn't know the name of the
5 man that they are accusing until, I don't know, a year or
6 two ago. I'm not big into watching the news and keeping
7 track of current events. My life is enough current.

8 THE COURT: And Miss Locke, has anything that
9 you saw, read or heard caused you to form an opinion as
10 to the guilt or innocence of Mr. Flowers?

11 JUROR BEVERLY LOCKE: No, sir.

12 THE COURT: And will you lay aside anything you
13 might have heard, seen or knowledge you might have
14 obtained outside the court and base your decision
15 strictly and only on the evidence presented here in open
16 court?

17 JUROR BEVERLY LOCKE: Yes, sir. I've watched
18 some of these court shows, and I have been astonished.
19 And yes, sir. I can do what is right.

20 THE COURT: Do you understand that it may not
21 work in the real world like it might be on t.v.?

22 JUROR BEVERLY LOCKE: Well, I'm just saying,
23 when I say astonished, I am just talking about how
24 ridiculous some of the stuff was. And I realize t.v. is
25 made up. It is just made up.

26 THE COURT: But do you --

27 JUROR BEVERLY LOCKE: But anyway, yes, I have
28 no, no preformed opinion. And anything that is lurking
29 in my mind, if it is, that will be set aside, just to pay

1 attention to what's, what's -- not issued, presented.

2 THE COURT: And, ma'am, if, if the jury found
3 him guilty of murder, capital murder, then we would have
4 a sentencing phase of the trial. We would only get into
5 the sentencing phase if he were to be found guilty. If
6 he was found not guilty, that would conclude everything.

7 But if he is found guilty, then we would get into a
8 sentencing phase and the State would be seeking the death
9 penalty. They would be putting on aggravating factors,
10 which is reasons why the State believes the death penalty
11 should be imposed. Then Mr. Flowers would be putting on
12 mitigating factors, which would be things that he
13 believes would justify the jury in not imposing the death
14 penalty. It could be anything about his early childhood
15 up to and including his present life today.

16 So I want to know right now without having heard any
17 of that evidence or instructed on the law, could you
18 consider life without parole and the death penalty as
19 possible sentences?

20 JUROR BEVERLY LOCKE: Yes, sir, I could.

21 THE COURT: And do you have either -- do you
22 have a fixed idea of what you think the punishment should
23 be or will you consider these equally at this point?

24 JUROR BEVERLY LOCKE: Yes, sir.

25 THE COURT: You will consider them equally.

26 JUROR BEVERLY LOCKE: Yes, sir, I will.

27 THE COURT: Okay. Thank you.

28 JUROR BEVERLY LOCKE: Am I...

29 THE COURT: They are going to ask a couple of

1 questions of you too.

2 MR. EVANS: Good evening, Miss Locke.

3 JUROR BEVERLY LOCKE: Hi.

4 MR. EVANS: Just a couple of things I want to
5 go over with you. There's concept that what we are
6 trying to do here is get a jury that can come in,
7 disregard anything in their past, anything that they may
8 have heard, anything that -- anybody that they may know,
9 and come in here with a complete open mind, not leaning
10 either direction for a conviction or for not guilty,
11 listen strictly to the evidence and base the decision on
12 that. Can you do that?

13 JUROR BEVERLY LOCKE: Yes, sir.

14 MR. EVANS: And in the second phase, if he is
15 found guilty, the judge will instruct the jury on what
16 aggravating factors they can consider. That will be the
17 things that we introduce and what mitigating factors the
18 defense can bring up. The mitigating factors can be
19 almost unlimited. It can be anything about his life,
20 anything that they want to bring up that the Court will
21 allow. If the Court allows the testimony in, can you
22 consider anything that either side brings up and is
23 allowed for you to consider?

24 JUROR BEVERLY LOCKE: Yes, sir.

25 MR. EVANS: Would you only make a decision of
26 which sentence was appropriate after you had completely
27 heard both sides?

28 JUROR BEVERLY LOCKE: Yes, sir. It sounds a
29 very logical process.

1 MR. EVANS: And you could consider either
2 penalty depending on what all of the evidence was.

3 JUROR BEVERLY LOCKE: Yes, sir.

4 MR. EVANS: And what mitigation you heard.

5 JUROR BEVERLY LOCKE: Yes, sir.

6 MR. EVANS: Nothing further.

7 MRS. STEINER: Good evening, Miss Locke.

8 JUROR BEVERLY LOCKE: Hi.

9 MRS. STEINER: Miss Locke, on considering
10 sentences, as you sit here you have no preference one way
11 or the other.

12 JUROR BEVERLY LOCKE: That's right.

13 MRS. STEINER: At the -- as the Court advised
14 you, you would not even be considering what the penalty
15 should be unless you had already decided beyond a
16 reasonable doubt --

17 JUROR BEVERLY LOCKE: Um-hum.

18 MRS. STEINER: -- Mr. Flowers was guilty of up
19 to four capital murders.

20 JUROR BEVERLY LOCKE: Yes, ma'am.

21 MRS. STEINER: You understand that?

22 JUROR BEVERLY LOCKE: Yes, ma'am.

23 MRS. STEINER: There would be no defenses left.
24 He would be guilty.

25 JUROR BEVERLY LOCKE: Yes, ma'am.

26 MRS. STEINER: And at that point you would then
27 consider aggravating and mitigating circumstances. Do
28 you understand?

29 JUROR BEVERLY LOCKE: Yes, ma'am.

1 MRS. STEINER: The mitigating circumstances
2 might have nothing to do with the actual crime or would
3 not, not have even explained how the crime happened.
4 They would be about Mr. Flowers' life apart from that
5 crime before it happened, possibly after it happened and
6 he would already be guilty of the crime. Can you still
7 consider mitigation having nothing to do with the crime
8 --

9 JUROR BEVERLY LOCKE: Yes, ma'am.

10 MRS. STEINER: -- in arriving at sentence?

11 JUROR BEVERLY LOCKE: Yes, ma'am.

12 MRS. STEINER: Now, His Honor will instruct you
13 that when you are making that decision, unlike whether or
14 not he is guilty or whether or not there is aggravating
15 factors that could be used to impose a death penalty,
16 mitigation and whether or not you think it outweighs the
17 aggravating factors, that is an individual decision that
18 you -- each juror makes for him or herself.

19 JUROR BEVERLY LOCKE: Yes, ma'am.

20 MRS. STEINER: They don't need to agree with
21 each other. Do you understand that?

22 JUROR BEVERLY LOCKE: Good.

23 MRS. STEINER: If you have one opinion about
24 something being mitigating and that's it -- sentence
25 should be, and another juror has a different one, can you
26 respect that other juror's opinion?

27 JUROR BEVERLY LOCKE: Oh, yes, ma'am.

28 MRS. STEINER: And even if it's opposite from
29 yours.

1 JUROR BEVERLY LOCKE: Yes, ma'am.

2 MRS. STEINER: And can you -- as you would
3 expect the same respect.

4 JUROR BEVERLY LOCKE: Oh, yes.

5 MRS. STEINER: Thank you, Your Honor. I have
6 nothing further.

7 THE COURT: Miss Locke, if you will step down
8 and go back with the rest of the jurors. But don't when
9 you go back talk about what you have been asked in here,
10 please, ma'am.

11 JUROR BEVERLY LOCKE: Yes, sir.

12 THE COURT: That will be all for now.

13 JUROR BEVERLY LOCKE: Thank you.

14 THE COURT: I see the person's here to give Mr.
15 Flowers his insulin shot right now. So we will take a
16 recess for a few minutes to allow that to be
17 administered.

18 (A RECESS WAS TAKEN.)

19 THE COURT: After the last juror was
20 questioned, I meant to make this request. And I hope the
21 State -- I mean I hope the defense wouldn't object. I
22 would like the State to run an N.C.I.C.

23 MR. EVANS: We are checking on that.

24 THE COURT: Because, you know, Miss Locke, I
25 believe, thinks she was convicted of a misdemeanor, but I
26 don't want it to somehow come forward that she was
27 convicted of a felony. So if y'all can find that
28 information out.

29 MR. EVANS: Yes, Your Honor.

1 MRS. STEINER: Your Honor, in my prior life I
2 did do federal C.J.A. appointments and people stay on
3 probation for years on some of those situations.

4 THE COURT: Even on misdemeanors.

5 MRS. STEINER: Even on misdemeanors. It's
6 actually called supervised release, and I didn't want to
7 question her about this. Often times when it's a drug
8 situation, there's been addiction, treatment and that
9 sort of thing.

10 (MR. EVANS WAS TALKING ON A CELL PHONE.)

11 MR. EVANS: Your Honor, if, if we can, I can't
12 hear. We are trying to get the results right now if we
13 can get them.

14 MRS. STEINER: Oh, okay.

15 MR. EVANS: Your Honor, it looks like what we
16 have been able to find out so far from the federal
17 Probation folks, that she did have a felony charge. She
18 was indicted. It was dismissed. She was allowed to
19 plead to a misdemeanor, but part of that plea was on
20 condition that she receive a psychological evaluation.
21 And I don't have anything on whether or not that was done
22 or what the results of that was at this time. We are
23 supposed to be getting this emailed to us.

24 THE COURT: But at this point, I mean, she is
25 not --

26 MR. EVANS: Not a felon.

27 THE COURT: -- not a felon. So she would not
28 be disqualified from service on the jury.

29 If you will get Mr. Hamilton next, please.

1 And you were saying, Mrs. Steiner, this is typical,
2 I mean very typical for federal practice to be doing
3 that.

4 MRS. STEINER: In my C.J.A. experience where,
5 where there were psychological or addiction issues people
6 would stay on supervision for many years and often get in
7 trouble, which sounds like she hasn't.

8 THE COURT: Right.

9 (JUROR NUMBER 91, JIMMY HAMILTON, ENTERED THE COURTROOM.)

10 THE COURT: Mr. Hamilton, if you will, come
11 down and have a seat.

12 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

13 THE COURT: Mr. Hamilton, what we are doing now
14 is asking questions individually of the jurors, because
15 we felt it was appropriate to ask some questions outside
16 the presence of the other jurors just so nothing would
17 come up in front of them that might create some kind of
18 problem.

19 But the first thing I want to get with you is I
20 believe -- did you list on your questionnaire that Robert
21 Golden -- when the questionnaires asked about whether you
22 had had family members or friends that were victims of
23 violent crime or murder, did you list Robert Golden as a
24 close friend of yours that was murdered?

25 JUROR JIMMY HAMILTON: Yes. Before I read that
26 that was the case.

27 THE COURT: But you considered him a close
28 friend.

29 JUROR JIMMY HAMILTON: Yes, I did.

1 THE COURT: And would you be able to sit in
2 judgment on somebody that has been accused of murdering
3 your close friend?

4 JUROR JIMMY HAMILTON: I would think I would.
5 I wouldn't want to jeopardize the trial.

6 THE COURT: Well, it's not a question of
7 jeopardizing the trial. But if you cannot be fair and
8 impartial, then obviously you could not serve. And, you
9 know, have you got any doubts in your own mind about your
10 ability to be fair and impartial because of being good
11 friends with Mr. Golden?

12 JUROR JIMMY HAMILTON: Yes.

13 THE COURT: So you feel like you just maybe
14 could not be fair and impartial because of that.

15 JUROR JIMMY HAMILTON: That and I work with his
16 brother.

17 THE COURT: And so you have seen them and
18 known -- know his brother still; is that correct?

19 JUROR JIMMY HAMILTON: That's correct.

20 THE COURT: And that would influence or affect
21 you in being fair and impartial.

22 JUROR JIMMY HAMILTON: It possibly could.

23 THE COURT: Mr. Evans, if you want to ask any
24 questions.

25 MR. EVANS: Very briefly.

26 You are saying it possibly could. And as you know,
27 from hearing our other questions that we have been asking
28 for a couple of days, we need some positive answers if we
29 can get it. Are you telling us that you could not set

1 that aside and that it would influence you or that you
2 could not?

3 JUROR JIMMY HAMILTON: I don't think there is
4 any possibility that I wouldn't set it aside.

5 MR. EVANS: You don't think it's any
6 possibility that you wouldn't set it aside.

7 JUROR JIMMY HAMILTON: No.

8 MR. EVANS: So you are telling us that you
9 would set it aside, and you would not let it influence
10 your decision; is that right?

11 JUROR JIMMY HAMILTON: I would do my best. If
12 you knew somebody that was a friend that had been dead
13 for 14 years, wouldn't you want to seek closure in his
14 family's life?

15 MR. EVANS: And that is what I'm asking. I'm
16 not --

17 JUROR JIMMY HAMILTON: I understand.

18 MR. EVANS: I'm just trying to find out what
19 your answer is. Are you saying that it would affect you
20 then and that you would consider that when making a
21 decision?

22 JUROR JIMMY HAMILTON: It's just like I told
23 Mr. Carter. I would consider the facts.

24 MR. EVANS: All right, sir. Nothing further.

25 JUROR JIMMY HAMILTON: And I really don't
26 believe that I would consider Mr. Golden.

27 MR. EVANS: Thank you, sir.

28 MR. CARTER: Mr. Hamilton, I understand this is
29 a tough stuff situation for you. And you know, I

1 understand friendship. I have plenty of them, plenty of
2 friends. And nobody is suggesting that, you know, you
3 shouldn't have feelings and emotion about your friend.
4 In fact, we all expect you to.

5 And from what I could hear, you are not telling us
6 that you are sure that you could put that aside or you
7 would try. I understand you would try to, but I'm
8 getting the impression you are not really sure.

9 Is it fair to say that Mr. Flowers' fate, with
10 respect to this trial, would be better off in the hands
11 of somebody who didn't have your connection to Mr.
12 Golden?

13 JUROR JIMMY HAMILTON: I don't know Mr.
14 Flowers, but if -- it is just like you asked. I would do
15 my best to consider the facts.

16 MR. CARTER: Right.

17 JUROR JIMMY HAMILTON: Because it would do
18 Robert Golden no good to accuse somebody that didn't do
19 the deed or his family either or the other families.

20 MR. CARTER: Can you assure the Court that you
21 wouldn't have any notions of animosity towards Mr.
22 Flowers, and you wouldn't have any goals of extracting
23 revenge if you served in this case?

24 JUROR JIMMY HAMILTON: It's the first time I
25 have ever seen Mr. Golden.

26 MR. CARTER: Mr. Flowers.

27 JUROR JIMMY HAMILTON: Excuse me. Mr. Flowers.
28 I'm not sure I hadn't seen his daddy down at Wal-Mart. I
29 don't really know unless I seen a picture of him. I'm

1 not from around here originally. That's why I leave it
2 up to y'all to decide. Y'all should be professionals.

3 MR. CARTER: Yes, sir, we are trying -- we are
4 definitely trying to be so.

5 JUROR JIMMY HAMILTON: That's right. And I
6 have told you all I can tell you about it. There is no
7 -- you know. You done asked me questions. I've
8 answered. There is no need in my mind for you to keep
9 asking me the same questions, seeking a different answer.
10 Somebody -- that tells me somebody is trying to
11 intimidate me. When somebody tries to intimidate you,
12 that is because they are insecure.

13 MR. CARTER: Okay. So you are saying I am
14 personally trying to intimidate you and --

15 JUROR JIMMY HAMILTON: Y'all keep asking me.
16 Not personally.

17 MR. CARTER: Okay.

18 JUROR JIMMY HAMILTON: As a whole in general.
19 No, sir. I'm not saying anything against you --

20 MR. CARTER: Yes, sir.

21 JUROR JIMMY HAMILTON: -- Mr. Evans or anybody
22 in this court.

23 MR. CARTER: Well, I don't want to continue to
24 ask you any questions. I really don't. And so I take it
25 your last -- your final answer is you will do your best.
26 You can't guarantee it, but you will do your best. Is
27 that --

28 JUROR JIMMY HAMILTON: I don't believe there is
29 anybody in this courthouse that can guarantee that their

1 best is going to be right. That is my opinion.

2 MR. CARTER: I don't really know. I guess that
3 is my last question.

4 THE COURT: Let me ask a couple more. These
5 are strictly just to make sure that we do get 12 people
6 to be fair and impartial. We are not trying to
7 intimidate anybody or do anything like that. This is
8 very important. It's a very serious thing that Mr.
9 Flowers has been charged with.

10 JUROR JIMMY HAMILTON: I understand.

11 THE COURT: He has got the absolute right to
12 have a completely fair and impartial jury to decide his
13 fate and the State of Mississippi has a right to the
14 same.

15 If you were selected as a juror in this case, would
16 you lay aside all things that you might have heard about
17 the case and base your decision only on the evidence here
18 in court?

19 JUROR JIMMY HAMILTON: Yes. Because I really
20 hadn't heard a lot about it.

21 THE COURT: And if the case got to the point
22 where the jury convicted Mr. Flowers, and only if he was
23 convicted, then would we get to a sentencing phase where
24 the jury would decide what the punishment would be.

25 The State is seeking the death penalty. They would
26 be putting on aggravating factors, which in the State's
27 mind would be reasons the death penalty should be
28 imposed. Mr. Flowers, through his attorneys, would be
29 putting on proof that would show that -- or would in

1 their mind indicate that the death penalty would not be
2 appropriate based on mitigating circumstance. That could
3 be anything from, you know, his family background or his
4 life up to and including the present time. Without
5 knowing or hearing any facts on that issue and without
6 having been instructed by the Court on any issue
7 concerning that, could you consider the death penalty and
8 life without parole as sentencing options?

9 JUROR JIMMY HAMILTON: Yes.

10 THE COURT: And as you sit here today, do you
11 have any -- are you favoring one possible sentence over
12 the other?

13 JUROR JIMMY HAMILTON: Yes.

14 THE COURT: And which do you think is a more
15 appropriate sentence at this point?

16 JUROR JIMMY HAMILTON: Life without parole.

17 THE COURT: But you would wait until you have
18 heard all the evidence to decide that issue; is that
19 correct?

20 JUROR JIMMY HAMILTON: That's correct.

21 THE COURT: Okay. Thank you, Mr. Hamilton.

22 Next we need Mary Ann Crowley next.

23 (JUROR NUMBER 92, MARY ANN CROWLEY, ENTERED THE
24 COURTROOM.)

25 Miss Crowley, if you will come down here and have a
26 seat, please.

27 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

28 Miss Crowley, what we are doing now is we are asking
29 questions of each juror outside the presence of other

1 jurors because there are just some matters we felt
2 necessary to take up outside the presence of the others.
3 And what I want to get into is whether you have any
4 knowledge about this case or know any of the facts about
5 the case or anything concerning the case.

6 JUROR MARY ANN CROWLEY: No, sir, I do not.

7 THE COURT: Did there ever come a time when you
8 even heard about the Tardy murders?

9 JUROR MARY ANN CROWLEY: Yeah. I heard a
10 little something about it, but I really wasn't down here
11 when it happened. I was living in Grenada County.

12 THE COURT: And how long have you been living
13 now in Montgomery County?

14 JUROR MARY ANN CROWLEY: I moved back in 2001.

15 THE COURT: And has anything that you heard,
16 saw, read caused you to form any opinion as to the guilt
17 or innocence of Mr. Flowers?

18 JUROR MARY ANN CROWLEY: No, sir.

19 THE COURT: And if you are selected as a juror,
20 will you lay anything you heard aside and base your
21 decision only on the evidence that is presented here in
22 court?

23 JUROR MARY ANN CROWLEY: Yes, sir. I will lay
24 it aside and listen to what they say.

25 THE COURT: Miss Crowley, the way the process
26 works is if the jury were to convict Mr. Flowers of
27 capital murder, then we would go into the sentencing
28 phase. If he was acquitted on the first part of the
29 trial, we would not get into the sentencing phase. But

1 if he were to be convicted, then the sentencing phase
2 would be for the jury to determine what the jury believed
3 to be the appropriate punishment.

4 The State of Mississippi is seeking the penalty of
5 life in -- I mean seeking the death penalty. And they
6 would be putting on aggravating factors which the State
7 would believe would show that the death penalty was
8 appropriate. Mr. Flowers would be putting on mitigating
9 facts that would show in his mind that the death penalty
10 should not be imposed in this particular case.

11 Mitigating factors could be anything about his life
12 that's occurred from infancy on up to the present time.

13 So I want to know if he got to the point where he
14 was -- where the second phase of the trial was taking
15 place after he had been found guilty of capital murder,
16 could you consider the death penalty as a potential
17 sentence?

18 JUROR MARY ANN CROWLEY: No, sir.

19 THE COURT: Miss Crowley, on your
20 questionnaire, on your questionnaire you answered that
21 you strongly favor the death penalty and that you could
22 consider it and could not consider life without parole.
23 Did you --

24 JUROR MARY ANN CROWLEY: I probably read it
25 wrong, because I did it at work. I did my questionnaire
26 at work.

27 THE COURT: And so you are saying -- are, are
28 you saying that that would not even be something that you
29 would consider, the death penalty?

1 JUROR MARY ANN CROWLEY: No, sir.

2 THE COURT: Could you consider life without
3 parole as a possible sentence?

4 JUROR MARY ANN CROWLEY: Yeah, I probably could
5 consider that but not...

6 THE COURT: But you are just saying you would
7 not consider the death penalty at all.

8 JUROR MARY ANN CROWLEY: No, sir.

9 THE COURT: Mr. Evans.

10 MR. EVANS: Good evening, Miss Crowley.

11 JUROR MARY ANN CROWLEY: Hi.

12 MR. EVANS: I want to make sure I understand
13 for sure what you are saying. Your views on the death
14 penalty are so strong that you could not consider that
15 yourself as a possible penalty in any case; is that
16 right?

17 JUROR MARY ANN CROWLEY: Yes, sir.

18 MR. EVANS: You could never give the death
19 penalty.

20 JUROR MARY ANN CROWLEY: No, sir.

21 MR. EVANS: Nothing further, Your Honor.

22 MR. CARTER: I have a couple, Your Honor.

23 Miss Crowley, do you understand that if you got
24 picked as a juror whatever decision you made would be
25 your decision and not the decision of anybody else? Do
26 you understand that?

27 JUROR MARY ANN CROWLEY: Yes, sir, I do.

28 MR. CARTER: Now, you said you could consider
29 life without possibility of parole. Do you have any

1 reservations about that?

2 JUROR MARY ANN CROWLEY: No.

3 MR. CARTER: Do you consider it a serious
4 crime? I mean a serious penalty, life without
5 possibility of parole, where you never get out of jail?
6 Do you consider it a serious punishment?

7 JUROR MARY ANN CROWLEY: Yes, sir, I do.

8 MR. CARTER: And when the Court asked you if
9 you could consider death, the Court is not telling you
10 that you had to vote for death. It is your decision how
11 you vote. But what we want to know is can you even weigh
12 the possibility of death and weigh and consider the
13 possibility of life without -- life without the
14 possibility of parole. Can you weigh both of them and
15 then decide which way you want to vote?

16 And so only you really know the answer to that. Can
17 you -- is it -- again, nobody is telling you how you have
18 to vote. You can vote however you want to. It is your
19 decision. What we are asking you though is can you
20 consider both of them, think about both as a possibility
21 for punishment and then decide? If you can't, it's just
22 -- I mean it is up to you.

23 JUROR MARY ANN CROWLEY: I probably could think
24 about both of them, but I would be more with life in
25 prison with parole with --

26 MR. CARTER: So you would be leaning towards
27 life no matter what the facts are.

28 JUROR MARY ANN CROWLEY: Yes, sir.

29 MR. CARTER: So if -- you know, to get to

1 punishment phase, you have to already gone through the
2 first phase and you would have found Mr. Flowers already
3 guilty. You understand that?

4 JUROR MARY ANN CROWLEY: Yes, sir.

5 MR. CARTER: And despite that, knowing what he
6 is charged with, you would have found him guilty, you
7 still could not go back, viewing both options equally,
8 and you certainly would be leaning towards life without
9 possibility of parole. That is what you are saying.

10 JUROR MARY ANN CROWLEY: Yes, sir.

11 MR. CARTER: Okay. Thank you. No further
12 questions.

13 THE COURT: While you are leaning toward life,
14 could you consider the death penalty as a sentence? I
15 mean right now you haven't heard any proof. But would
16 that be something you could consider?

17 JUROR MARY ANN CROWLEY: No, sir.

18 THE COURT: Even after you -- without hearing
19 any facts or being instructed on the law, you are just
20 saying that would just be something you could not even
21 consider.

22 JUROR MARY ANN CROWLEY: No, sir, I couldn't.
23 Huh-huh.

24 THE COURT: Thank you, Miss Crowley. You, you
25 may step down. If you will not talk with anyone about
26 what you have talked about in here.

27 JUROR MARY ANN CROWLEY: Okay.

28 THE COURT: We will need Miss Pearson next.

29 (JUROR NUMBER 93, MARJORIE PEARSON, ENTERED THE

1 COURTROOM.)

2 THE COURT: Miss Pearson, if you will come
3 forward and have a seat down here, please.

4 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

5 THE COURT: Miss Pearson, what we are doing now
6 is asking questions outside the presence of the other
7 jurors on a couple of issues that we felt necessary to
8 ask outside the presence of the other people.

9 First of all, do you have any facts about this case
10 or any knowledge or have you heard anything about this
11 case?

12 JUROR MARJORIE PEARSON: I read one article
13 that Dale that used to work at *Winona Times* did. I don't
14 know his last name. It starts with a "G".

15 THE COURT: And when did -- how long ago was
16 that that you read this newspaper article?

17 JUROR MARJORIE PEARSON: It's in the last
18 month.

19 THE COURT: Last -- in the last month.

20 JUROR MARJORIE PEARSON: But I think it was an
21 article from around '97.

22 THE COURT: Oh, it was an old article that you
23 read.

24 JUROR MARJORIE PEARSON: Old article.

25 THE COURT: An old issue of the paper.

26 JUROR MARJORIE PEARSON: Yes, sir. Yes, sir.

27 THE COURT: Did that cause you to form an
28 opinion as to the guilt or innocence of Mr. Flowers?

29 JUROR MARJORIE PEARSON: Yes, sir.

1 THE COURT: Could you lay that opinion aside
2 and base your decision strictly on the evidence presented
3 here in court?

4 JUROR MARJORIE PEARSON: Probably not. Could
5 not.

6 THE COURT: So you are saying you probably
7 could not lay that aside.

8 JUROR MARJORIE PEARSON: Yes, sir.

9 THE COURT: And next issue involves the
10 possible sentence that could be involved in this case.
11 What happens is the trial first is held to decide guilt
12 or innocence. Only if he was found guilty would we get
13 to the sentencing phase. And at that time the jury would
14 decide what the jury felt to be the appropriate sentence.
15 The sentence could be anything from the death penalty to
16 life in prison without parole. It will end up being one
17 or the other.

18 Could you consider both life in prison without
19 parole and the death penalty as sentencing options?

20 JUROR MARJORIE PEARSON: Yes, sir.

21 THE COURT: So you will consider both of them;
22 is that correct?

23 JUROR MARJORIE PEARSON: Yes, sir.

24 THE COURT: Okay. Thank you.

25 Mr. Evans.

26 MR. EVANS: Thank you, Your Honor.

27 The other day you said that you could not judge; is
28 that right?

29 JUROR MARJORIE PEARSON: Yes, sir.

1 MR. EVANS: What did you mean by that? Do you
2 just feel that you cannot judge anybody on a criminal
3 case?

4 JUROR MARJORIE PEARSON: I don't believe it's
5 my place.

6 MR. EVANS: Okay. And would -- are you telling
7 us that if you were picked as a juror that you just would
8 not be able to do that?

9 JUROR MARJORIE PEARSON: Yes, sir.

10 MR. EVANS: Nothing further, Your Honor.

11 THE COURT: Miss Steiner.

12 MRS. STEINER: Good afternoon, Miss Pearson.

13 JUROR MARJORIE PEARSON: Good afternoon.

14 MRS. STEINER: His Honor asked you if you could
15 consider both sentences --

16 JUROR MARJORIE PEARSON: Yes.

17 MRS. STEINER: -- that the law allows. In
18 considering those sentences you -- the State would put on
19 evidence to support seeking the death penalty. And Mr.
20 Flowers could put on things that had nothing to do with
21 the crime itself in mitigation asking you to consider and
22 impose a life sentence. Could you consider that even
23 though you found him guilty?

24 JUROR MARJORIE PEARSON: Would you clarify
25 that? I don't really understand.

26 MRS. STEINER: Could you consider factors in
27 Mr. Flowers' life from before this crime was committed or
28 his life in prison since, jail since?

29 JUROR MARJORIE PEARSON: Yes.

1 MRS. STEINER: As -- could you consider that in
2 thinking about a life sentence without parole instead of
3 a death sentence once you found him guilty?

4 JUROR MARJORIE PEARSON: Yes, ma'am.

5 MRS. STEINER: All right. Now, in addition to
6 aggravation and mitigation, the State has the right to
7 ask the family members of the victims who died to talk to
8 the jury about what the loss of their loved one means.
9 If that evidence was before you, can you consider things
10 other than the facts of the crime in determining a
11 sentence?

12 JUROR MARJORIE PEARSON: Yes.

13 MRS. STEINER: I think that is all I have.

14 THE COURT: You may step down at this time,
15 Miss Pearson. When you go outside don't discuss with
16 anyone what you have said in here or what you have been
17 asked in here, please.

18 JUROR MARJORIE PEARSON: Okay.

19 THE COURT: We need Miss Acy next. That is 94.
20 (JUROR NUMBER 94, MELISSA ACY, ENTERED THE COURTROOM.)

21 Miss Acy, if you will come down. We have a few
22 questions we are going to ask.

23 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

24 THE COURT: What we are doing, Miss Acy, is
25 asking questions outside the presence of other jurors,
26 because there are just some questions we felt appropriate
27 to take up without being out in front of everybody.

28 And I want to know if you heard anything about this
29 case or had any knowledge about this case.

1 JUROR MELISSA ACY: I mean I've heard people,
2 you know, talking about it for years.

3 THE COURT: And have you ever talked to any of
4 the relatives of the victims about this case?

5 JUROR MELISSA ACY: No.

6 THE COURT: Or law enforcement or anybody like
7 that?

8 JUROR MELISSA ACY: No. No.

9 THE COURT: Have you read newspaper articles or
10 seen things on t.v. or heard on the radio about it?

11 JUROR MELISSA ACY: I have.

12 THE COURT: And has what you -- how about the
13 internet?

14 JUROR MELISSA ACY: No.

15 THE COURT: Has anything that you saw, heard or
16 read caused you to form an opinion as to the guilt or
17 innocence of Mr. Flowers?

18 JUROR MELISSA ACY: No.

19 THE COURT: And would -- if you are selected
20 and serving on the jury, would you lay aside anything you
21 heard outside of court and base your decision only on the
22 evidence that was presented here in open court?

23 JUROR MELISSA ACY: Yes.

24 THE COURT: And the next question concerns the
25 possibility of the sentence that could be imposed if he
26 were convicted. If Mr. Flowers is convicted, then the
27 possibility exists that he could receive the death
28 penalty. If he is found not guilty, we don't get to the
29 second phase. But if we got to the second phase, the

1 jury would then decide what the appropriate sentence
2 should be as punishment.

3 The State is seeking the death penalty. They would
4 put on aggravating facts which they believe would justify
5 the imposition of the death penalty. Mr. Flowers through
6 his attorneys would put on mitigating facts that they
7 believe would justify the death penalty not being
8 imposed. And if the death penalty was not imposed, the
9 sentence would be life without parole. Can you consider
10 both life without parole and the death penalty as
11 sentencing options in this case?

12 JUROR MELISSA ACY: Yes.

13 THE COURT: And do you have, before you heard
14 anything, any fixed opinion on what the appropriate
15 punishment should be?

16 JUROR MELISSA ACY: No.

17 THE COURT: Okay. Thank you, Miss Acy.

18 Mr. Evans.

19 MR. EVANS: Thank you, Your Honor.

20 Good evening, Miss Acy.

21 JUROR MELISSA ACY: Hi.

22 MR. EVANS: Do you understand that we are
23 attempting to get a juror -- jury that can come in,
24 completely disregard anything that they have heard,
25 disregard anybody that they may know in the community,
26 base their decision solely on what they see in the
27 courtroom, what the judge allows -- what testimony the
28 judge allows and what evidence the judge allows.

29 JUROR MELISSA ACY: Yes.

1 MR. EVANS: And you are telling us that you
2 could set aside anything else and strictly base your
3 decision on what's in court.

4 JUROR MELISSA ACY: Yes, sir.

5 MR. EVANS: Not leaning toward either direction
6 when you come in.

7 JUROR MELISSA ACY: (Nodded.)

8 MR. EVANS: Just open mind.

9 JUROR MELISSA ACY: Yes.

10 MR. EVANS: As far as the second phase, if he
11 is found guilty, we will go into a sentencing phase. In
12 that the Court will instruct the jury on what aggravating
13 factors they can consider, that's the factors that we'll
14 be bringing up to justify death and what the defendant
15 can bring up as far as mitigating factors, and that can
16 be almost unlimited it. It can be anything about his
17 life, his past since the crime.

18 And what you would be asked to do is come in with an
19 open mind again, knowing that he has been convicted, come
20 in with an open mind again on that phase, not be leaning
21 one way or the other, listen to the Court's instructions,
22 what we put on, what the defense puts on, truly consider
23 everything that is put on and then make a decision of
24 what sentence is appropriate. Can you do that?

25 JUROR MELISSA ACY: I, I can.

26 MR. EVANS: Nothing further, Your Honor.

27 MRS. STEINER: Good afternoon, Miss Acy.

28 JUROR MELISSA ACY: Hi.

29 MRS. STEINER: You are -- you said you heard

1 talking for years. You were acquainted with the Rigby
2 family; is that correct?

3 JUROR MELISSA ACY: Correct.

4 MRS. STEINER: Did you hear any of the talking
5 --

6 JUROR MELISSA ACY: No.

7 MRS. STEINER: -- from them?

8 JUROR MELISSA ACY: No. Not from them know.

9 MRS. STEINER: And you knew someone else,
10 someone's sons. Was that --

11 JUROR MELISSA ACY: The Rigbys sons.

12 MRS. STEINER: The Rigby sons.

13 JUROR MELISSA ACY: Yes. I knew a lot of --

14 MRS. STEINER: All right.

15 JUROR MELISSA ACY: -- both sides.

16 MRS. STEINER: And I believe you work at the
17 Vaiden Community Living Center.

18 JUROR MELISSA ACY: I do.

19 MRS. STEINER: Is that elder care for nursing
20 care, assisted living?

21 JUROR MELISSA ACY: It is.

22 MRS. STEINER: Were you -- do you know whether
23 or not you have ever cared for any family members of any
24 of the victims' family or Mr. and Mrs. Flowers' family?

25 JUROR MELISSA ACY: Not immediate family.
26 There is -- on both sides there's some relatives, I
27 think, that we have.

28 MRS. STEINER: Have you offered care for any of
29 the lawyers here, families that you know?

1 JUROR MELISSA ACY: No. No. Not that I'm
2 aware of. No.

3 MRS. STEINER: You are not a nurse caregiver.

4 JUROR MELISSA ACY: No. No. I'm the human
5 resource director.

6 MRS. STEINER: Miss Acy, judge -- you've said
7 you can consider both sentences. The mitigation, the
8 State's aggravation --

9 JUROR MELISSA ACY: Um-hum.

10 MRS. STEINER: -- and the defendant's
11 mitigation, which can cover anything in his life. You
12 will -- you understand you will have found him guilty
13 beyond a reasonable doubt of having committed at least
14 one and probably four murders, if you even reach a
15 sentencing phase.

16 JUROR MELISSA ACY: (Nodded.)

17 MRS. STEINER: And his -- in addition to his
18 mitigation and the State's aggravation -- the State's
19 aggravation in this case will have to do with, with the
20 aspects of the crime that they contend make it worth the
21 death penalty. If the mitigation does not address
22 aspects of the crime that refute that in your mind can
23 you still consider the mitigation that relates to other
24 things in the crime?

25 JUROR MELISSA ACY: I think you have lost me
26 there for a moment.

27 MRS. STEINER: I'm sorry. Could you consider
28 -- if Mr. Flowers just talks about his life before the
29 crime and since the crime.

1 JUROR MELISSA ACY: Um-hum.

2 MRS. STEINER: But does not talk about -- if
3 the evidence does not talk -- say, add anything to the
4 information you have about the crime, can you still
5 consider mitigation and realistically consider a life
6 sentence without parole?

7 JUROR MELISSA ACY: Yes.

8 MRS. STEINER: In addition to aggravation and
9 mitigation, the State may choose to put on testimony,
10 including testimony from members of the Rigby family.
11 Mr. Bennie Rigby and, I believe, his sons are now listed
12 as witnesses. And you know them personally.

13 JUROR MELISSA ACY: I know them. Yes.

14 MRS. STEINER: And they are not going to be
15 talking about the facts. They are going to be talking
16 about what has gone on in their heart as a result of the
17 loss of their mother.

18 JUROR MELISSA ACY: Um-hum.

19 MRS. STEINER: Is your acquaintance with them
20 going to be with you in the jury room?

21 JUROR MELISSA ACY: No.

22 MRS. STEINER: Now, the other thing is you've
23 not -- you have not sat in on any of the prior trials,
24 have you?

25 JUROR MELISSA ACY: No, I had to work.

26 MRS. STEINER: Some of the evidence in this
27 case may include photographs of Mrs. Rigby after her
28 death in place in the store. And when you see that, are
29 you going to see -- be able to look at that like any

1 other crime victim, or will your remembrance of her as a
2 living person come into you as well?

3 JUROR MELISSA ACY: No, I think I can look at
4 it as anyone.

5 MRS. STEINER: Despite your association with
6 her --

7 JUROR MELISSA ACY: Right.

8 MRS. STEINER: -- and her husband and boys.

9 JUROR MELISSA ACY: Right.

10 MRS. STEINER: When again --

11 THE COURT: You need to wrap it up.

12 MRS. STEINER: Okay. With respect to
13 considering mitigation of the sentence, can you set aside
14 any personal feelings about having seen a dead person?

15 JUROR MELISSA ACY: I think I can. Yes.

16 MRS. STEINER: And can you -- but if other
17 people find mitigation that you don't find, you don't all
18 have to agree. Can you respect other people's --

19 JUROR MELISSA ACY: Sure.

20 MRS. STEINER: -- opinion?

21 JUROR MELISSA ACY: Sure.

22 MRS. STEINER: And agree to disagree.

23 JUROR MELISSA ACY: (Nodded.)

24 MRS. STEINER: And be satisfied that you have
25 done your job if you can't all agree on mitigation or
26 sentence.

27 JUROR MELISSA ACY: Yes.

28 MRS. STEINER: Thank you.

29 THE COURT: Miss Acy, you may step down and

1 please don't go back and talk about with your fellow
2 jurors what has been asked in here.

3 JUROR MELISSA ACY: Okay.

4 THE COURT: We need Miss Crawford next.

5 (JUROR NUMBER 95, LESLIE CRAWFORD, ENTERED THE
6 COURTROOM.)

7 THE COURT: If you will come forward, please.

8 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

9 THE COURT: Miss Crawford, what we are doing
10 now is asking questions of individual jurors outside the
11 presence of other jurors because we just felt it
12 appropriate to -- that some things needed to be asked
13 outside the presence of the others.

14 First of all, though, did you ever receive one of
15 these questionnaires in the mail?

16 JUROR LESLIE CRAWFORD: Yes, sir.

17 THE COURT: Did you ever fill one out? I never
18 did see one from you.

19 JUROR LESLIE CRAWFORD: I did.

20 THE COURT: And I never did receive it and that
21 is why I was asking.

22 JUROR LESLIE CRAWFORD: I turned it in late. I
23 gave it to the bailiff.

24 THE COURT: You gave it to the bailiff. When
25 did you do that?

26 JUROR LESLIE CRAWFORD: I think it was Monday.

27 THE COURT: Okay. On Monday of this week.
28 Okay. Well, I am sure the clerk has got it then. I just
29 had never seen it, and I just did not know whether one --

1 Counsel, did y'all receive one?

2 MR. HOWIE: We have one.

3 MRS. STEINER: Your Honor, I didn't get a copy
4 but, but the State says they did. So apparently...

5 THE COURT: Why don't I just have a copy made
6 for you and me both right now.

7 MRS. STEINER: Thank you, Your Honor.

8 THE COURT: Because I am sure -- well, the
9 reason we sent them out is for you to look at them ahead
10 of time.

11 And Miss Crawford, you have been late, pretty bad
12 late the last couple of days. Have you had some problems
13 getting to court on time?

14 JUROR LESLIE CRAWFORD: My daughter was sick.

15 THE COURT: Daughter was sick. And how old is
16 she?

17 JUROR LESLIE CRAWFORD: Eight months.

18 THE COURT: Eight months. Goodness. And how
19 is she doing now?

20 JUROR LESLIE CRAWFORD: She is fine. It is
21 just she has been staying up all night.

22 THE COURT: And if, if you are selected on this
23 jury, you understand that you will be --

24 JUROR LESLIE CRAWFORD: Away.

25 THE COURT: -- sequestered and will be away for
26 several days. Are you the one whose mother was also on
27 the jury panel?

28 JUROR LESLIE CRAWFORD: Yes.

29 THE COURT: And mother --

1 JUROR LESLIE CRAWFORD: Chose --

2 THE COURT: -- decided to -- so you would have
3 mother -- your momma then to take care of your baby --

4 JUROR LESLIE CRAWFORD: Yes.

5 THE COURT: -- if, if you were here then right?

6 JUROR LESLIE CRAWFORD: Yes, sir.

7 THE COURT: What we're doing is we are asking
8 questions of the jurors about whether they have heard
9 anything about this case or have any knowledge about the
10 case. I think you were probably a pretty young lady when
11 this first happened, because you are 28 now, I believe.
12 And this happened, like, 19 -- I mean 2000 -- no, 1996.
13 Did you -- have you heard anything about this case?

14 JUROR LESLIE CRAWFORD: Vaguely. Not really.

15 THE COURT: Do you even remember how you might
16 have heard about it?

17 JUROR LESLIE CRAWFORD: Probably the newspaper.

18 THE COURT: And has anything you might have
19 read in the paper or seen or heard caused you to form any
20 opinion as to the guilt or innocence of Mr. Flowers?

21 JUROR LESLIE CRAWFORD: No, sir.

22 THE COURT: And can you lay aside anything you
23 might have read or heard and just base your verdict on
24 the evidence presented here in court?

25 JUROR LESLIE CRAWFORD: Yes, sir.

26 THE COURT: Next question, Miss Crawford, it
27 concerns the possibility of what might happen if he is
28 convicted. We would have a sentencing phase if he were
29 found guilty of these capital murders. If he was found

1 not guilty, we would not even get to the second part.

2 But if he were to be found guilty, then we would
3 have a sentencing hearing for the jury to decide what the
4 appropriate punishment would be. The State of
5 Mississippi is asking the jury to impose the death
6 penalty. If the death penalty was not imposed, life in
7 prison without parole would be the sentence. And I want
8 to know could you listen to all the facts and listen to
9 the instructions of law and consider both life without
10 parole and the death penalty as sentencing options if you
11 were sitting on this jury?

12 JUROR LESLIE CRAWFORD: Not the death penalty.

13 THE COURT: Are there any circumstances where
14 you could consider the death penalty?

15 JUROR LESLIE CRAWFORD: No.

16 THE COURT: So you are just saying absolutely
17 no way could you ever consider it.

18 JUROR LESLIE CRAWFORD: (Shook head.)

19 THE COURT: Okay. Thank you, Miss Crawford.

20 JUROR LESLIE CRAWFORD: Can I go?

21 THE COURT: No. They are going to ask some
22 questions of you too.

23 MR. EVANS: Miss Crawford, I have got several
24 questions I want to ask you. But the first one, you are
25 saying that you could never give the death penalty, no
26 matter what the case yourself; is that right?

27 JUROR LESLIE CRAWFORD: Huh-huh.

28 MR. EVANS: You couldn't even consider it as a
29 possibility penalty.

1 JUROR LESLIE CRAWFORD: I wouldn't want to.
2 No.

3 MR. EVANS: Now, you have also said that you
4 have visited with your boyfriend in the jail in Vaiden.
5 And while you were there you have talked with the
6 defendant Curtis Flowers, and you have seen him
7 approximately 12 times down there.

8 JUROR LESLIE CRAWFORD: Yes, sir.

9 MR. EVANS: And I think you said that that
10 would probably affect you and keep you from being fair
11 and impartial.

12 JUROR LESLIE CRAWFORD: Well, it was the next
13 question you asked after that. Me knowing his sister.

14 MR. EVANS: What was the next one?

15 JUROR LESLIE CRAWFORD: It was me knowing his
16 family members that --

17 MR. EVANS: Okay. I was going to get into
18 that. You are also good friends with his sister; is that
19 right?

20 JUROR LESLIE CRAWFORD: Not friends. I just
21 know, know his family.

22 MR. EVANS: You know them. Was that the
23 question that you were asking that said it would affect
24 you and keep you from being fair and impartial?

25 JUROR LESLIE CRAWFORD: Yes, sir.

26 MR. EVANS: Just for the record, so we make
27 things clear, you were related to Juror Number 5, Jessie
28 Crawford.

29 JUROR LESLIE CRAWFORD: Yes, sir.

1 MR. EVANS: You are his niece.

2 JUROR LESLIE CRAWFORD: Yes, sir.

3 MR. EVANS: Now, Jessie Crawford has stated to
4 the Court that his son has a baby with one of Curtis'
5 sisters.

6 JUROR LESLIE CRAWFORD: Yes, sir.

7 MR. EVANS: So you are also related to him
8 through that; is that correct?

9 JUROR LESLIE CRAWFORD: Well, not related to
10 him, related to the niece.

11 MR. EVANS: Okay. And because of all of these
12 reasons, are you telling us that you just could not be
13 fair and impartial in this particular case?

14 JUROR LESLIE CRAWFORD: Yes, sir.

15 MR. EVANS: Okay. Nothing further, Your Honor.

16 MR. CARTER: Miss Crawford, are you saying you
17 would be uncomfortable as a result of those
18 relationships?

19 JUROR LESLIE CRAWFORD: Yes, sir.

20 MR. CARTER: But if you got picked as a juror
21 and allowed to serve, could you put those relationships
22 aside?

23 JUROR LESLIE CRAWFORD: I'd have to.

24 MR. CARTER: You would have to.

25 JUROR LESLIE CRAWFORD: Um-hum.

26 MR. CARTER: And you would put it aside and be
27 fair to both -- put that aside and be fair to Mr. Flowers
28 and to the victims' family.

29 JUROR LESLIE CRAWFORD: Yes, sir.

1 MR. CARTER: And also, I take it you would be
2 uncomfortable with the death penalty.

3 JUROR LESLIE CRAWFORD: Um-hum.

4 MR. CARTER: And are you telling us that no
5 matter what Mr. Evans proved, how bad the facts were --

6 JUROR LESLIE CRAWFORD: I just don't believe --
7 I just don't think it is right. No.

8 MR. CARTER: You don't think the death penalty
9 is right.

10 JUROR LESLIE CRAWFORD: (Shook head.)

11 MR. CARTER: And are you also telling us that
12 not only would you be reluctant to vote for it, you
13 wouldn't even think about it? You couldn't even think
14 about and give it any thoughts, the death penalty.

15 JUROR LESLIE CRAWFORD: Could I give it any
16 thought?

17 MR. CARTER: In other words, maybe I can clear
18 it up a little bit. How ever you vote is, is your
19 decision. Our state legislature has said that life
20 without possibility of parole and death both are
21 appropriate for capital murder. And you certainly have
22 an aversion to the death penalty. You are not crazy
23 about it. Lots of folks aren't.

24 But I want to know - and only you know this - are
25 you saying that there is no circumstances, under which
26 you could even think about or consider voting for that?

27 JUROR LESLIE CRAWFORD: No.

28 MR. CARTER: No further questions.

29 THE COURT: Miss Crawford, you may step down.

1 And when you go back out, don't talk about with your
2 other jurors what has been talked about in here.

3 JUROR LESLIE CRAWFORD: Okay.

4 THE COURT: And then I'll just note again for
5 the record, Number 96 was excused because her grandfather
6 died this morning. And she was, as you could expect,
7 quite troubled about that and not in any capacity -- not
8 any way she could continue on.

9 We need Mr. Robinson, Number 98 next.

10 (JUROR NUMBER 98, WILLIE ROBINSON, ENTERED THE
11 COURTROOM.)

12 THE COURT: Mr. Robinson, if you will come
13 down.

14 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

15 THE COURT: What we are doing, Mr. Robinson, is
16 we are asking questions of each of the jurors outside the
17 presence of the others, because there is some matters we
18 just felt more appropriate to take up without having to
19 have to talk out in front of everybody.

20 First, I am wanting to know if you have heard about
21 the case or have any knowledge about the case, read about
22 it or seen things on t.v. or anything like that.

23 JUROR WILLIE ROBINSON: Well, about all I have
24 seen things on t.v. and I read the newspaper. That is
25 all I know about it.

26 THE COURT: And can you remember the last time
27 you even saw something in the paper about it?

28 JUROR WILLIE ROBINSON: I guess it was last
29 time they had court.

1 THE COURT: A couple of years ago, maybe?

2 JUROR WILLIE ROBINSON: Yeah.

3 THE COURT: Has anything you saw, heard or read
4 caused you to form an opinion concerning the guilt or
5 innocence of Mr. Flowers?

6 JUROR WILLIE ROBINSON: No.

7 THE COURT: And would you lay aside anything
8 you saw, heard or read and base your decision strictly
9 and only on the evidence presented here in court?

10 JUROR WILLIE ROBINSON: Yes, I could.

11 THE COURT: And Mr. Robinson, the next question
12 concerns the sentencing phase. What would happen is if
13 Mr. Flowers was found guilty, we would have a sentencing
14 phase. The jury would decide the appropriate sentence.

15 If he is found not guilty, we don't get to that
16 second phase. We would only get there if the second
17 phase -- to the second phase if after the first phase he
18 had been found guilty of capital murder. Then and only
19 then would the jury consider what would be the
20 appropriate punishment.

21 The State of Mississippi is seeking the death
22 penalty in this case. They would put on aggravating
23 facts that in their view would show that the death
24 sentence was appropriate. Mr. Flowers, through his
25 attorneys, would put on mitigating facts. That would be
26 facts that they believe would show that the death penalty
27 is not appropriate. That could be any number of things
28 including childhood experiences or anything about his
29 life up till now.

1 If the death penalty was not imposed, life in prison
2 would be the sentence if he, again, was convicted in the
3 first stage of the trial. Can you consider both the
4 death penalty and life without parole as sentencing
5 options?

6 JUROR WILLIE ROBINSON: Yes.

7 THE COURT: And having heard none of the facts
8 or anything at this point, would you be tending to favor
9 one of those options over the other?

10 JUROR WILLIE ROBINSON: No.

11 THE COURT: So you will consider them both and
12 make a decision based on what you determine after you
13 have heard the evidence; is that correct?

14 JUROR WILLIE ROBINSON: That's right.

15 THE COURT: Okay. Thank you.

16 MR. EVANS: Good evening, Mr. Robinson. How
17 are you doing? I notice on your questionnaire you marked
18 that you could not consider the death penalty. Now, do
19 you believe in the death penalty?

20 JUROR WILLIE ROBINSON: Well, no.

21 MR. EVANS: You don't believe in the death
22 penalty. You don't think it should be a possible
23 penalty; is that right?

24 JUROR WILLIE ROBINSON: No.

25 MR. EVANS: And what the judge is asking you
26 and what we need to know, we need a jury that's going to
27 fairly and honestly consider both sides. And a jury that
28 would decide from the evidence, not from their personal
29 beliefs, what opinion is -- what sentence would be

1 appropriate. Are you telling us that your views against
2 the death penalty are such that you, yourself, could not
3 consider it as a penalty?

4 JUROR WILLIE ROBINSON: Is that what I had on
5 my -- on my questionnaire?

6 MR. EVANS: Yes, sir. If what's on your
7 questionnaire is right, is that right, you couldn't
8 consider it?

9 JUROR WILLIE ROBINSON: That's right.

10 MR. EVANS: All right. And it doesn't matter
11 what kind of case it is. You just couldn't consider the
12 death penalty; is that right?

13 JUROR WILLIE ROBINSON: That's right.

14 MR. EVANS: Thank you, sir.

15 MRS. STEINER: Good afternoon, Mr. Robinson.

16 JUROR WILLIE ROBINSON: How you doing?

17 MRS. STEINER: Mr. Robinson, His Honor had
18 explained a little more about what your job was here if
19 you were selected as a juror. You understand your job
20 isn't to bring anything from outside in your personal
21 beliefs or whatever you may have heard or anybody you
22 know in the community inside the courtroom. And the only
23 person who tells you what you -- what the law is is His
24 Honor. And His Honor will be instructing you on what --
25 that you can or -- if the death penalty, if we even get
26 to the death penalty here, that would be after you would
27 have decided beyond a reasonable doubt that Curtis
28 Flowers was guilty of capital murder, up to four capital
29 murders. You understand that?

1 JUROR WILLIE ROBINSON: Yes, sir.

2 MRS. STEINER: And then you would be asked to
3 consider what the appropriate punishment would be. You
4 understand that?

5 JUROR WILLIE ROBINSON: Yes.

6 MRS. STEINER: And His Honor would tell you, as
7 he has here, and you answered you could consider both.
8 You would be guided by His Honor on what you could
9 consider for aggravation and what you could consider in
10 mitigation. And you would be -- that would be your
11 conscience. Nobody is going to tell you. The judge
12 won't. Now, Mr. Carter and I, Mr. Evans may ask you to
13 vote one way or the other, but we are not asking you that
14 now. Your vote is your vote. That is your conscience.

15 MR. EVANS: Is there any question coming?

16 MRS. STEINER: Yes.

17 Under those circumstances, no one is asking you
18 whether -- could you consider, before you cast a vote for
19 a sentence, the penalty of death and the penalty of life
20 in prison without parole under those circumstances?

21 JUROR WILLIE ROBINSON: Say -- you lost me
22 there somewhat.

23 MRS. STEINER: I'm sorry. If the judge
24 instructs you that you need to set everything else aside
25 and consider the penalty of death, could you do so?

26 JUROR WILLIE ROBINSON: Set everything else
27 aside and...

28 MRS. STEINER: And consider two penalties.

29 MR. EVANS: I don't understand what she is

1 talking about the Court telling him to set aside.

2 MRS. STEINER: Let me -- if the Court instructs
3 you that you must, as a juror, consider the death penalty
4 and life in prison without parole, could you follow those
5 instructions of the Court?

6 JUROR WILLIE ROBINSON: You got me confused
7 right now.

8 MRS. STEINER: I'm sorry. If the Court says in
9 this to be a juror you --

10 JUROR WILLIE ROBINSON: Yeah.

11 MRS. STEINER: -- must consider life in prison
12 without parole.

13 MR. EVANS: Your Honor, I don't think the Court
14 is going to tell anybody they must do anything.

15 MRS. STEINER: You may consider. If the Court
16 instructs you to -- that you may consider life in prison
17 without parole and the death penalty as punishment, could
18 you follow those instructions by the Court?

19 JUROR WILLIE ROBINSON: Yes, I could follow the
20 instructions. But, but you got me confused here. I
21 can't -- you are losing me somewhere here.

22 MRS. STEINER: I'm sorry. His Honor was clear
23 to you; is that correct?

24 JUROR WILLIE ROBINSON: Yes.

25 MRS. STEINER: And you answered the questions
26 His Honor answered with what your honest opinion is about
27 considering the penalty here.

28 JUROR WILLIE ROBINSON: That's right.

29 THE COURT: I'm a little bit confused too. And

1 I want to make sure that we understand what you are
2 saying.

3 JUROR WILLIE ROBINSON: Yes.

4 THE COURT: Because, you know, certainly we
5 respect anything you are saying, but we want to be
6 understanding what you are saying. So if the facts of
7 the case justified the imposition of the death penalty
8 and the law allowed the death penalty, could you consider
9 that as a sentencing option?

10 JUROR WILLIE ROBINSON: Well, what you saying,
11 if we find if, if he's guilty and that's his punishment
12 that's what...

13 THE COURT: If you found him guilty, then you
14 would decide what the appropriate punishment would be.
15 The jury would either decide the death penalty -- and if
16 he did not get the death penalty, then life in prison
17 without parole would be the sentence of the Court.

18 You are clear with me so far?

19 JUROR WILLIE ROBINSON: Oh, yes. Yes.

20 THE COURT: So could you consider the death
21 penalty as a possible sentence if you were sitting in the
22 second phase of the trial after he had been convicted
23 during the first part of the trial?

24 JUROR WILLIE ROBINSON: Could I consider the
25 death penalty?

26 THE COURT: Yes, sir. Could you consider that
27 as a sentencing option, as a possibility?

28 JUROR WILLIE ROBINSON: No.

29 THE COURT: So you are saying that, that you

1 just could not consider --

2 JUROR WILLIE ROBINSON: No. No.

3 THE COURT: -- it at all.

4 JUROR WILLIE ROBINSON: No.

5 THE COURT: Okay. Thank you, Mr. Robinson.

6 You may step down. And if you would, when you go out
7 though, don't talk about with your fellow jurors --

8 JUROR WILLIE ROBINSON: No. No.

9 THE COURT: -- what we talked about here. I
10 knew you wouldn't, but I just -- I caution everybody that
11 way.

12 JUROR WILLIE ROBINSON: Okay. Thank you.

13 THE COURT: Miss Jones. Number 103.

14 (JUROR MARY JONES ENTERED THE COURTROOM.)

15 Miss Jones, what we are doing now is asking jurors
16 outside the presence of other jurors certain questions
17 that we just felt was more appropriate to ask in private.
18 First, I want to know if you have heard anything about
19 this case, have any knowledge of it, read anything in the
20 paper, seen the t.v. or any other news broadcast of any
21 kind about this case.

22 JUROR MARY JONES: No, I haven't.

23 THE COURT: Did you ever -- did there ever even
24 come to be a time when you heard about the Tardy murders
25 at all?

26 JUROR MARY JONES: I, I mean I heard about it
27 the day that it happened. When it went on in 1996.

28 THE COURT: And but you really hadn't paid any
29 attention to things.

1 JUROR MARY JONES: No, I hadn't.

2 THE COURT: And has anything that you heard or
3 saw caused you to form an opinion as to the guilt or the
4 innocence of Mr. Flowers?

5 JUROR MARY JONES: No, it hadn't.

6 THE COURT: If you were sitting as a juror in
7 this case, would you lay aside anything that you heard
8 outside of court and base your decision only on the
9 evidence presented here in court?

10 JUROR MARY JONES: Yeah, I would.

11 THE COURT: And the next issue involves
12 possible sentences that might be available. We would
13 only get into the sentencing phase of a trial if the jury
14 found Mr. Flowers guilty. If the jury found him not
15 guilty, there would not even be the second phase of the
16 trial. But if the jury were to find Mr. Flowers guilty,
17 then we would have a sentencing phase where the jury
18 would decide what the punishment should be.

19 The State of Mississippi would be seeking the death
20 penalty. And the State of Mississippi would put on proof
21 called aggravating factors that are reasons why the
22 jury -- why the State felt the jury should impose the
23 death penalty.

24 Mr. Flowers, through his attorneys, would put on
25 mitigating factors. That would be reasons why in his
26 view and in the view of his lawyers the death penalty
27 would not be an appropriate sentence. And that can be
28 anything about his -- you know, anything in his life
29 from, you know, childhood on up till now. Without

1 hearing any -- without knowing any facts or hearing any
2 of that testimony at this point, could you consider both
3 the death penalty and life without parole as sentencing
4 options?

5 JUROR MARY JONES: I couldn't. Not, not, not
6 really the death penalty.

7 THE COURT: And on your questionnaire I think
8 you said you could consider it. Have you changed your
9 mind?

10 JUROR MARY JONES: Yes. I changed that.

11 THE COURT: And so you are saying now -- if the
12 facts justified it and the law allowed it, could -- you
13 know, what would your view be if you heard the facts and
14 were instructed on the law?

15 JUROR MARY JONES: Maybe prison. Maybe. That
16 is what I select.

17 THE COURT: But you would say -- are you saying
18 though that you could not consider the death penalty?

19 JUROR MARY JONES: Yeah, I could not consider
20 that.

21 THE COURT: Okay. Miss Jones.

22 Mr. Evans.

23 MR. EVANS: Good evening, Miss Jones.

24 JUROR MARY JONES: Good evening.

25 MR. EVANS: Now, before we get to the death
26 penalty, there is one thing I want to bring up with you.
27 I believe you stated that you were related to Miss Hazel
28 Jones; is that right?

29 JUROR MARY JONES: I don't even know her.

1 MR. EVANS: You don't know her. Okay. I put
2 it on the wrong line.

3 JUROR MARY JONES: I guess so. I don't know
4 her.

5 MR. EVANS: Now, your beliefs are that you just
6 don't believe in the death penalty; is that right?

7 JUROR MARY JONES: That's right.

8 THE COURT: Is that a religious belief or just
9 personal belief?

10 JUROR MARY JONES: Just a personal belief.

11 MR. EVANS: Is that belief so strong that you
12 yourself couldn't consider the death penalty as an
13 appropriate --

14 JUROR MARY JONES: Well, it, it is not -- it is
15 not really that strong, but I just didn't believe it.

16 MR. EVANS: You just don't believe in it, and
17 you couldn't do it yourself.

18 JUROR MARY JONES: No.

19 MR. EVANS: You couldn't consider it on a case
20 yourself.

21 JUROR MARY JONES: No.

22 MR. HILL: Your Honor, could we have just a
23 minute?

24 MR. EVANS: I had that too. I don't know if
25 this was on the wrong line also or not but in my notes I
26 had down that you had made the statement that you could
27 not be fair and impartial.

28 JUROR MARY JONES: I ain't -- I ain't put on
29 that on mine.

1 MR. EVANS: But it wasn't anything in the
2 questioning that brought that up?

3 JUROR MARY JONES: No.

4 MR. EVANS: So your biggest problem with the
5 case is that you just could not consider the death
6 penalty.

7 JUROR MARY JONES: That's right. I don't know
8 nothing about the others.

9 MR. EVANS: All right. And as far as just
10 regular cases, if this weren't the death penalty, could
11 you judge someone? Could you sit in judgment of someone
12 else?

13 JUROR MARY JONES: I think so but as long as --

14 MR. EVANS: Just not the death penalty.

15 JUROR MARY JONES: As long as it's not the
16 death penalty.

17 MR. EVANS: Thank you, ma'am.

18 MR. CARTER: How you doing, Miss Jones?

19 JUROR MARY JONES: Oh, I'm good.

20 MR. CARTER: Apparently, you said on your
21 questionnaire that you -- that you could vote for the
22 death penalty. And apparently, you are telling us that
23 you had a chance to think about since you filled out the
24 questionnaire.

25 JUROR MARY JONES: Yeah. I thought about it a
26 little bit.

27 MR. CARTER: Thought about it. And do you
28 understand that no one is telling you that you have to
29 vote for the death penalty? Asking you if you can

1 consider the death penalty is not telling you that you
2 have to vote for it.

3 JUROR MARY JONES: I know.

4 MR. CARTER: Do you understand that?

5 JUROR MARY JONES: I understand.

6 MR. CARTER: And you said in reply to Mr.
7 Evans' question that your being against the death penalty
8 is not really all that strong. You just, just don't like
9 the idea of somebody getting the death penalty.

10 JUROR MARY JONES: No, I don't like the idea.

11 MR. CARTER: You certainly don't like the idea
12 of yourself being involved with somebody getting the
13 death penalty. Is that fair to say?

14 JUROR MARY JONES: Right.

15 MR. CARTER: However, if you got picked as a
16 juror, could you -- you could listen to the evidence and
17 deliberate and make a decision as to whether he is guilty
18 or not guilty.

19 JUROR MARY JONES: Yeah, I can listen at the
20 evidence.

21 MR. CARTER: Okay. And during that second
22 phase, the penalty phase, if witnesses were called to the
23 witness stand, where you are sitting now, could you
24 listen to them also?

25 JUROR MARY JONES: Yeah, I'd listen.

26 MR. CARTER: Listen to both sides.

27 JUROR MARY JONES: Right.

28 MR. CARTER: And after you listen to that,
29 could you consider life without possibility of parole as

1 a sentencing option?

2 JUROR MARY JONES: I'm not too sure about that.

3 MR. CARTER: So are you telling us that you,
4 you couldn't even consider giving anybody life without
5 the possibility of parole either?

6 JUROR MARY JONES: Could I ask a question?

7 MR. CARTER: Yes, ma'am.

8 JUROR MARY JONES: I thought he couldn't have
9 parole.

10 MR. CARTER: Ma'am.

11 JUROR MARY JONES: Is he not -- can have
12 parole?

13 MR. CARTER: The two -- the two penalties,
14 possible options or penalties for capital murder is life
15 without possibility of parole and the other one is the
16 death penalty. With your knowing that now, could you
17 vote for life without possibility of parole for a person
18 found guilty of capital murder?

19 JUROR MARY JONES: I'm not sure about that.

20 MR. CARTER: Not sure about that one. And if
21 the facts warranted it -- you gotta remember. Nobody is
22 trying to make you vote either way now. It is your
23 decision. So if the facts warranted it, could you also
24 give some, some thought to --

25 MR. EVANS: Your Honor, that is not the
26 appropriate --

27 MR. CARTER: -- to the death penalty? Could
28 you consider -- consider means thought, think about, make
29 a decision about, whether you could vote for the death

1 penalty. Not that you have to but could you think about
2 it and make a decision?

3 JUROR MARY JONES: Well, I can think about it
4 but I rather not do it.

5 MR. CARTER: You wouldn't want to do it.

6 JUROR MARY JONES: Right.

7 MR. CARTER: You wouldn't want to consider it,
8 but you could consider it.

9 JUROR MARY JONES: Yeah, I could. Um-hum.

10 MR. CARTER: Okay.

11 THE COURT: So am I clear now on you saying
12 that you could consider the possibility of sentencing
13 somebody to death if the facts justified it and the law
14 allowed it?

15 JUROR MARY JONES: Well, yeah.

16 THE COURT: So you could consider that as a
17 sentencing possibility.

18 JUROR MARY JONES: Right.

19 THE COURT: Okay.

20 MR. EVANS: Your Honor, may I ask just a few
21 extra questions on that?

22 MR. CARTER: Your Honor, we object.

23 THE COURT: Well, the juror has, has changed
24 from what was said previously, and I think it
25 appropriate. Then if you want to follow-up after the
26 State, I will allow that.

27 MR. EVANS: A few minutes ago you said that
28 your view against the death penalty was such that you
29 yourself could not consider it in any case.

1 JUROR MARY JONES: Well, I still say that.

2 MR. EVANS: You still say that.

3 JUROR MARY JONES: Still say that.

4 MR. EVANS: You yourself could not consider
5 that as an appropriate penalty for any case.

6 JUROR MARY JONES: No. No.

7 MR. EVANS: Nothing further.

8 THE COURT: Well, when you hear the word
9 consider, what, what are you thinking when the word
10 consider the death penalty? What, what are you thinking
11 that means?

12 JUROR MARY JONES: It means -- it doesn't mean
13 that I have to consider them doing the death penalty.

14 THE COURT: I didn't understand that at all. I
15 mean I didn't understand what you said.

16 JUROR MARY JONES: I, I, I mean that I really
17 wouldn't consider them sending him for death penalty, for
18 murder, for death penalty. I just -- I rather not set
19 it.

20 THE COURT: It's getting --

21 JUROR MARY JONES: I --

22 THE COURT: No, I was going to say, it's
23 getting late in the day. My hearing is not -- because my
24 sinuses are bothering me. My ears get plugged up, and I
25 don't always hear. You are kind of soft-spoken. So
26 would you repeat what you just said, ma'am, because I
27 really couldn't hear you?

28 JUROR MARY JONES: I want to say the way I said
29 it at first that I rather not consider him for death

1 penalty. That is what I said. But I still don't say
2 that I couldn't.

3 THE COURT: So you are saying you had rather
4 not.

5 JUROR MARY JONES: I rather not.

6 THE COURT: But you could consider it --

7 JUROR MARY JONES: I could do it.

8 THE COURT: -- if, if the facts justified it
9 and the law allowed it.

10 JUROR MARY JONES: Yeah, that is what I'm
11 trying to say.

12 THE COURT: So you could consider it.

13 JUROR MARY JONES: Yeah, I could.

14 THE COURT: It would be an unpleasant task, but
15 that is something you could think about.

16 JUROR MARY JONES: Yeah, I think about it.

17 THE COURT: Okay. Thank you.

18 You may step down. And when you go back out, don't
19 talk about with anyone or among yourselves what, what's
20 been asked.

21 JUROR MARY JONES: Oh, I won't.

22 THE COURT: I knew you wouldn't, but I am
23 telling everybody that. I wasn't just singling you out.
24 And that will be all for right now, Miss Jones.

25 JUROR MARY JONES: Thank you.

26 THE COURT: We need Miss Swindoll next.

27 (JUROR NUMBER 106, JENNIFER SWINDOLL, ENTERED THE
28 COURTROOM.

29 Miss Swindoll, if you will, come down and have a

1 seat.

2 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

3 What we are doing at this time is just asking each
4 juror individually a few questions that we felt was
5 necessary to ask instead of out in front of everybody
6 else. And I want to ask a couple of questions first,
7 though, about, maybe, what you said yesterday. Did I
8 write this down right? That you said you weren't sure
9 you could just listen to the evidence and you thought it
10 wouldn't be fair to either side for you to be a juror.

11 JUROR JENNIFER SWINDOLL: In this case in
12 particular, with all the outside influence, the news and
13 everything, I just don't think I could be fair and
14 impartial.

15 THE COURT: So have you read things in the news
16 about this case?

17 JUROR JENNIFER SWINDOLL: After the last case.

18 THE COURT: And did you listen to radio, see
19 anything on the internet or see anything on t.v.?

20 JUROR JENNIFER SWINDOLL: It is mostly radio
21 and newspapers online.

22 THE COURT: How about the internet?

23 JUROR JENNIFER SWINDOLL: Newspapers online.
24 Yes, sir.

25 THE COURT: I mean other than newspapers. I'm
26 sorry.

27 JUROR JENNIFER SWINDOLL: Oh, no, sir.

28 THE COURT: And have those things caused you to
29 form an opinion as to the guilt or innocence of Mr.

1 Flowers?

2 JUROR JENNIFER SWINDOLL: Yes, sir.

3 THE COURT: Could you lay that opinion aside or
4 is that such a fixed opinion that you could not lay that
5 aside?

6 JUROR JENNIFER SWINDOLL: I just believe it is
7 just a fixed opinion.

8 THE COURT: And it's a fixed opinion that --

9 JUROR JENNIFER SWINDOLL: Yes, sir.

10 THE COURT: -- could not be laid aside.

11 JUROR JENNIFER SWINDOLL: Yes, sir.

12 THE COURT: And if you were to actually be
13 selected on the jury and Mr. Flowers was found guilty at
14 the first part of the trial, the first phase, the guilt
15 phase, then there would be a second phase. And that
16 second phase would be for the purpose of determining what
17 the jury thought should be the appropriate sentence.

18 The State of Mississippi is seeking the death
19 penalty. They would be putting on aggravating factors
20 that they believe would justify the imposition of the
21 death penalty. The defense would put on mitigating facts
22 which, which in the defense view would be reasons why the
23 death penalty should not be imposed. That could be
24 anything about his background, history, family, life, you
25 know, anything that's happened in his life time.

26 If you were selected on the jury and it got to the
27 second phase of the trial, if the facts justified it and
28 the law allowed it, could you consider the imposition of
29 the death penalty?

1 JUROR JENNIFER SWINDOLL: Yes, sir.

2 THE COURT: And also, if he did not receive the
3 death penalty, there would be a sentence of life without
4 parole. Could you also --

5 JUROR JENNIFER SWINDOLL: I could not.

6 THE COURT: You would not consider death --
7 life without parole.

8 JUROR JENNIFER SWINDOLL: No, sir.

9 THE COURT: So if he were convicted, you would
10 automatically believe the death penalty should be the
11 sentence that was imposed.

12 JUROR JENNIFER SWINDOLL: Yes, sir.

13 THE COURT: Okay. Thank you.

14 MR. EVANS: No questions.

15 MR. CARTER: We don't have any either, Your
16 Honor.

17 THE COURT: Okay. You may step down.

18 JUROR JENNIFER SWINDOLL: Thank you.

19 THE COURT: And when you go back out, don't
20 discuss with your fellows jurors what's been discussed in
21 here.

22 JUROR JENNIFER SWINDOLL: Gotcha.

23 THE COURT: Thank you, ma'am.

24 Mr. Golding next. Number 107.

25 (JUROR NUMBER 107, WILLIAM GOLDING, ENTERED THE
26 COURTROOM.)

27 If you will come down, please, sir and have a seat.

28 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

29 What we are doing now, Mr. Golding, is we are asking

1 questions individually outside the presence of the other
2 jurors because we just felt that was the appropriate
3 procedure to follow.

4 And I want to ask you first about the facts of the
5 case. Have you heard things through the years about this
6 case or read newspaper articles or heard discussions or
7 seen it on t.v. or radio, heard it on radio or internet
8 or anything like that?

9 JUROR WILLIAM GOLDING: Yes. But I don't know
10 -- I don't remember what it was. I just -- I can't
11 really tell what it was.

12 THE COURT: But you have seen stuff --

13 JUROR WILLIAM GOLDING: Yeah. Yeah.

14 THE COURT: -- about it.

15 JUROR WILLIAM GOLDING: Yeah. Yeah.

16 THE COURT: Well, has what seen -- has what you
17 have seen caused you to form an opinion as to the guilt
18 or innocence of Mr. Flowers?

19 JUROR WILLIAM GOLDING: Yes, sir.

20 THE COURT: You have a fixed opinion on his
21 guilt or innocence at this time.

22 JUROR WILLIAM GOLDING: I feel like I do.

23 THE COURT: Could you lay that opinion aside
24 and base your decision on the evidence presented here in
25 court, or is that a fixed opinion that could not be
26 changed?

27 JUROR WILLIAM GOLDING: I feel like it could be
28 changed.

29 THE COURT: It could be changed. Well, I want

1 to ask you this now. Will you lay aside anything that
2 you might have heard or any preconceived notions that you
3 might have about the case and base your decision only on
4 the evidence presented here in court?

5 JUROR WILLIAM GOLDING: Yes, sir.

6 THE COURT: And if you have heard facts about
7 the case outside the courtroom that you do not hear
8 inside the courtroom, would things that you heard in the
9 past influence your decision making in the case?

10 JUROR WILLIAM GOLDING: I don't think so.

11 THE COURT: Any doubt in your mind?

12 JUROR WILLIAM GOLDING: I, I just believe I
13 could take the evidence and -- that I hear in the
14 courtroom and make a decision.

15 THE COURT: Well, I'll ask you to kind of
16 search your soul about this, because this is very
17 important to Mr. Flowers. It is very important to the
18 State of Mississippi. And I mean the prosecution when I
19 refer to the State of Mississippi.

20 JUROR WILLIAM GOLDING: Um-hum.

21 THE COURT: Is there any doubts but what you
22 could lay everything aside and deliberate and base your
23 decision strictly and only on the evidence?

24 JUROR WILLIAM GOLDING: No.

25 THE COURT: No doubt in your mind that you
26 could do that.

27 JUROR WILLIAM GOLDING: I, I believe I would
28 have to live with myself. I believe I would have to go
29 with the facts.

1 THE COURT: So you would listen to the facts in
2 court --

3 JUROR WILLIAM GOLDING: Yes, sir.

4 THE COURT: -- and not be influenced by any
5 other influences; is that correct?

6 JUROR WILLIAM GOLDING: Yes, sir.

7 THE COURT: The next question, Mr. Golding,
8 concerns a possible sentence that might be appropriate.
9 That would come into play only if Mr. Flowers was found
10 guilty. If he is found not guilty, we do not get into
11 the sentencing phase. But if he is found guilty then the
12 jury would determine what the appropriate punishment
13 would be.

14 The State of Mississippi would be seeking the
15 imposition of the death penalty. They would put on
16 aggravating factors, which would indicate in the State's
17 mind reasons why the death penalty should be imposed.
18 Mr. Flowers, through his attorneys, would put on proof
19 called mitigating factors. That is reasons why the death
20 penalty should not be imposed. That could be anything
21 about his family background, history, his life story
22 basically, anything they chose.

23 And if, if you were sitting as a juror in the
24 penalty phase, if the facts justified it and the law
25 allowed it, could you consider imposing the death
26 penalty?

27 JUROR WILLIAM GOLDING: Could you --

28 THE COURT: Did I --

29 JUROR WILLIAM GOLDING: Could you explain that

1 one more time? Would I? The way I always understood it
2 is I would be making a decision based on what?

3 THE COURT: Right. First, first, the jury
4 would decide guilt or innocence.

5 JUROR WILLIAM GOLDING: Okay.

6 THE COURT: That would be the first step. Are
7 you with me so far?

8 JUROR WILLIAM GOLDING: Okay.

9 THE COURT: If the jury found him guilty, you
10 would go to the sentencing phase. Do you understand
11 that?

12 JUROR WILLIAM GOLDING: Yes, sir.

13 THE COURT: If the jury found him not guilty,
14 there would not even be a second phase.

15 JUROR WILLIAM GOLDING: (Nodded.)

16 THE COURT: But if the jury were to find him
17 guilty, then we would go to that sentencing phase. At
18 the sentencing phase, could you consider the death
19 penalty as a possible sentence?

20 JUROR WILLIAM GOLDING: I believe I could.

21 THE COURT: And could -- and if he was not
22 sentenced to death, he would be sentenced to life without
23 parole. Could you also consider life without parole as a
24 sentence?

25 JUROR WILLIAM GOLDING: Yes, sir.

26 THE COURT: So as you sit here today, do you
27 have any fixed notion that one sentence over the other
28 would be the appropriate one?

29 JUROR WILLIAM GOLDING: No.

1 THE COURT: So will you listen to both of them
2 and then make your decision?

3 JUROR WILLIAM GOLDING: Yes, sir.

4 THE COURT: Okay. Mr. Evans.

5 MR. EVANS: Thank you, Your Honor.

6 Good evening, Mr. Golding.

7 JUROR WILLIAM GOLDING: Good evening.

8 MR. EVANS: What we are trying to determine is
9 if the jurors here, and you particularly in this case,
10 could disregard anything that you may have heard or any
11 friendships that you may have and just come into the
12 courtroom with a complete open mind, walk through this
13 door with the idea that you are going to set aside
14 anything that you know about the case, have heard or
15 anybody you know, not let any outside influence lean you
16 one way or another and listen strictly to the evidence
17 and the law that the judge gives you and base a decision
18 in the first phase of whether this defendant is guilty or
19 innocent only on that. Can you do that?

20 JUROR WILLIAM GOLDING: Yeah.

21 MR. EVANS: All right. And once we get through
22 that phase, if he is convicted, we will go into a second
23 phase. The judge in that phase will instruct you on what
24 the law is.

25 We will be arguing what is called aggravating
26 factors. That is why we will say that we think the
27 penalty should be death. The defense will be arguing
28 what is called mitigating factors. That can be almost
29 anything. It can be his life history, his childhood,

1 what he has done since the crime, things like that.

2 The Court will instruct you that you should consider
3 everything. You should consider what we say. You should
4 consider what the defense attorneys say.

5 And what I'm asking you is in that phase, would you
6 do that. Would you follow the Court's instruction,
7 consider everything that both sides puts on before you
8 even make any attempt to determine which penalty would be
9 appropriate?

10 JUROR WILLIAM GOLDING: Yes, sir.

11 MR. EVANS: That is all, Your Honor.

12 MRS. STEINER: Is any of the basis for your
13 opinion based on knowing Mr. Bennie Rigby, from going to
14 church with him?

15 JUROR WILLIAM GOLDING: No, I don't think so.

16 MRS. STEINER: It's from what you heard. Have
17 you had any discussions with Mr. Rigby about his wife's,
18 Carmen's, death.

19 JUROR WILLIAM GOLDING: If I have, I don't
20 recall. It was -- it was nothing that I really can base
21 it on anyway.

22 MRS. STEINER: Were you in that church with
23 Carmen and Bennie Rigby?

24 JUROR WILLIAM GOLDING: Huh-huh. Never knew
25 Carmen.

26 MRS. STEINER: But he and his boys are at
27 church with you?

28 JUROR WILLIAM GOLDING: I never knew his boys.
29 Just mainly Bennie.

1 MRS. STEINER: All right. Did you ever
2 participate in, either as an audience member,
3 participant, in any of his singing activities?

4 JUROR WILLIAM GOLDING: Yes.

5 MRS. STEINER: Did you sing?

6 JUROR WILLIAM GOLDING: Yeah, I did. Didn't --
7 no. I didn't sing. I just in the -- in the audience.

8 MRS. STEINER: You went to hear him perform.

9 JUROR WILLIAM GOLDING: -- in the audience.
10 Yes.

11 MRS. STEINER: Did you participate -- did you
12 hear him perform a couple of months after the event in
13 which his wife had died at a fundraiser in Kosciusko
14 where they were raising money?

15 JUROR WILLIAM GOLDING: No. No.

16 MRS. STEINER: Were you aware that that was
17 taking place?

18 JUROR WILLIAM GOLDING: I don't remember it.

19 MRS. STEINER: Have you attended any of the
20 other trials that have been held in this matter?

21 JUROR WILLIAM GOLDING: No.

22 MRS. STEINER: Did you read the newspaper
23 coverage on them?

24 JUROR WILLIAM GOLDING: Probably read some.

25 MRS. STEINER: Are you -- you are aware of the
26 verdicts that were entered.

27 JUROR WILLIAM GOLDING: Not for sure. I just
28 know that it was a hung jury one time.

29 MRS. STEINER: All right.

1 JUROR WILLIAM GOLDING: I really don't know.

2 MRS. STEINER: All right. Now, you've talked
3 with His Honor and Doug about considering mitigation that
4 might support a sentence less than death, of life without
5 parole. You understand that you wouldn't even be getting
6 to that point unless you, yourself, had been convinced
7 beyond a reasonable doubt that Mr. Flowers was guilty of
8 at least one, possibly up to four, separate capital
9 murders, including the wife of a man you went to church
10 with. You understand that.

11 JUROR WILLIAM GOLDING: Yes.

12 MRS. STEINER: At that point, the State would
13 have to put on evidence of aggravation. And in addition
14 to aggravation from the State, the State may put on
15 testimony from your church friend, Mr. Rigby, about his,
16 his feelings about the loss of his wife, Carmen.

17 JUROR WILLIAM GOLDING: Um-hum.

18 MRS. STEINER: You understand that is not
19 aggravation.

20 JUROR WILLIAM GOLDING: Yes.

21 MRS. STEINER: Could you hear that without
22 reliving your sympathy for him as having lost his wife?

23 JUROR WILLIAM GOLDING: I think so.

24 MRS. STEINER: All right. And then mitigation
25 is anything to do with Mr. Flowers' life. It may not --
26 there may be no evidence about the crime itself in the
27 mitigation. Do, do you need to hear -- one of the things
28 you said, that your opinion could be changed. Would you
29 need to hear evidence from Mr. Flowers about --

1 MR. EVANS: Your Honor, I object that is not
2 what he said. It is improper.

3 MRS. STEINER: -- about the crime?

4 THE COURT: I'll sustain the objection. You
5 can rephrase it if you want. You're getting close to
6 being out of time.

7 MRS. STEINER: You had indicated that your
8 opinion could be changed. Would you need to hear
9 anything from Mr. Flowers --

10 JUROR WILLIAM GOLDING: No.

11 MRS. STEINER: -- about the crime to change
12 your opinion?

13 JUROR WILLIAM GOLDING: No.

14 MRS. STEINER: Would you need to hear anything
15 from Mr. Flowers about the crime to consider the sentence
16 of life in prison without the possibility of parole?

17 JUROR WILLIAM GOLDING: No.

18 MRS. STEINER: Now, you understand that the
19 decision of how to vote with respect to whether something
20 mitigates the crime or whether life in prison or the
21 death penalty should be imposed, that is each juror for
22 his or herself. You don't have to agree with all the
23 other jurors on your position.

24 JUROR WILLIAM GOLDING: Um-hum.

25 MRS. STEINER: You understand that?

26 JUROR WILLIAM GOLDING: Yes.

27 MRS. STEINER: And they don't have to agree
28 with you.

29 JUROR WILLIAM GOLDING: Yes.

1 MRS. STEINER: That everything ends whether or
2 not you all agree. It's your personal conscience.

3 JUROR WILLIAM GOLDING: Um-hum.

4 MRS. STEINER: And can you respect the right of
5 a juror who disagrees with you in his or her conscience
6 on something being mitigating or on the life sentence?

7 JUROR WILLIAM GOLDING: Yes, ma'am.

8 MRS. STEINER: And you would expect them to be
9 able to agree to disagree with you; is that correct?

10 JUROR WILLIAM GOLDING: That's correct.

11 MRS. STEINER: I have nothing further.

12 THE COURT: You may step down. And when you go
13 out, if you would, don't talk with anybody about what we
14 talked about.

15 JUROR WILLIAM GOLDING: Can I say one more
16 thing?

17 THE COURT: Yes, sir, you may.

18 JUROR WILLIAM GOLDING: I have been -- my
19 memory has been jogged since some of the questioning.

20 THE COURT: Right.

21 JUROR WILLIAM GOLDING: And I just want to make
22 sure that I'm not leaving out anything.

23 THE COURT: Okay. What --

24 JUROR WILLIAM GOLDING: I had a cousin that
25 was -- served some prison time in Louisiana. His mother
26 and daddy's name was Alice and Jimmy King, but I cannot
27 remember his name. I hadn't heard him or seen him in 35
28 years probably.

29 THE COURT: And is there anything about that

1 situation that would influence you or affect you in being
2 a fair and impartial juror?

3 JUROR WILLIAM GOLDING: No.

4 THE COURT: Okay. Thank you. That's all.

5 Mr. Surrell next.

6 (JUROR NUMBER 108, MATTHEW SURRELL, ENTERED THE
7 COURTROOM.)

8 THE COURT: Have a seat, Mr. Surrell.

9 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

10 THE COURT: What we are doing, Mr. Surrell, is
11 we are asking questions individually of the jurors now
12 because there are some things we felt like it was best
13 just to ask outside the presence of the others. And I
14 want to ask a couple of things.

15 I believe you indicated that you were a real close
16 friend of Mr. Stewart, one of the victims in this case.

17 JUROR MATTHEW SURRELL: That's correct.

18 THE COURT: And on your questionnaire I believe
19 you even listed a close friend that was murdered and that
20 -- and you were referring to him --

21 JUROR MATTHEW SURRELL: That's correct.

22 THE COURT: -- on that questionnaire. I assume
23 you attended his funeral.

24 JUROR MATTHEW SURRELL: I did.

25 THE COURT: Were you a pall bearer or just
26 attended.

27 JUROR MATTHEW SURRELL: Honorary.

28 THE COURT: Honorary pall bearer at his
29 funeral. I want you to search your soul and your

1 conscience. And can you tell this Court that those
2 factors will not come into play if you are sitting as a
3 juror in this case?

4 JUROR MATTHEW SURRELL: Yes, sir.

5 THE COURT: And you would not be influenced at
6 all by your friendship that you had with him.

7 JUROR MATTHEW SURRELL: No, sir.

8 THE COURT: And I can tell you from past
9 experiences at different trials, there will be certain
10 photographs probably that will be introduced that are not
11 pleasing to look at. There may be crime scene photos
12 where you see pictures of your deceased friend that, that
13 might cause you some difficulty. And are you saying that
14 those would not inflame you and cause you to --

15 MR. EVANS: Your Honor, there are no pictures.

16 THE COURT: I'm sorry. There are not any
17 pictures then. Okay. I could not remember. I've seen
18 --

19 MRS. STEINER: Autopsy.

20 THE COURT: So if you saw photographs of Mr.
21 Stewart, you know, in his status after he was shot or
22 deceased, are you saying that would not influence you or
23 your friendship with him would not come into play?

24 JUROR MATTHEW SURRELL: That's correct. I'm
25 not saying that the photos wouldn't upset me, but it is
26 not going to hinder my opinion based on facts.

27 THE COURT: And I am -- of course, being a
28 friend of his and knowing about the situation, you have
29 heard things, I am sure, about the case through the

1 years.

2 JUROR MATTHEW SURRELL: Honestly, just what has
3 been in the press. I have not read any testimony or
4 anything such as that.

5 THE COURT: And have those things caused you to
6 form an opinion as to the guilt or innocence of Mr.
7 Flowers?

8 JUROR MATTHEW SURRELL: Yes, sir. I have
9 formed an opinion.

10 THE COURT: Can you lay that opinion aside and
11 base your decision only on the evidence presented?

12 JUROR MATTHEW SURRELL: Yes, sir, I can.

13 THE COURT: Will you lay that opinion aside and
14 base your decision only on the evidence presented?

15 JUROR MATTHEW SURRELL: Yes, sir, I will.

16 THE COURT: If you sit as a juror in this case
17 and you hear testimony from the witness stand, but you
18 have read something else in the newspaper in the past,
19 would you when you were deliberating think about these
20 past things that you read and have that come into play?
21 Or will you base it strictly on what has been said in the
22 courtroom?

23 JUROR MATTHEW SURRELL: I will base it strictly
24 on what has been said in the courtroom.

25 THE COURT: So no outside influences --

26 JUROR MATTHEW SURRELL: No.

27 THE COURT: -- would come into play?

28 JUROR MATTHEW SURRELL: No, sir.

29 THE COURT: Now, the next situation or

1 questioning concerns the possible sentence that might be
2 imposed if there was a conviction. First, the jury
3 decides the guilt or innocence of Mr. Flowers. If Mr.
4 Flowers was found not guilty, that is it. The
5 proceedings are over. If he were to be found guilty of
6 the crime, then we would have a sentencing phase at that
7 time. And at that time the Court would allow the State
8 to put on aggravating facts. That would be reasons why
9 the State believes the death penalty would be
10 appropriate. The Court would then allow the defense to
11 put on mitigating factors. This would be reasons why the
12 death penalty in their view would not be appropriate.
13 And then the jury after being instructed will decide the
14 appropriate sentence. Could you consider both life
15 without parole and the death penalty as sentencing
16 options if you sat as a juror in this case?

17 JUROR MATTHEW SURRELL: Yes, sir.

18 THE COURT: And as you sit here today, without
19 having heard any facts of the case, could you consider
20 both of those equally right now without having heard
21 anything?

22 JUROR MATTHEW SURRELL: Yes, sir.

23 THE COURT: And are you leaning one way or
24 another towards sentence having not heard anything?

25 JUROR MATTHEW SURRELL: Not at this time.

26 THE COURT: Okay. Mr. Evans.

27 MR. EVANS: Thank you, Your Honor.

28 You understand what, what we are trying to get to is
29 a juror that will disregard anything else, come in here,

1 listen to strictly the evidence and nothing else and base
2 their decision only on what they hear in court and you
3 can do that.

4 JUROR MATTHEW SURRELL: Yes, sir.

5 MR. EVANS: All right. And as far as the
6 penalty, the only time -- the judge will instruct you
7 that the only time that the jury is to even think about
8 what penalty is appropriate is after we have gone through
9 the first phase, he has been convicted.

10 And then we go into the second phase. And I put
11 on -- or my side, the State, puts on our evidence of
12 aggravation, why we think he should get the death
13 penalty. The defendant will be able to put on evidence.
14 His attorney will put on evidence about what mitigators
15 are there. The Court can allow anything. Anything can
16 be a mitigator - his past, how he grew up, where he
17 lives, his life in general. And the Court will tell you
18 that jurors should consider all of that, should honestly
19 sit there and think about what both sides put on,
20 consider every bit of it before they even think about
21 what sentence should be appropriate.

22 Can you tell us you can do that?

23 JUROR MATTHEW SURRELL: Yes, sir.

24 MR. EVANS: Then based on whatever you decided
25 at that point, based on all of the evidence, you could
26 make a decision of whatever sentence was appropriate.

27 JUROR MATTHEW SURRELL: Yes, sir.

28 MR. EVANS: Nothing further, Your Honor.

29 MRS. STEINER: You were 16 when your best

1 friend, BoBo Stewart, died; is that right?

2 JUROR MATTHEW SURRELL: Yes.

3 MRS. STEINER: That's why you were honorary,
4 not actual pall bearer, you were really too young to have
5 to put up with actually carrying the man's coffin.

6 JUROR MATTHEW SURRELL: I don't -- I don't know
7 if that's the case or not. The entire baseball team was
8 honorary pall bearers.

9 MRS. STEINER: You were honorary pall bearers.
10 And y'all were, I'm sure, very grieved in your heart for
11 having lost your teammate.

12 JUROR MATTHEW SURRELL: Sure.

13 MRS. STEINER: And that grief is still in your
14 heart; is that right?

15 JUROR MATTHEW SURRELL: Sure.

16 MRS. STEINER: And that grief, you can't check
17 that grief at the door, even however objective you want
18 to be.

19 JUROR MATTHEW SURRELL: Ma'am.

20 MRS. STEINER: You can't check the grief in
21 your heart at the door no matter how fair you want to be
22 to everybody.

23 JUROR MATTHEW SURRELL: I can check grief at
24 the door about this. Yes, ma'am.

25 MRS. STEINER: Now, it is very commendable to
26 want to be fair even when you're being asked to sit in
27 judgment on someone -- did you tell His Honor you had
28 formed an opinion?

29 JUROR MATTHEW SURRELL: I have. Yes.

1 MRS. STEINER: And it's commendable to want to
2 be fair. But searching your heart as His Honor asked you
3 to do, do you feel that this is the case in which your
4 instincts to be fair, leave all your personal feelings at
5 the gate, this is the case in which you should sit?

6 JUROR MATTHEW SURRELL: I can leave everything
7 at the door and listen to the facts of this case.

8 MRS. STEINER: Now, as His Honor has said, one
9 of the things, in the event he's found guilty, you will
10 have not only to set aside everything you heard outside
11 and come in, in this courtroom. But you have now -- you
12 will have found him guilty beyond a reasonable doubt of
13 having killed your best friend, Bobo Stewart. And you
14 will then have to come in and sit in judgment on him.
15 And at that judgment the law requires that you look at
16 the sentences of life in prison without parole and the
17 death penalty. And in making those considerations, one
18 piece of evidence that may come before you will be
19 testimony from Mr. Randy Stewart.

20 JUROR MATTHEW SURRELL: Um-hum.

21 MRS. STEINER: Your best friend, BoBo's,
22 father. I assume he said some words at the funeral or
23 the team offered personal condolences to him for his
24 loss; is that correct?

25 JUROR MATTHEW SURRELL: I'm sure we did. Yes.

26 MRS. STEINER: And he, he may be talking about
27 the feelings he had then. The feelings you were offering
28 condolences to him after, and that will be part of the
29 evidence in the sentencing phase. And that will bring

1 back your grief, will it not?

2 JUROR MATTHEW SURRELL: Not when I check the
3 feelings at the door. No, ma'am, it won't.

4 MRS. STEINER: And you'll -- you really
5 couldn't -- if you are convinced that this is the right
6 man who killed your best friend, Bobo Stewart, you would
7 want him to pay with his life for that death; is that
8 correct?

9 JUROR MATTHEW SURRELL: I would listen to the
10 evidence that both sides present, and I would make my
11 decision based on the evidence.

12 MRS. STEINER: And you would want Mr. Flowers
13 to talk about why -- you would want to hear something
14 about the crime itself and how this person --

15 MR. EVANS: Your Honor, I object. That is not
16 a proper question.

17 MRS. STEINER: -- was found guilty of the
18 crime. Would you want to hear such evidence?

19 THE COURT: Well, I've got -- I want you to
20 rephrase or something. I don't -- I really wasn't quite
21 understanding you.

22 MRS. STEINER: Okay. As His Honor explained,
23 evidence of mitigation in support of a life sentence
24 without parole can include things that have nothing to do
25 with the actual killing of your best friend, Bobo
26 Stewart. Do you understand that?

27 JUROR MATTHEW SURRELL: (Nodded.)

28 MRS. STEINER: You could go -- you could hear
29 nothing about anything to do with the crime. You might

1 hear about Mr. Flowers' life before the crime, his
2 activities in the community. You might hear about the
3 life he has lived since his arrest. But you might hear
4 nothing about the death of your best friend, Bobo
5 Stewart, other than out of the mouth of his father, Mr.
6 Bennie. Do you understand that?

7 MR. EVANS: Your Honor, what he might hear is
8 not appropriate. She is trying to tell him what he will
9 hear, and that is not the issue.

10 THE COURT: I sustain the objection at this
11 point.

12 MRS. STEINER: Under those circumstances, can
13 you -- you could not -- can you --

14 MR. EVANS: Your Honor, under those
15 circumstances is what I'm objecting to.

16 THE COURT: I, I sustain the objection. I'm
17 not sure --

18 MRS. STEINER: Thank you.

19 THE COURT: I, I guess I understand the
20 question, but I don't -- you know, it's not appropriate
21 how you are asking it.

22 MRS. STEINER: You have an opinion with respect
23 to guilt or innocence. Do you have an opinion with
24 respect to the proper sentence for whoever is guilty of
25 killing your best friend --

26 JUROR MATTHEW SURRELL: No, ma'am. Not at this
27 time.

28 MRS. STEINER: -- Bobo Stewart. Okay. Thank
29 you.

1 THE COURT: Mr. Surrell, you can step down. Of
2 course, when you go back out, don't talk with anybody
3 about what we have gone over with you in here.

4 JUROR MATTHEW SURRELL: Okay.

5 THE COURT: We need Miss Robinson next, Number
6 110.

7 (JUROR NUMBER 110, MAMIE ROBINSON, ENTERED THE
8 COURTROOM.)

9 THE COURT: Miss Robinson, if you will, come
10 down and have a seat, please.

11 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

12 What we are doing, Miss Robinson, is we are asking
13 jurors individual questions that we felt was appropriate
14 to ask without being outside and in the presence of the
15 rest of the them.

16 And first I want to know if you have heard facts
17 about this case.

18 JUROR MAMIE ROBINSON: No.

19 THE COURT: And how long have you lived in this
20 county?

21 JUROR MAMIE ROBINSON: All my life. But I
22 don't -- I have a 100-year-old grandfather.

23 THE COURT: One hundred. Do you -- have you
24 been taking care of your elderly grandfather?

25 JUROR MAMIE ROBINSON: Yes. But he still gets
26 around and does for himself.

27 THE COURT: Well, did you ever even come -- did
28 there ever come to be an occasion where you even heard
29 about the Tardy Furniture store murders?

1 JUROR MAMIE ROBINSON: Just maybe when it first
2 happened, but I didn't know any details. Nothing like
3 that.

4 THE COURT: And have you through the years read
5 anything in the paper or heard radio or watched t.v.
6 about it?

7 JUROR MAMIE ROBINSON: I don't have time.

8 THE COURT: Ma'am.

9 JUROR MAMIE ROBINSON: I don't have time. No.

10 THE COURT: I understand that you don't have
11 time.

12 JUROR MAMIE ROBINSON: Believe me, I don't.

13 THE COURT: And could you lay aside anything
14 you might have heard in the past and base your decision
15 strictly on the evidence here --

16 JUROR MAMIE ROBINSON: Yes.

17 THE COURT: -- in court? And will you set that
18 aside and base your decision only on the evidence?

19 JUROR MAMIE ROBINSON: Yes, sir.

20 THE COURT: And Miss Robinson, the next
21 question involves the possibility of the sentence that
22 might be available.

23 What happens is the jury decides the guilt or
24 innocence of Mr. Flowers. If they find him not guilty,
25 it is over. And the proceedings come to an end. If the
26 jury finds Mr. Flowers guilty, then at that time the jury
27 is called upon to decide what the appropriate sentence
28 would be.

29 The State of Mississippi is seeking the death

1 penalty in this case. The State would put on aggravating
2 factors, which in the State's view would be reasons why
3 the death penalty should be imposed.

4 Are you with me so far?

5 JUROR MAMIE ROBINSON: Yes.

6 THE COURT: Because I don't want to talk too
7 long.

8 JUROR MAMIE ROBINSON: No.

9 THE COURT: Then Mr. Flowers, through his
10 attorneys, would put on proof that would be mitigating
11 factors. That's reasons why they believe the death
12 penalty would not be an appropriate sentence. That could
13 be things like anything from his childhood on to
14 adulthood. Are you with me so far?

15 JUROR MAMIE ROBINSON: Yes.

16 THE COURT: If you were sitting as a juror on
17 the second phase of the trial, could you consider the
18 imposition of the death penalty if you felt the facts
19 justified it and the law allowed it?

20 JUROR MAMIE ROBINSON: Yes.

21 THE COURT: Also, if the death penalty was not
22 imposed, then life without parole would be the sentence.
23 Could you also consider that as a sentencing possibility?

24 JUROR MAMIE ROBINSON: Yes, sir.

25 THE COURT: And so as you sit here today, are
26 you leaning one way or another toward what you think the
27 appropriate sentence would be?

28 JUROR MAMIE ROBINSON: No, sir.

29 THE COURT: And will you wait until you hear

1 all the evidence, if it comes to that second phase,
2 before you make that determination?

3 JUROR MAMIE ROBINSON: Yes, sir.

4 THE COURT: Okay. Thank you.

5 MR. EVANS: Good evening.

6 JUROR MAMIE ROBINSON: Good evening.

7 MR. EVANS: As -- what we are trying to do is
8 get a, a jury with the members of the jury that will come
9 in here with no preconceived notions about the case or no
10 outside influence. And you're telling us basically that
11 you don't know much about this case any way; is that
12 right?

13 JUROR MAMIE ROBINSON: No, sir, I don't know.

14 MR. EVANS: And you don't know anybody that
15 would influence your decision either way in this case; is
16 that right?

17 JUROR MAMIE ROBINSON: No, sir. I don't
18 have --

19 MR. EVANS: So you can be a fair juror, listen
20 to the evidence and base your decision strictly on the
21 evidence you hear in court.

22 JUROR MAMIE ROBINSON: Yes, sir, I can.

23 MR. EVANS: All right. For the second phase,
24 once the jury hears the evidence, if the jury convicts
25 this defendant of the murders, we go into a second phase.
26 In that phase the State will be asking for the death
27 penalty. And, of course, the defense will be asking for
28 a life sentence. In that phase the judge will instruct
29 the jury on what the law is.

1 Now, we will offer aggravating circumstances and the
2 Court will tell you what aggravating circumstances you
3 can consider. The defense will offer mitigating
4 circumstances or reasons that they think that a life
5 sentence is appropriate. Now, those mitigators can be
6 anything. It can be his childhood. It can be how he was
7 raised. It can be what he has done since the crime
8 occurred. It can be anything. And the Court will
9 instruct you that you should listen to both sides.

10 And are you telling us that you would fairly listen
11 to the aggravators that we put on and the mitigators that
12 the defense puts on?

13 JUROR MAMIE ROBINSON: Yes.

14 MR. EVANS: Consider both of them and only make
15 a decision of which sentence is appropriate after you
16 heard all of that?

17 JUROR MAMIE ROBINSON: Yes, sir.

18 MR. EVANS: And based upon what your findings
19 were, you could either give the death penalty or a life
20 sentence.

21 JUROR MAMIE ROBINSON: Yes, sir.

22 MR. EVANS: Nothing further, Your Honor.

23 MRS. STEINER: Good afternoon.

24 JUROR MAMIE ROBINSON: Good afternoon.

25 MRS. STEINER: The Court will instruct you when
26 you are trying to make this decision -- you understand
27 you will have found Curtis Flowers guilty beyond a
28 reasonable doubt of at least one of four capital murders,
29 possibly all four, when you make your sentencing

1 decision. You understand that?

2 JUROR MAMIE ROBINSON: Yes.

3 MRS. STEINER: And you can -- and the evidence
4 of mitigation, unlike being guilty and unlike aggravation
5 or the death penalty, the evidence of mitigation is for
6 each individual juror in his or her conscience. You
7 don't have to agree with your colleagues. Do you
8 understand that?

9 JUROR MAMIE ROBINSON: Yes, I understand.

10 MRS. STEINER: Can you respect if you form one
11 opinion and you have a colleague who formed another
12 opinion about whether the mitigation justified the life
13 sentence or a death sentence? If your opinion is
14 different, can you respect your colleague's views on, on
15 that and agree to disagree?

16 JUROR MAMIE ROBINSON: Yes, ma'am.

17 MRS. STEINER: And similarly, if -- do you
18 expect to be respected with respect to being -- do you
19 expect to have your views understood and respected by
20 your colleagues?

21 JUROR MAMIE ROBINSON: Yes, ma'am.

22 MRS. STEINER: And you will be able in a
23 deliberation to agree to disagree without --

24 MR. EVANS: Your Honor, I am going to have to
25 object. I have tried not to all day. But the Court's
26 going to instruct these jurors that they should attempt
27 to reach a verdict by compromising with each other and
28 discussing the case. And this attempt to try to tell the
29 jury that they are supposed to agree to disagree is

1 completely against what the Court is going to instruct
2 the jury to do.

3 MRS. STEINER: If the Court please, I think
4 your instructions to the jury with respect to sentencing
5 have been unanimity with respect only to a death sentence
6 and with respect to the existence of aggravating factors.
7 I've been asking these questions on the basis of those
8 instructions, and we have not been furnished any
9 alternatives by either the Court or the State that that
10 will not also be included.

11 THE COURT: On the sentencing phase, the jury
12 does not have to -- they are not going to be told that
13 they have to reach -- I mean they are going to be told to
14 work together.

15 MR. EVANS: But they are not going to be told
16 to agree to disagree.

17 THE COURT: Well, I agree. I mean that is not
18 how --

19 MRS. STEINER: You are not going to instruct
20 them to --

21 THE COURT: Right. I --

22 MRS. STEINER: I'm asking -- I'm sorry, Your
23 Honor. I was simply asking if that -- if she -- if she
24 could do that because the instructions will be that they
25 do not have to do so.

26 THE COURT: Well, try to rephrase the question
27 maybe. I mean just...

28 MRS. STEINER: Your Honor, I think she has
29 answered the question as I asked it.

1 THE COURT: Okay. Are you through with, Miss
2 Robinson?

3 MRS. STEINER: I am.

4 THE COURT: Miss Robinson, you may step down.
5 And please, don't go out and talk about what we've asked
6 you in here. I have asked each juror not to do that. So
7 if you will, please, step down for now.

8 I need Mr. Jones next.

9 (JUROR NUMBER 111, S. BROOKS JONES, ENTERED COURTROOM.)

10 THE COURT: Mr. Jones, if you will come down,
11 please, sir, and have a seat there.

12 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

13 THE COURT: What we are doing Mr. Jones is
14 asking questions outside the presence of other jurors to
15 make sure that nothing was said that might be a factor or
16 influence some other juror.

17 And first of all, are you related to Margie Scruggs
18 who works for the D.A?

19 JUROR S. BROOKS JONES: I am. She is my
20 sister-in-law.

21 THE COURT: She is your sister-in-law. Are you
22 married to her sister?

23 JUROR S. BROOKS JONES: Correct.

24 THE COURT: Has your wife sat as a prior juror
25 in this case?

26 JUROR S. BROOKS JONES: No, sir.

27 THE COURT: Okay. Is there anything about
28 Margie being your sister-in-law and working for the
29 D.A.'s office that would influence you or affect you in

1 any way in being a fair and impartial juror in this case?

2 JUROR S. BROOKS JONES: No, sir.

3 THE COURT: So you wouldn't feel like her job
4 depended on how you ruled or anything like that.

5 JUROR S. BROOKS JONES: No, sir.

6 THE COURT: How long have you --

7 MRS. STEINER: Your Honor, I am going to object
8 to the form of that question on leading.

9 THE COURT: Would you -- would her employment
10 with the district attorney's office have any influence in
11 your -- at all in your verdict?

12 JUROR S. BROOKS JONES: No, sir.

13 THE COURT: Mr. Jones, have you heard anything
14 about the case, any knowledge about the case?

15 JUROR S. BROOKS JONES: Not really.

16 THE COURT: Have you read anything through the
17 years or seen anything on t.v. or heard on the radio?

18 JUROR S. BROOKS JONES: I'm sure I heard
19 something about the previous trials, but, you know, I
20 don't know any facts about it.

21 THE COURT: And have you attended any of the
22 prior court proceedings on this?

23 JUROR S. BROOKS JONES: No, sir.

24 THE COURT: And have you had any situation
25 where you formed an opinion as to the guilt or innocence
26 of Mr. Flowers?

27 JUROR S. BROOKS JONES: No, sir.

28 THE COURT: And can you lay aside anything that
29 you might have heard, read or seen outside the courtroom

1 and base your decision only on the evidence that's
2 presented here in court?

3 JUROR S. BROOKS JONES: I can.

4 THE COURT: And Mr. Jones, the next questions
5 concern the possibility of the sentencing phase. What
6 happens is there is a possibility of a two-phase trial.
7 The jury would first decide guilt or innocence of Mr.
8 Flowers. If the jury found Mr. Flowers guilty, then they
9 would decide what the appropriate sentence should be. If
10 he was found not guilty, we would not get to the second
11 part of the trial, because it would be concluded after an
12 acquittal.

13 But if we got to the sentencing phase, the State
14 would be seeking the imposition of the death penalty.
15 And the State would put on aggravating facts, that would
16 be facts why in the State's belief the death penalty
17 should be appropriate and would be appropriate. Mr.
18 Flowers, through his attorneys, would put on mitigating
19 facts. That would be reasons why Mr. Flowers, through
20 his attorneys, felt the death penalty should not be
21 imposed. That could be anything that's happened in his
22 life, you know, childhood on up until now. If the death
23 penalty was not imposed, life in prison without parole
24 would be the sentence by law.

25 If the facts justified it and the law allowed it,
26 could you consider the death penalty as a sentencing
27 option?

28 JUROR S. BROOKS JONES: I could.

29 THE COURT: Could you also consider life

1 without parole as a sentencing option?

2 JUROR S. BROOKS JONES: I could.

3 THE COURT: And as you sit here today do you
4 have any -- are you leaning one way or another toward
5 how -- what would be the appropriate sentence?

6 JUROR S. BROOKS JONES: No, sir.

7 THE COURT: And will you wait until hearing all
8 the proof to make that determination?

9 JUROR S. BROOKS JONES: Yes, sir.

10 THE COURT: Mr. Evans, you may proceed.

11 MR. EVANS: Thank you, Your Honor.

12 How are you doing today, Mr. Jones?

13 JUROR S. BROOKS JONES: Good.

14 MR. EVANS: As the judge has told you, what we
15 are trying to do is get a jury that can come in,
16 completely disregard any outside source, anything they
17 may have heard and base their decision on only what they
18 hear in the courtroom and the testimony. And you are
19 telling us that you can do that.

20 JUROR S. BROOKS JONES: I can.

21 MR. EVANS: And you would not be leaning one
22 way or another. You would just listen to what's in
23 court.

24 JUROR S. BROOKS JONES: Right.

25 MR. EVANS: As far as the sentencing phase,
26 when we get into that, if the defendant is convicted, we
27 go into the sentencing phase. The judge will allow the
28 State to put on certain aggravators. That is the things
29 that we think would justify the death penalty. The Court

1 will allow the defense to put on certain mitigators, and
2 it can be almost unlimited what those mitigators are. It
3 can be anything about his life, his childhood, the time
4 since the crime was committed, almost anything.

5 And the Court will instruct the jury that they
6 should seriously consider everything that both sides puts
7 on before they even start thinking about what a
8 appropriate penalty should be. Are you telling us that
9 you can do that?

10 JUROR S. BROOKS JONES: Yes, sir.

11 MR. EVANS: Just because the jury has already
12 convicted him shouldn't make any difference as to what
13 the penalty should be. You shouldn't even consider the
14 penalty until both sides have put on all of these factors
15 and you have considered both sides.

16 JUROR S. BROOKS JONES: Yes, sir.

17 MR. EVANS: You are telling us that you could
18 do that.

19 JUROR S. BROOKS JONES: I can.

20 MR. EVANS: Nothing further, Your Honor.

21 THE COURT: You may.

22 MRS. STEINER: How long have you and your wife
23 been married?

24 JUROR S. BROOKS JONES: Be 25 years in
25 September.

26 MRS. STEINER: And Miss Margie of the D.A.'s
27 office has therefore been your sister-in-law for 25
28 years.

29 JUROR S. BROOKS JONES: Yes, ma'am, she has.

1 MRS. STEINER: And you go to family reunions
2 together.

3 JUROR S. BROOKS JONES: We occasionally eat
4 together.

5 MRS. STEINER: All right. And you are
6 acquainted with -- and you are also a wildlife officer.
7 And you are acquainted with other law enforcement.

8 JUROR S. BROOKS JONES: Yes, ma'am.

9 MRS. STEINER: And are you one of the gentlemen
10 who was chatting with a friend in law enforcement out by
11 the checkpoint when I drove through in my beat up gray --

12 JUROR S. BROOKS JONES: I, I speak to them when
13 I get here. I mean I don't know if I --

14 MRS. STEINER: All right. You could have been.

15 JUROR S. BROOKS JONES: I, I could have.

16 MRS. STEINER: There was nothing about how I --

17 MR. EVANS: Your Honor, I object again. We, we
18 have gone through this.

19 MRS. STEINER: -- treated you, if you saw me.

20 THE COURT: I don't see that it has any bearing
21 on anything.

22 MRS. STEINER: Your Honor, I, I want to make
23 sure I didn't do something to offend this juror.

24 THE COURT: Ask him that.

25 MRS. STEINER: Did I do anything in the course
26 of coming through that checkpoint that offended you?

27 JUROR S. BROOKS JONES: No, ma'am. I didn't
28 see you. It must not have been --

29 MRS. STEINER: You don't know if you were there

1 or not.

2 JUROR S. BROOKS JONES: I did speak to the
3 officers when I got here this morning.

4 MRS. STEINER: And some of the other fellows
5 who --

6 JUROR S. BROOKS JONES: Right.

7 MRS. STEINER: -- you were acquainted with were
8 also there.

9 JUROR S. BROOKS JONES: Right.

10 MR. EVANS: Your Honor, he said that he didn't
11 see her come through so her phrasing that, that he was
12 there is inappropriate phrase.

13 MRS. STEINER: I believe he said he spoke with
14 the officer there and there were other jurors also who
15 were acquainted with him present.

16 MR. EVANS: But he said he did not see her.

17 MRS. STEINER: It's a different question, Your
18 Honor.

19 THE COURT: Let's move on.

20 MRS. STEINER: Was your answer yes?

21 JUROR S. BROOKS JONES: To, to which question?

22 MRS. STEINER: There were other jurors who were
23 also acquainted with the officer who you greeted, who
24 were there at the time you greeted the officer.

25 JUROR S. BROOKS JONES: I, I think so. I spoke
26 to some of the jurors I know, and I think I spoke to the
27 officer that was standing there.

28 MRS. STEINER: Okay.

29 JUROR S. BROOKS JONES: But I, I don't know

1 that it was when you passed.

2 MRS. STEINER: All right. Is any of the
3 information you've gotten over the years about the facts
4 of this case that you said you could set aside, was any
5 of that from Miss Margie?

6 JUROR S. BROOKS JONES: No.

7 MRS. STEINER: Any of that from, I think it's
8 -- is it the Tardy family you are friends with the whole
9 family?

10 JUROR S. BROOKS JONES: I, I don't know the --
11 I know Frank Ballard is the only one.

12 MRS. STEINER: Frank Ballard. So it's the
13 Ballard family, Roxanne and Frank.

14 JUROR S. BROOKS JONES: I know Frank. I don't
15 even know Roxanne.

16 MRS. STEINER: And that's a personal
17 friendship, as well as a work friendship.

18 JUROR S. BROOKS JONES: I just know him when I
19 see him.

20 MRS. STEINER: And is any of the information --
21 well, did you go to Miss Ballard's funeral on the basis
22 of your acquaintance with Frank?

23 JUROR S. BROOKS JONES: Miss Tardy's?

24 MRS. STEINER: Miss Tardy's.

25 JUROR S. BROOKS JONES: No, ma'am, I did not.

26 MRS. STEINER: All right. Did you go to
27 anybody's -- any of the victims' funerals?

28 JUROR S. BROOKS JONES: No, ma'am.

29 MRS. STEINER: Now, you checked on your juror

1 questionnaire when asked how you felt about the death
2 penalty --

3 JUROR S. BROOKS JONES: Um-hum.

4 MRS. STEINER: -- you checked "A", strongly
5 support. That, that does characterize how you feel about
6 it; is that correct?

7 JUROR S. BROOKS JONES: If that's the penalty
8 that should be sought, I, I have no problem with it.

9 MRS. STEINER: All right. And in this
10 instance, Mr. Flowers, you would be considering the
11 sentence only after you had found Mr. Flowers guilty
12 beyond a reasonable doubt of having committed at least
13 one, and probably all four, of these murders. You
14 understand that?

15 JUROR S. BROOKS JONES: Right.

16 MRS. STEINER: And in that situation, that is a
17 situation in which you would strongly support use of the
18 death penalty; is that correct?

19 JUROR S. BROOKS JONES: I would have --

20 MR. EVANS: That is not appropriate.

21 JUROR S. BROOKS JONES: -- to hear the evidence
22 before I could determine whether I would support it or
23 not.

24 MRS. STEINER: All right.

25 JUROR S. BROOKS JONES: I do not have a problem
26 with the death penalty.

27 MRS. STEINER: All right. And some of the
28 evidence you might hear, you will hear -- or well, you
29 may hear evidence not only of whatever aggravated that

1 beyond the guilt but also evidence from Miss Ballard and,
2 and other members of her family, possibly, concerning her
3 personal feelings --

4 JUROR S. BROOKS JONES: Um-hum.

5 MRS. STEINER: -- about this. And that your
6 acquaintance with Mr. Ballard, you would be listening to
7 his wife talking about the loss of her mother. And that
8 would have -- could you hear that and still consider
9 matters of mitigation from Mr. Flowers?

10 JUROR S. BROOKS JONES: Sure.

11 MRS. STEINER: All right. Mitigation, as His
12 Honor said, can include anything. It can include things
13 about Mr. Flowers that have nothing to do with the death
14 of any of the people you found him guilty of.

15 THE COURT: Time with this witness is pretty
16 much up.

17 MRS. STEINER: Okay. Thank you.

18 THE COURT: So you need to be wrapping it up.

19 MRS. STEINER: I appreciate that, Your Honor.

20 Could you -- could you consider things that came
21 before any of these events in his life as mitigation of
22 sentence before you make a decision?

23 JUROR S. BROOKS JONES: Yes, ma'am.

24 MRS. STEINER: And things that occurred since
25 he has been in prison.

26 JUROR S. BROOKS JONES: Yes, ma'am.

27 MRS. STEINER: Do you have any personal
28 knowledge of anything about his imprisonment?

29 JUROR S. BROOKS JONES: Pardon.

1 MRS. STEINER: You do not have -- you do not
2 serve as a guard at either Leflore, Vaiden or --

3 JUROR S. BROOKS JONES: No, ma'am.

4 MRS. STEINER: -- or Parchman.

5 JUROR S. BROOKS JONES: No, ma'am.

6 MRS. STEINER: Now, you understand although the
7 Court will instruct you at the guilt phase and on
8 imposition of the death penalty, you must be unanimous
9 with all your other jurors on the opinion. On mitigation
10 and imposition of life without parole, His Honor will
11 instruct you that unanimity is not required. Do you
12 understand that as a juror to deliberate you may respect
13 the opinions of others and you may disagree without
14 having to reach an opinion on the sentence --

15 JUROR S. BROOKS JONES: Yes, ma'am.

16 MRS. STEINER: -- of life without? And can you
17 respect the opinions of others?

18 JUROR S. BROOKS JONES: Sure.

19 MRS. STEINER: And do you wish to have that
20 courtesy extended to you as well?

21 JUROR S. BROOKS JONES: Yes, ma'am.

22 MRS. STEINER: But you will be satisfied even
23 if no agreement can be reached.

24 JUROR S. BROOKS JONES: Right.

25 MRS. STEINER: Thank you. I have nothing
26 further.

27 THE COURT: Mr. Jones, you can step down.

28 And we will have Mr. Golden come in next.

29 (JUROR NUMBER 118, ANTONIO GOLDEN, ENTERED THE

1 COURTROOM.)

2 Mr. Golden, if you will come down and have a seat,
3 please, sir.

4 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

5 What we are doing now, Mr. Golden, is we are asking
6 questions of the jurors individually because we don't
7 want to ask something that would be inappropriate to ask
8 in front of everybody else. I notice that you do share
9 the same last name as Robert Golden, one of the victims
10 that was in this case that we are here about. As far as
11 you know, were you related in any way to him?

12 JUROR ANTONIO GOLDEN: I think I am.

13 THE COURT: Do you know how?

14 JUROR ANTONIO GOLDEN: No.

15 THE COURT: Did y'all ever have a situation
16 where during his lifetime y'all would have socialized or
17 been at the same -- I know you are a pretty young man,
18 even now. So you would have been back in 1996, you would
19 have been, what, about eight or something like that?

20 JUROR ANTONIO GOLDEN: Yes.

21 THE COURT: But during that timeframe, do you
22 ever remember being around Mr. Golden?

23 JUROR ANTONIO GOLDEN: No.

24 THE COURT: And have you through the years had
25 any relationship or association with any of his children
26 or family?

27 JUROR ANTONIO GOLDEN: No.

28 THE COURT: I'll ask you now about knowledge of
29 the case. Have you heard facts about this case?

1 JUROR ANTONIO GOLDEN: Not besides just reading
2 the paper.

3 THE COURT: And any thing other than that?

4 JUROR ANTONIO GOLDEN: No.

5 THE COURT: And when you read about the case,
6 did that cause you to form an opinion as to the guilt or
7 innocence of Mr. Flowers?

8 JUROR ANTONIO GOLDEN: Maybe a little bit.

9 THE COURT: And so have you already formed an
10 opinion about guilt or innocence?

11 JUROR ANTONIO GOLDEN: Yeah.

12 THE COURT: Can you lay -- and can you and will
13 you lay that opinion aside and listen to the evidence and
14 base your verdict only on the evidence presented?

15 JUROR ANTONIO GOLDEN: Yes.

16 THE COURT: And will you in any way let the
17 things you have heard or this opinion you have come into
18 play or influence you in your deliberations?

19 JUROR ANTONIO GOLDEN: Yes.

20 THE COURT: It would come into play.

21 JUROR ANTONIO GOLDEN: No.

22 THE COURT: Or it would not. I'm sorry. I
23 maybe asked a confusing question.

24 JUROR ANTONIO GOLDEN: Would not.

25 THE COURT: So you are going to lay everything
26 aside and base it only on the evidence here in court.

27 JUROR ANTONIO GOLDEN: Yes.

28 THE COURT: Next concerns the possibility of a
29 sentence. If Mr. Flowers is convicted of capital murder,

1 the State is seeking the death penalty. If the death
2 penalty is not imposed, life in prison without parole, by
3 law, is the sentence that would be imposed.

4 The State of Mississippi will put on aggravating
5 factors. That would be facts that they believe would
6 justify the imposition of the death penalty. Then
7 mitigating facts would be put on by Mr. Flowers through
8 his attorneys. That would be reasons why a jury might
9 find that the death penalty is not appropriate.
10 Mitigating facts can be anything that's happened during
11 the course of Mr. Flowers' life. And there is a number
12 of things that they could put on during that phase of the
13 trial, if it got to that. I'll ask you now, if the facts
14 justified it and the law allowed it, could you consider
15 the death penalty as a sentencing option?

16 JUROR ANTONIO GOLDEN: No.

17 THE COURT: You could not.

18 JUROR ANTONIO GOLDEN: No.

19 THE COURT: Now, I believe on your jury
20 questionnaire you had said you could consider it. Did --
21 have you kind of thought about it, or did you mark your
22 form wrong?

23 JUROR ANTONIO GOLDEN: Marked the form wrong.

24 THE COURT: And so you are saying you could not
25 under any circumstances consider the death penalty.

26 JUROR ANTONIO GOLDEN: No.

27 THE COURT: And how about life in prison
28 without parole? Could you consider that as a sentencing
29 possibility?

1 JUROR ANTONIO GOLDEN: Yes.

2 THE COURT: And that will be all. I'll now ask
3 -- allow the State to ask questions.

4 MR. EVANS: Good evening, Mr. Golden.

5 JUROR ANTONIO GOLDEN: Good evening.

6 MR. EVANS: Mr. Golden, when I was asking you
7 some questions and y'all were out here the other day, in
8 response to one of my questions I think you said that you
9 could not sit in judgment of anyone else; is that right?

10 JUROR ANTONIO GOLDEN: Right.

11 MR. EVANS: And is that just your belief that
12 you don't think it is right for you to judge anyone?

13 JUROR ANTONIO GOLDEN: Correct.

14 MR. EVANS: So it wouldn't matter what the case
15 was. If you can't judge somebody, you couldn't make a
16 juror, could you?

17 JUROR ANTONIO GOLDEN: Correct.

18 MR. EVANS: So if you were -- even if the death
19 penalty wasn't involved, if you were called as a juror
20 you couldn't make a decision on someone's guilt, could
21 you?

22 JUROR ANTONIO GOLDEN: No.

23 MR. EVANS: Okay. And especially on the death
24 penalty. Because of your beliefs against the death
25 penalty, you could never consider the death penalty as an
26 appropriate penalty, could you?

27 JUROR ANTONIO GOLDEN: Correct.

28 MR. EVANS: Nothing further, Your Honor.

29 MR. CARTER: I have a few.

1 Mr. Golden, I want to make sure you are not
2 confused. And for most people this is the first time
3 they wind up in this situation and get asked this
4 question and get exposed to the trial process in this
5 way. And I just want to make sure you understand. I can
6 accept whatever answer you give as long as, as I know you
7 understand.

8 Now, as I talked about yesterday, you don't like
9 sitting in judgment of people. Lots of folks don't. I
10 don't blame you. I accept that. I don't know that I do.
11 But do you -- are you saying you can't do it or you don't
12 like to do it?

13 JUROR ANTONIO GOLDEN: Can't do it.

14 MR. CARTER: Can't do it. Okay. Are you sure
15 about that?

16 JUROR ANTONIO GOLDEN: Correct.

17 MR. CARTER: And you haven't been able to do it
18 before.

19 JUROR ANTONIO GOLDEN: Correct.

20 MR. CARTER: You avoid it whenever you can.

21 JUROR ANTONIO GOLDEN: Correct.

22 MR. CARTER: Or you never did. Okay. Is that
23 based -- what is that based on? What do you base it on?

24 JUROR ANTONIO GOLDEN: Just never had that
25 situation before. Never had this situation before.

26 MR. CARTER: Right. So you are -- you are
27 saying you can't. You can't judge in this case or you
28 can't judge in -- I mean you are 23, I believe; is that
29 correct?

1 JUROR ANTONIO GOLDEN: Correct.

2 MR. CARTER: And is it fair to say that you
3 have to decide who you will take on as a friend or, or
4 not a friend?

5 MR. EVANS: Your Honor, that --

6 MR. CARTER: You make a decision.

7 MR. EVANS: -- is not relevant here today.

8 THE COURT: I sustain as to that. I mean, you
9 know, who his friends are or how he decides is --

10 MR. CARTER: I'm trying to --

11 THE COURT: -- is not relevant.

12 MR. CARTER: Is it fair to say, Mr. Golden,
13 that you have to make life decisions and you have made
14 them before in terms of right or wrong. Have you had to
15 do that before?

16 MR. EVANS: Your Honor, again, that is not the
17 question here today. It is irrelevant.

18 MR. CARTER: The question is can he judge.

19 MR. EVANS: And he said he can't.

20 MR. CARTER: We are trying to determine --

21 MR. EVANS: The defense attorney --

22 THE COURT: Ask him that question, if he can
23 judge, because whether he has made decisions --

24 MR. CARTER: When you say you can't judge, Mr.,
25 Mr. Golden, what do you mean by that?

26 JUROR ANTONIO GOLDEN: Don't judge other
27 people.

28 MR. CARTER: You can't --

29 JUROR ANTONIO GOLDEN: On anything.

1 MR. CARTER: On anything. Okay.

2 THE COURT: Mr. Golden, you may step down. If
3 you'll, when you go back, don't talk with anybody about
4 what we have brought up and discussed in here.

5 JUROR ANTONIO GOLDEN: All right. I have
6 something to say. I'm a truck driver. And I gotta go
7 back to work next week or whatever. I drive cross
8 country. But the only reason why I been still here is
9 because my license was expired.

10 THE COURT: So when are you supposed to be
11 leaving again?

12 JUROR ANTONIO GOLDEN: I got a road test I
13 gotta take in Greenville, Monday, Monday morning at 9:00.

14 THE COURT: We'll be letting you know something
15 before that.

16 JUROR ANTONIO GOLDEN: All right.

17 THE COURT: We need Miss King in here next.

18 (JUROR NUMBER 119, ALISHA KING, ENTERED THE COURTROOM AND
19 WAS SEATED ON THE WITNESS STAND.)

20 THE COURT: Miss King, what we are doing now is
21 we are asking some follow-up questions of the jurors
22 outside the presence of the other jurors, because there
23 are some things we just felt like it was appropriate to
24 ask without other jurors hearing what we were asking.

25 Have you through the years heard anything about this
26 case?

27 JUROR ALISHA KING: Very little. I mean what I
28 have heard, it has just been like bits and pieces. You
29 know, you catch something on the news. But other than

1 that, I mean I don't -- I don't know anything.

2 THE COURT: And you were probably in junior
3 high when this -- 1996.

4 JUROR ALISHA KING: Yeah. I was 14, 15.

5 THE COURT: And has anything you read, seen in
6 the newspaper or heard caused you to form any opinions as
7 to the guilt or innocence of Mr. Flowers?

8 JUROR ALISHA KING: No, sir.

9 THE COURT: And would you lay aside anything
10 that you might have seen, read or heard and base your
11 decision only on the evidence that is presented here in
12 open court?

13 JUROR ALISHA KING: Absolutely.

14 THE COURT: And the next question involves
15 possibilities of the sentences in this case, if it got to
16 that point. What happens in a capital murder case is the
17 jury first decides guilt or innocence.

18 JUROR ALISHA KING: Um-hum.

19 THE COURT: If Mr. Flowers was found not
20 guilty, the proceedings would be over. But if he were to
21 be found guilty, then there would be a consideration as
22 to what the appropriate sentence would be. The State of
23 Mississippi is seeking the death penalty in this case.
24 They would put on aggravating factors which they believe
25 would justify the imposition of the death penalty.

26 Mr. Flowers, through his attorneys, would put on
27 mitigating factors, which would be factors that in their
28 view would show that the death penalty in this instance
29 would not be appropriate, as I say, if he was convicted.

1 That can be anything about his, you know, prior life or
2 anything from childhood through now.

3 If the facts justified it and the law allowed it,
4 could you consider the possibility of the death penalty
5 in this case?

6 JUROR ALISHA KING: Yes, sir.

7 THE COURT: And if the death penalty was not
8 imposed, then life in prison without parole would be the
9 automatic sentence. Could -- would that -- could you
10 consider that as a sentence as well?

11 JUROR ALISHA KING: Yes, sir.

12 THE COURT: And sitting here today, do you have
13 any fixed opinion on what the appropriate sentence would
14 be?

15 JUROR ALISHA KING: No, sir.

16 THE COURT: And will you wait until all the
17 proof is heard if it got to the sentencing phase before
18 you made that determination?

19 JUROR ALISHA KING: Yes, sir.

20 THE COURT: Okay.

21 MR. EVANS: Good evening, Miss King.

22 JUROR ALISHA KING: Yeah.

23 MR. EVANS: Now, you are telling us you can
24 walk through the door of the courtroom and completely
25 disregard anything outside and base your decision
26 strictly on what you hear in the courtroom.

27 JUROR ALISHA KING: Yes, sir.

28 MR. EVANS: Not leaning one way or the other,
29 just listening to the evidence and basing it strictly on

1 that.

2 JUROR ALISHA KING: Yes, sir.

3 MR. EVANS: All right. If the defendant is
4 convicted in the first phase, we'll go into the second
5 phase. At that point the judge -- well, at some point in
6 there the judge will instruct you on what the law is. We
7 will be arguing aggravating factors to show in our
8 opinion why the death penalty is appropriate. The
9 defense will be offering mitigators.

10 The Court will tell you that almost anything that
11 they offer is something that you should consider. You
12 should consider what we put on. You should consider what
13 they put on. And only after you have thought about
14 everything that has been put on should you even make a
15 thought about what the penalty should be.

16 Just the fact that he has been convicted shouldn't
17 affect your decision. The only thing that should affect
18 your thought of what the penalty should be is the
19 evidence that is put on in court. And after considering
20 all of it, you should make that decision. Can you do
21 that?

22 JUROR ALISHA KING: Yes, sir.

23 MR. EVANS: And you would not come into court
24 leaning for any particular penalty. You would just
25 listen to the evidence and make that decision.

26 JUROR ALISHA KING: Right.

27 MR. EVANS: But you could at this point
28 consider either penalty depending on what the evidence
29 was.

1 JUROR ALISHA KING: Yes, sir.

2 MR. EVANS: Nothing further.

3 MRS. STEINER: Good evening, Miss King.

4 JUROR ALISHA KING: Hey.

5 MRS. STEINER: Do you know whether or not your
6 parents went to Miss Carmen's funeral?

7 JUROR ALISHA KING: They did not.

8 MRS. STEINER: All right. And obviously, you
9 did not either.

10 JUROR ALISHA KING: No, sir. No, ma'am.

11 MRS. STEINER: It's late. We have been talking
12 here about penalty. Kind of puts the cart before the
13 horse here. You understand the fact that we have to talk
14 about what penalty you would impose, does that affect
15 your ability to fairly consider the guilt of the
16 defendant before you even --

17 JUROR ALISHA KING: I mean I haven't heard
18 anything. So therefore I can't --

19 MRS. STEINER: All right.

20 JUROR ALISHA KING: -- say if he is guilty or
21 not guilty. I mean I haven't heard anything.

22 MRS. STEINER: But you don't construe me or His
23 Honor believing that he is going to be found guilty.

24 JUROR ALISHA KING: No, ma'am.

25 MRS. STEINER: All right. You've -- you've
26 testified -- you've in answer to His Honor's questions
27 and Doug's, you've, you've indicated that you could
28 consider either penalty.

29 JUROR ALISHA KING: Right.

1 MRS. STEINER: On your questionnaire you
2 checked box "A" and said you strongly favor the death
3 penalty. Is that -- is that a fair characterization of
4 your views?

5 JUROR ALISHA KING: I mean I favor it, but I
6 mean I can, you know, consider either option.

7 MRS. STEINER: I understand that, but your,
8 your view of the death penalty is you strongly favor it.

9 JUROR ALISHA KING: I wouldn't say strongly,
10 you know, not, you know, either or.

11 MRS. STEINER: All right. Did you just mark
12 the wrong box or were --

13 JUROR ALISHA KING: It's possible.

14 MRS. STEINER: All right. And His Honor will
15 instruct you on the guilt or innocence phase --

16 JUROR ALISHA KING: Um-hum.

17 MRS. STEINER: -- that you must -- in order to
18 reach a verdict, the jurors must be unanimous. And you
19 understand that deliberating involves compromise and
20 consideration --

21 JUROR ALISHA KING: Yes, ma'am.

22 MRS. STEINER: -- and that sort of thing.
23 Similarly, if the decision is to impose a death penalty
24 or have the jury return a death penalty, that too must be
25 unanimous. You understand that?

26 JUROR ALISHA KING: Yes, ma'am.

27 MRS. STEINER: His Honor will instruct you with
28 respect to making decisions about mitigating evidence and
29 a life sentence.

1 JUROR ALISHA KING: Um-hum.

2 MRS. STEINER: That, that is each juror's
3 individual conscience.

4 JUROR ALISHA KING: Um-hum.

5 MRS. STEINER: You don't have to be unanimous.

6 JUROR ALISHA KING: Okay.

7 MRS. STEINER: You -- your conscience on, on
8 whether to impose a life sentence without parole or a
9 death sentence is your vote. And you need not agree with
10 the other jurors in order to have this matter conclude.
11 You understand that?

12 JUROR ALISHA KING: Yes, ma'am.

13 MRS. STEINER: And the deliberations require
14 that you respect divergent views. Are you comfortable
15 with doing that?

16 JUROR ALISHA KING: Yes, ma'am.

17 MRS. STEINER: Are you comfortable if you
18 believe something about the mitigation shows something
19 you think warrants a life without parole sentence
20 agreeing to disagree with the jurors who don't feel that
21 way?

22 JUROR ALISHA KING: Yes, ma'am.

23 MRS. STEINER: And conversely, if you feel that
24 there is not sufficient mitigation, then death sentence
25 would be imposed. Will you respect and agree to disagree
26 with jurors who feel otherwise --

27 JUROR ALISHA KING: Yes, ma'am.

28 MRS. STEINER: -- at the sentencing phase, if
29 you should reach it?

1 JUROR ALISHA KING: Um-hum.

2 MRS. STEINER: And could you --

3 THE COURT: You are pretty much out of time.

4 MRS. STEINER: The only other question I have
5 is mitigation could be nothing to do with the facts of
6 the crime. It could have nothing -- would you be able to
7 consider mitigation that doesn't refer to the crime, Mr.
8 Flowers' life before or after the event in question?

9 JUROR ALISHA KING: Yes, ma'am.

10 MRS. STEINER: Thank you. That is all I have.

11 THE COURT: Miss King, you may step down and
12 please don't go out and talk about with anybody what we
13 have discussed in here.

14 JUROR ALISHA KING: Yes, sir.

15 THE COURT: I need Mr. Bennett next.

16 (JUROR NUMBER 120, STEVEN BENNETT, ENTERED THE
17 COURTROOM.)

18 Mr. Bennett, if you will, come forward and have a
19 seat, please.

20 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

21 THE COURT: What we are doing, Mr. Bennett, is
22 asking questions outside the presence of the other
23 jurors, because there are some things we felt would be
24 better to just bring up without everybody else being in
25 here. And I want to know if you have knowledge about
26 this case or have heard anything about it.

27 JUROR STEVEN BENNETT: No. Not really. I
28 guess I sat in probably ten minutes of testimony, at the
29 most, two years ago.

1 THE COURT: And I believe you already told us
2 that you had transported Mr. Flowers some --

3 JUROR STEVEN BENNETT: Right.

4 THE COURT: -- during the course of that
5 proceeding.

6 JUROR STEVEN BENNETT: Correct.

7 THE COURT: Is there anything that you have
8 heard about the case back then or, or read about or any
9 knowledge you have obtained that has caused you to have a
10 fixed or formed opinion as to Mr. Flowers' guilt or
11 innocence?

12 JUROR STEVEN BENNETT: No, sir.

13 THE COURT: And can you lay aside anything that
14 you might have seen or heard and base your decision only
15 on the evidence that is presented here in open court?

16 JUROR STEVEN BENNETT: Yes, sir.

17 THE COURT: The next question would concern the
18 possibility of a sentencing phase, if the case got to
19 that point. If the jury found Mr. Flowers guilty, then
20 the jury would determine what the appropriate sentence
21 would be. If he was found not guilty, we would not get
22 into that second phase.

23 But if we did get into the second phase, after a
24 jury had found him guilty, the State would be seeking the
25 death penalty. They would be putting on aggravating
26 factors that would show in the State's belief that the
27 death penalty would be appropriate. Mr. Flowers would
28 then be given an opportunity, through his lawyers, to put
29 on mitigating facts. That would be reasons why in their

1 view the death penalty would not be appropriate. If he
2 did not receive the death penalty, life in prison without
3 parole would be the sentence.

4 If the facts justified it and the law allowed it,
5 could you consider the imposition of the death penalty?

6 JUROR STEVEN BENNETT: Yes, sir.

7 THE COURT: And could you also consider life in
8 prison without parole?

9 JUROR STEVEN BENNETT: Yes, sir.

10 THE COURT: And as you sit here today, do you
11 have any fixed opinion on what the appropriate sentence
12 would be if he were convicted?

13 JUROR STEVEN BENNETT: No, sir.

14 THE COURT: And will you wait until you have
15 heard all the evidence and been instructed on the law
16 before you make such a determination?

17 JUROR STEVEN BENNETT: Yes, sir.

18 MR. EVANS: Good evening, Mr. Bennett.

19 JUROR STEVEN BENNETT: How are you?

20 MR. EVANS: You're, you're telling us that you
21 would come into court with an open mind, disregard
22 anything outside of the court and base your decision only
23 on the evidence here in court; is that correct?

24 JUROR STEVEN BENNETT: Absolutely.

25 MR. EVANS: And you would not be leaning one
26 way or the other.

27 JUROR STEVEN BENNETT: No, sir.

28 MR. EVANS: As far as the second phase, if the
29 defendant is convicted in the first phase, we will put on

1 certain factors that are called aggravation. But it's
2 basically we are putting on things to show the jury our
3 view of what the penalty should be. The defense will be
4 putting on things to put on what their version of the
5 penalty should be, which they are going to be arguing for
6 life.

7 Now, the mitigators can be almost anything. It can
8 be anything about his life. It doesn't have to be
9 anything about the facts of the case. It can be things
10 about how he grew up or anything else. And the Court
11 will instruct you that you should consider that. You
12 should consider that just like you would consider the
13 things that we put on. You should consider all of it.
14 You are telling us that you would come in, you would
15 consider what both sides put on before you would even
16 consider what penalties should be appropriate. And then
17 make a decision based upon what you hear in court.

18 JUROR STEVEN BENNETT: Yes, sir.

19 MR. EVANS: And you have no preconceived idea
20 of what the penalty should be. You would be fair to both
21 sides.

22 JUROR STEVEN BENNETT: Yes, sir.

23 MR. EVANS: Nothing further.

24 MRS. STEINER: Good evening, Mr. Bennett.

25 JUROR STEVEN BENNETT: How are you?

26 MRS. STEINER: I just noticed on your
27 questionnaire you formerly worked for Acy Mechanical.

28 JUROR STEVEN BENNETT: Yes, ma'am.

29 MRS. STEINER: And we have been -- there is a

1 juror on this venire list, Melissa Acy. Is she kin to
2 your boss there?

3 JUROR STEVEN BENNETT: She is married to Barry,
4 one of the co-owners or sons of the owner.

5 MRS. STEINER: Okay. And would -- if you two
6 were to end up on the jury together, would that affect
7 your deliberation?

8 JUROR STEVEN BENNETT: No, ma'am. I don't know
9 her on a personal level at all. Just through the
10 company.

11 MRS. STEINER: And she is of a generation of
12 people who are your boss there.

13 JUROR STEVEN BENNETT: Right.

14 MRS. STEINER: And you're 24.

15 JUROR STEVEN BENNETT: Right. Right. Like I
16 said, I have no contact with her at all.

17 MRS. STEINER: All right. And now, you
18 indicated you sat in on some testimony a couple of years
19 ago. Was that -- were you were acting as an officer,
20 court security?

21 JUROR STEVEN BENNETT: Yes, ma'am.

22 MRS. STEINER: And have you -- did you do any
23 reading about the case or anything?

24 JUROR STEVEN BENNETT: None more than what the
25 newspaper may print.

26 MRS. STEINER: You did follow it in the paper?

27 JUROR STEVEN BENNETT: At times. I mean I
28 don't get the paper every week. If my brother picks it
29 up, somebody brings it home, then, then I'll read it.

1 But as far as me going to the store to pick up one to
2 follow a case or anything happening in the news, I don't
3 do that.

4 MRS. STEINER: Is this one of your brothers who
5 is with Montgomery County Sheriff's Department?

6 JUROR STEVEN BENNETT: Right.

7 MRS. STEINER: Do you live with him?

8 JUROR STEVEN BENNETT: Correct.

9 MRS. STEINER: Do you live with your parents,
10 or is it just you and your brother?

11 JUROR STEVEN BENNETT: We live together in a
12 rental house.

13 MRS. STEINER: So you are no longer an officer
14 but you live --

15 JUROR STEVEN BENNETT: I still work -- I don't
16 work for Montgomery County. I am still employed with
17 Kilmichael Police Department.

18 MRS. STEINER: All right. And are you
19 full-time there?

20 JUROR STEVEN BENNETT: Just a reserve.

21 MRS. STEINER: All right. Now, you understand
22 as an officer, there are times when you must exercise
23 authority and people need to obey you; is that correct?

24 JUROR STEVEN BENNETT: Yes, ma'am.

25 MRS. STEINER: And if you are in a chain of
26 command you need to -- you need to obey the officers who
27 are above you.

28 JUROR STEVEN BENNETT: Yes, ma'am.

29 MRS. STEINER: In a jury everybody is equal.

1 Everybody's opinion is equal.

2 JUROR STEVEN BENNETT: Okay.

3 MRS. STEINER: You understand that.

4 JUROR STEVEN BENNETT: Yes, ma'am.

5 MRS. STEINER: Now, you've indicated on your
6 juror questionnaire that you strongly favor the death
7 penalty. Is that a fair characterization of your views
8 on the death penalty?

9 JUROR STEVEN BENNETT: Based on the facts. I
10 mean if the facts could be proven showing that that is
11 the punishment that is needed, yes, ma'am.

12 MRS. STEINER: All right. And you've indicated
13 you consider that penalty and any penalty -- the life
14 sentence without parole at this point equally; is that
15 correct?

16 JUROR STEVEN BENNETT: Yes, ma'am.

17 MRS. STEINER: Now, we are putting the cart a
18 little bit before the horse here, you understand. It --
19 the fact that you're having to talk about this, and I'm
20 talking about this, and His Honor is talking about this,
21 there is no assumption that you will even have to reach
22 that phase. There is no -- we are not assuming he will
23 be found guilty, but we have to put you there since this
24 is the only time --

25 JUROR STEVEN BENNETT: I understand.

26 MRS. STEINER: -- I can talk to you. All
27 right. Now, at, at that phase the Court will instruct
28 you, like, as with a verdict of guilty or not guilty, a
29 verdict of death and finding aggravation warranting death

1 must be unanimous. You understand that.

2 JUROR STEVEN BENNETT: Yes, ma'am.

3 MRS. STEINER: And your deliberation is, he
4 will instruct you, to attempt to come to an agreement
5 with your fellow jurors. You understand that.

6 JUROR STEVEN BENNETT: Yes, ma'am.

7 MRS. STEINER: Now, with respect to any of the
8 mitigating factors that you consider and the fact being
9 -- voting not to impose the death sentence, impose a life
10 sentence instead, that is a individual decision. Each
11 juror has his or her right to his or her opinion.

12 JUROR STEVEN BENNETT: Okay.

13 MRS. STEINER: Yourself included. And you
14 don't have to all agree on that. You understand?

15 JUROR STEVEN BENNETT: Um-hum.

16 MRS. STEINER: And I know as someone who is
17 accustomed as an officer to taking orders from the chain
18 of command, would you feel that if someone you respected
19 or had authority or was older thought one way, you would
20 have to give up your opinion?

21 JUROR STEVEN BENNETT: No, ma'am.

22 MRS. STEINER: And vice versa. If you --
23 you're an officer, and you are trained to be
24 authoritative when necessary. You would not pull rank
25 and disrespect someone else's opinion; correct?

26 JUROR STEVEN BENNETT: No, ma'am.

27 MRS. STEINER: That's all I have.

28 THE COURT: Mr. Bennett, you may step down. If
29 you will not talk about what we've discussed with anybody

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1 out there that is on the jury panel with you.

2 JUROR STEVEN BENNETT: Okay.

3 THE COURT: Counsel, at this time, you know, it
4 is getting late in the evening. I think we can go --
5 just go over some ones that can be excused for cause --

6 MR. EVANS: All right, sir.

7 THE COURT: -- and go ahead and recess. I, I
8 would actually like to proceed, and I could proceed till
9 midnight if I had to. But I have got people who have
10 been sitting out in metal chairs all day that are
11 potential jurors, and I suspect they are tired. And I
12 expect counsel is too. And so I think after we look over
13 others for cause, we will go ahead and recess for the
14 evening.

15 MRS. STEINER: Your Honor, are you asking the
16 parties to make cause challenges which are not -- that
17 cannot be agreed to or will we have another opportunity
18 to be looking --

19 THE COURT: We can make the ones that are
20 obvious. And then if there are some others that you want
21 to make right now, I will take them up.

22 Mr. Scott, Number 57. Is there any disagreement on
23 him?

24 MR. EVANS: No, sir.

25 MR. CARTER: One moment, Your Honor.

26 MR. EVANS: He clearly said he could not
27 consider death under any circumstance.

28 MR. CARTER: No objection, Your Honor.

29 MRS. STEINER: Let me -- let me say this, Your

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1 Honor. We preserve certain objections with respect to
2 the entire *Witherspoon* process.

3 THE COURT: That's, that's clear in the record.

4 MRS. STEINER: Thank you, Your Honor. When we
5 say no objection, we aren't waiving that. We are simply
6 saying we agree with the facts disclosed on the basis of
7 *Witherspoon*.

8 THE COURT: Then Number 65, Miss Woods.

9 MR. EVANS: Yes, sir.

10 MR. CARTER: One moment.

11 No objection, Your Honor.

12 THE COURT: Then Number 92, Miss Crowley.

13 MR. EVANS: Yes, sir.

14 MR. CARTER: No objection. We agree on that
15 one.

16 THE COURT: Ninety-five.

17 MR. EVANS: Yes, sir, we agree.

18 THE COURT: Miss Crawford.

19 MR. CARTER: Agree.

20 THE COURT: And 98, Robinson.

21 MR. EVANS: Yes, sir.

22 MR. CARTER: We agree.

23 MRS. STEINER: Your Honor, that is *Witherspoon*.

24 THE COURT: I see 106. Miss Swindoll.

25 MR. EVANS: Yes, sir. The State agrees.

26 MR. CARTER: We agree.

27 THE COURT: 118. Mr. Golden.

28 MR. EVANS: Yes, sir, we agree.

29 MRS. STEINER: Your Honor, I believe he was, at

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1 least, under *Witherspoon*.

2 THE COURT: And does counsel see others at this
3 point that need to be considered for --

4 MRS. STEINER: Yes, Your Honor. I, I'm a
5 little tired at the end of the day, and I have a
6 patchwork here. But I, I had noted some that we would
7 likely -- I think, Your Honor, in terms of Miss -- Your
8 Honor, may I -- would it be all right to defer these
9 others until I have had a chance, either about five
10 minutes to confer with the people who have been taking
11 notes for me or wait until the morning? I really -- I've
12 got a patchwork here. And I -- and if we are going to be
13 doing --

14 THE COURT: I would like to be able to send
15 anybody home that we need to.

16 MRS. STEINER: May I have five minutes then to
17 talk to my --

18 THE COURT: Yeah, I will give you five minutes.
19 (A BREAK WAS TAKEN.)

20 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
21 AND THE DEFENDANT WERE PRESENT IN THE COURTROOM. PROCEEDINGS
22 WERE AS FOLLOWS:)

23 MRS. STEINER: Do you want the State to do its
24 first?

25 THE COURT: If the State has got any to make.
26 I did not know if they did or not.

27 MR. EVANS: For cause, Your Honor, I think the
28 only one that we would ask for cause at this point is
29 Number 62. Basically, she has told the Court that she

1 would automatically lean toward the defendant. She
2 doesn't think that she can be fair and impartial, and she
3 knows everybody involved the case. She has worked with
4 his sister, worked with his father, lived in the
5 neighborhood where he lives, knows almost everybody
6 involved in the case. But basically, because of all of
7 that, she has said she doesn't think she can be fair.

8 MR. CARTER: What is her number? We disagree.

9 THE COURT: Are you disagreeing that she said
10 that?

11 MR. CARTER: We disagree.

12 MRS. STEINER: Your Honor, Your Honor, I
13 think -- I, I did not write down that she had
14 definitively said she could not be fair. She did say she
15 had no opinion.

16 THE COURT: Well, I will wait until tomorrow
17 where my court reporter that was typing those notes can
18 --

19 MRS. STEINER: Yes, thank you.

20 THE COURT: -- call those up for me. And I
21 will take a closer look at that tomorrow.

22 MRS. STEINER: Thank you.

23 THE COURT: Does the defense have any?

24 MRS. STEINER: Yes, Your Honor. Your Honor,
25 our first cause challenge would be for Venire, Juror 48,
26 who in the course of her voir dire, even after both the
27 Court and the State had elicited her, she had -- she said
28 absolutely she could consider the death penalty. But
29 only yes, sir, she could consider life without parole and

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1 expressed an opinion that life definitely would be a
2 better penalty, even now in the pretrial situation. We
3 would strike her for cause under *Morgan versus Illinois*.

4 THE COURT: Response from the State, if any.

5 MR. EVANS: Your Honor, yes, she said that she
6 could consider all mitigation. She could consider both
7 sides before she made any determination as to what the
8 penalty should be.

9 THE COURT: She said it would be the better
10 sentence for a brutal crime, but I will look at her. I
11 will look tomorrow at what she had to say as well.

12 MR. EVANS: And I, I think that anybody could
13 agree with that statement. But at this point all of that
14 has to be determined, how brutal the crime is and whether
15 that is even something that the Court allows.

16 THE COURT: As I say, I take -- I will look at
17 her testimony or have the court reporter call that up
18 tomorrow before I --

19 MR. EVANS: Yes, sir.

20 THE COURT: -- make a, a ruling on that.

21 MRS. STEINER: Thank you, Your Honor. The next
22 cause strike we would raise is to Juror Number 50, Mr.
23 Bobby Lester. He is -- his testimony was that he was
24 within minutes in, in the bank, personally involved in
25 the shock and grief of the events in an immediate way. I
26 believe his testimony is also that he has formed an
27 opinion with respect to this.

28 We would strike him under two theories here. The
29 first would be the Mississippi Supreme Court precedent

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1 *Taylor versus State* of implied bias. Some relationships
2 are not -- are simply not able to be set aside. These
3 are family relationships. But under the -- in *Taylor*
4 *versus State*, 656 So.2d 104, at Page 111, the Supreme
5 Court wrote we must endeavor to ensure that every
6 defendant receives a fair trial, free of implied bias.
7 Despite the fact that the juror said he could set aside
8 his relationship or -- yeah. He could set aside his --
9 he was the brother of assistant district attorney.

10 MR. EVANS: What?

11 THE COURT: Brother of assistant district
12 attorney?

13 MR. EVANS: Where did that come from?

14 MRS. STEINER: *Taylor versus State* is the
15 precedent.

16 THE COURT: Oh, I thought you were saying Mr.
17 Lester had said that.

18 MRS. STEINER: No. That is under the same
19 theory of implied bias, of being so close to someone.

20 THE COURT: Okay. I am with you now. I was
21 confused --

22 MRS. STEINER: Forgive me.

23 THE COURT: -- about what you had said.

24 MRS. STEINER: All right. And the other reason
25 we would move to strike Mr. -- Juror 50, Mr. Lester, for
26 cause is under the United State Supreme Court case of
27 *Murphy versus Florida* and *Reynolds versus the United*
28 *States*. *Murphy versus Florida* is 421 U.S. 794,
29 specifically states the juror's assurance that he can be

1 equal to the task cannot be dispositive under the Sixth
2 Amendment of the accused's rights. And this is -- the
3 other case is *Reynolds versus United States*. It's a very
4 old case, is the foundation for most of the fair trial,
5 juror bias that specifically held that if a positive and
6 decided opinion has been formed, he would have been
7 incompetent even if it had not been expressed. And the
8 expression of an opinion is important only as to showing
9 he had not formed one, where he has heard it.

10 I think the implications for fairness under *Murphy*
11 and *Reynolds* require that a juror with an opinion, no
12 matter what they represent to the Court, we cannot --
13 that is an opinion is an opinion. And that regardless of
14 their best hopes to be able to sit -- and he did it. And
15 in his situation, he was part of the immediate grieving
16 process. At the very least with respect to unbiased,
17 unemotional consideration of victim impact and not
18 allowing it to inflame him as the *Branch* case says.
19 Victim impact testimony cannot be permitted to inflame.

20 I think someone who has gone through that immediate
21 shock and mourning and dealt with that, both as a
22 supervisor and individual acquainted, that the implied
23 bias and the -- his assurances are his hopes. I don't
24 think there is actuality under *Murphy* and *Reynolds*. And
25 we would move to strike him on both those grounds.

26 MR. EVANS: Your Honor, I don't know that we
27 heard the same witness, because I didn't hear half of
28 what she said. He was working at the bank. Folks came
29 in and reported it and some of them were crying. He has

1 strictly, clearly, unequivocally told this Court that he
2 could be fair and impartial, would base his decision on
3 nothing other than what he heard in the court. The fact
4 that they don't want him as a juror hadn't got anything
5 to do with it.

6 THE COURT: My recollection of what Mr. Lester
7 said is -- while not exactly what the prosecutor said,
8 but it is very close. The juror has definitively stated
9 that he would lay any opinion he had about the case
10 aside, that he would base his decision strictly on the
11 evidence presented here in open court and not on any
12 information gathered outside the courtroom. He stated
13 definitively that he does not have a fixed opinion on
14 what the appropriate sentence would be. He would listen
15 to the evidence and would decide the sentence based on
16 the facts as he heard them and the law as given by the
17 Court. So I do not see any grounds for striking Number
18 50.

19 MRS. STEINER: Thank you, Your Honor.

20 Number 51 is Mr. Huggins. He, he is the juror who
21 knew, somewhat reluctantly, after. Although, he is away
22 a lot, did acknowledge knowledge of the parties, but
23 his -- when he was being questioned on the death penalty,
24 I think his final word was if he had found someone, that
25 he believed in eye for an eye and life for life. And
26 that if he had found someone guilty, life for life would
27 be the sentence he would impose.

28 MR. EVANS: No, sir, that is not. She could
29 have followed-up on that question, but she did not. He

1 said he believed in an eye for an eye. He also said he
2 could be fair and impartial. He could be fair to the
3 defendant. He would make a decision based upon the
4 evidence in the case. An eye for an eye can mean a lot
5 of things. It can mean if somebody is found guilty, they
6 should be convicted.

7 MRS. STEINER: If the Court please, I followed
8 up on an eye for an eye and asked --

9 THE COURT: My recollection of what he said was
10 that he would be fair and impartial, that he would
11 consider both sentencing options, and that his personal
12 view would not enter into the decision making on what the
13 appropriate sentence would be.

14 I can look at his testimony tomorrow but my
15 recollection is that there is no grounds right now for
16 striking him for cause. I will, as I say, revisit the
17 issue when I have the rough draft of the transcript
18 available.

19 MRS. STEINER: Thank you, Your Honor. So you
20 reserving -- you are not ruling on that one at this
21 point.

22 THE COURT: Correct.

23 MRS. STEINER: Thank you, Your Honor.

24 Juror 67, Mr. Amason, his, his testimony -- I'm
25 sorry. Let me step back.

26 Juror 54 we would strike. When she was discussing
27 mitigation, she said that her feelings -- she talked
28 about feelings of grief she had had when she learned her
29 friend Bobo -- I think she attended the funeral. And,

1 and I think I'm right about her, that she -- that those
2 senses of grief would well up if she had to look at the
3 pictures. She couldn't check those at the door. There
4 were jurors who said they could.

5 But the other thing is if, in fact, she is a juror
6 who actually attended the funeral -- this individual,
7 again, I would think the implied bias of having sat and
8 mourned the loss of someone at their funeral is enough
9 for this Court under both *Murphy*, *Reynolds* and *Taylor* to
10 take the expression of an ability to be impartial as an
11 expression of a hope that simply can't be realized. And
12 the Court under the Sixth Amendment does need to ensure
13 the jury and, and excuse this juror from participating
14 despite her best intentions.

15 MR. EVANS: Your Honor, the only person talking
16 about grief with that juror was the defense attorney.
17 She kept on and on and on talking about grief. The juror
18 said that she would not consider that. It wouldn't have
19 any bearing on her decision in the case. She kept trying
20 to say that she was grieving and it would affect her, but
21 the juror said it wouldn't.

22 THE COURT: I -- I mean I have nothing written
23 by her name that indicates that she said anything other
24 than she would be completely fair and impartial. That
25 anything she heard outside the courtroom would not be a
26 consideration in deliberating on a verdict. She also
27 said that she didn't have any fixed opinion about what
28 the appropriate sentence would be.

29 So I do not see any grounds for cause. Certainly,

1 the State -- I mean if the defense chooses to
2 peremptorily strike her when you use your peremptory
3 strikes that, that would be something. But there is no
4 grounds for cause here.

5 MRS. STEINER: Thank you, Your Honor.

6 Juror Number 67. In the course of the conversation
7 with him regarding considering mitigation in response to
8 our -- my questions concerning -- particularly
9 considering mitigation, dealing with matters unrelated to
10 the crime itself, before and after, he said I am not
11 going to consider anything before or after the crime. In
12 the context of that, I believe that the Court -- that,
13 that mitigation in this context does require being able
14 to at least consider factors other than the facts of the
15 crime. And we would move to strike him under *Morgan*
16 *versus Illinois* and the other cases cited in brief, the
17 *Smith* and *Abdul-Kabir* cases. He simply will not consider
18 matters before and after. And the Supreme Court has now
19 spoken thrice on the fact that the broad scope -- I think
20 Your Honor tried to instruct him about that, but his
21 definitive response at the end was he couldn't consider
22 things before and after.

23 MR. EVANS: Your Honor, my memory of what was
24 said was that he was confused about the question. When
25 the Court asked him if he would consider everything that
26 the Court told him to consider, including those things,
27 he said that he would.

28 THE COURT: That's my recollection.

29 And you were asking him some of the most confusing

1 questions. I couldn't understand on a good many of the
2 questions you were asking these potential jurors what you
3 were talking about. And he certainly expressed that he
4 didn't understand.

5 But I know that he definitively stated when it got
6 down to me asking him the question about whether he would
7 lay aside any facts and base the verdict on the evidence
8 presented, he said yes. Then when he was asked if he
9 would listen to the facts and the evidence during the
10 sentencing phase, if it got to that point, and would
11 listen to the instructions of Court and then make a
12 decision, he said yes.

13 He indicated that he did not have any fixed opinion
14 about what the appropriate sentence would be. And
15 certainly, if he ends up on the jury the Court will be
16 instructing him on how he should deliberate on the
17 evidence. So I do not see any reason for Mr. Amason, to
18 be struck for cause.

19 MRS. STEINER: Thank you, Your Honor.

20 Your Honor, may I remain seated while I do these or
21 would you like me to stand?

22 THE COURT: You can stay seated.

23 MRS. STEINER: Thank you.

24 The next one would be Juror 69, I'm sorry, 69, Billy
25 Carpenter. His -- again, his testimony was that he
26 attended the funeral of Bobo Stewart, and he was friends
27 with Randy Stewart. I think, again, we have a situation
28 of implied bias because of personal participation in the
29 ritual surrounding the death of one of the victims in

1 this case. And that under *Murphy* and *Reynolds* his --
2 this Court must go beyond an assurance out of his mouth
3 and treat it as an aspiration. And that under the Sixth
4 Amendment the juror's assurances of fairness are not
5 sufficient to protect the defendant's right to a fair and
6 impartial juror under *Irvin versus Dowd*, and as well as
7 this court, the Mississippi Supreme Court precedent.

8 MR. EVANS: His only involvement, Your Honor,
9 he said he knew him. He was only -- he was an honorary
10 pall bearer with the rest of the ball team.

11 THE COURT: No, that is not the one we are
12 talking about.

13 MR. EVANS: That is not the one?

14 THE COURT: Mr. Carpenter is a 56-year-old man.

15 MR. EVANS: Oh, okay. Okay. Yeah, he didn't
16 even remember whether he had been or not. He said he may
17 have. That was his only involvement. He said that he
18 could be completely fair and impartial.

19 THE COURT: I agree. I wrote down that he said
20 he didn't even know if he went to the funeral or not. So
21 what -- your characterization that he said he went to the
22 funeral is, is not correct. He said he didn't know if he
23 went or not. And he said nothing about the facts or
24 circumstances of the cases caused him to form an opinion
25 as to guilt or innocence, that he would lay aside
26 anything he heard by word of mouth or reading the
27 newspaper and base his decision strictly on the evidence
28 presented here in court.

29 I have no reason to trust the honesty of his

1 testimony and will deny that one for strike -- that one
2 for cause.

3 MRS. STEINER: Thank you, Your Honor.

4 The next cause strike would be Venire Member,
5 Prospective Juror Number 72, Julian Colbert. Her
6 testimony was that she could set aside what she had read
7 on the internet, on the *Clarion Ledger*, etc., etc., but
8 she said she actually attended trials three and four.

9 And I believe that means she has now heard the
10 evidence inside the courtroom. There was no questioning
11 by the Court and State about that. So we would move that
12 she be struck for having influence within the courtroom
13 from the prior trials. And I believe that simply
14 whatever assurances quite -- and she wasn't forthcoming
15 with the Court when the Court asked about it. She talked
16 about newspapers. It was only I had no idea.

17 MR. HILL: She said she was an avid paper
18 reader.

19 MRS. STEINER: But her actual attendance at two
20 prior trials, I believe can -- cannot be ignored, under
21 the Sixth Amendment, as possibly affecting her ability to
22 treat this, this as independent proceeding, and we would
23 move that she be struck for cause.

24 MR. EVANS: Your Honor, she said -- she freely
25 admitted that she went to and participated and watched
26 two of the trials. Now, the characterization that she
27 was less than candid with the Court is completely untrue.
28 She admitted that she read the paper regularly. She saw
29 the news on it. We agree with the fact that she said she

1 attended two trials. But the misrepresentation that this
2 juror was misleading is improper.

3 THE COURT: She stated affirmatively that she
4 would not consider any facts that she had heard outside
5 the presence of this courtroom if she is a juror, that
6 she would not have anything that has caused her to form
7 an opinion as to guilt or innocence. She has indicated
8 that she would wait and listen to the evidence if it got
9 to a sentencing phase. So there is nothing before the
10 Court that would indicate that Miss Colbert is a biased
11 individual or that she could not be a fair and impartial
12 juror.

13 I don't think I've questioned individually anybody
14 in this entire panel that has not heard about the case.
15 Everybody that we have asked has heard about the case.
16 So you know, there is I don't think any possibility that
17 we could get 12 jurors out of this county that haven't
18 heard about the case. But she at this point has said
19 that there is nothing that would affect her or cause her
20 to be biased. And she stated she would be fair and
21 impartial.

22 MRS. STEINER: That's denied, Your Honor; is
23 that correct?

24 THE COURT: It is.

25 MRS. STEINER: Your Honor, our next cause
26 challenge would go to Miss Linda Martin, Juror Number 75.
27 She did state that she has an opinion regarding this
28 case. I think any juror who stated that he or she has an
29 opinion, regardless of his or her representation, is

1 excludable by the Court under the Sixth Amendment, under
2 *Murphy versus Florida* and *Reynolds versus United States*.
3 I just think that is an assurance that it can be set
4 aside, is simply an aspirational statement and not, in
5 fact, something that this Court's duty to break the Sixth
6 Amendment right of the accused, which the accused's right
7 to a Sixth Amendment jury, a fair and impartial jury,
8 that under *Murphy* and *Reynolds* that simply having this
9 opinion.

10 Now, in addition to having the opinion and saying
11 she could set it aside, this is the juror -- I'm sorry.

12 MR. HILL: Talking about Number 76.

13 MRS. STEINER: Seventy-five. No. I, I believe
14 she said she had an opinion and can set aside.

15 May I confer?

16 And that's, that's the basis for this objection.

17 MR. EVANS: She said that she could base her
18 decision strictly on the evidence in court and could
19 consider both possible penalties, had no preconceived
20 idea of what the penalty should be.

21 THE COURT: I agree with what the State of
22 Mississippi has just said. She indicated affirmatively
23 that any opinion she had would be laid aside, that she
24 would not consider any previous opinion she had. She
25 stated that her verdict would be based strictly on the
26 evidence as presented here in court, not on information
27 gathered outside the courtroom. She also indicated that
28 she had, had no fixed opinion on the appropriate
29 sentence, if it got to that point. And I trust her at

1 what she said. I mean there is no reason to doubt what
2 she has said.

3 MRS. STEINER: Thank you, Your Honor.

4 Your Honor, our next cause challenge would be Juror
5 80, Brenda Simmons. She is the lady who did become
6 somewhat tearful as she was discussing -- and I cannot
7 remember which of the victim family funerals she
8 attended. But even talking about -- when we were
9 discussing victim impact, I know she, again, aspires to
10 be fair. I think everybody who has come before this
11 Court has that aspiration. But I think that if just
12 being asked about it produces this woman to self-admitted
13 tearfulness, that she sucked it up and said she, she
14 could -- she didn't. I mean I think that emotions and,
15 again, with respect to victim impact testimony, the rule
16 of the Mississippi Supreme Court is that it may not
17 insight prejudice or undue emotion. And I believe that
18 with respect, at least, to consideration of, of victim
19 impact testimony as passionately as required by both
20 Payne and the Mississippi Supreme Court, Miss Simmons
21 simply does not meet the criteria. She -- and, and she
22 is also an attendee at the funeral.

23 MR. EVANS: Your Honor, if anything incited
24 emotion it was opposing counsel by continually telling
25 her how gruesome this crime was, how brutal the crime
26 was, how gruesome these bloody pictures were going to be.
27 And that would be true with any -- I have seen many
28 trials. And most of the trials, when jurors see pictures
29 they get upset. I think that is true in any case. And

1 only thing, if anything, that caused her any emotion was
2 the over implication by defense attorney of how gruesome
3 this crime was. We weren't arguing that. They were.

4 MRS. STEINER: Your, Your Honor, very frankly,
5 I've sat through extremely well-constructed and, and
6 powerful closings by the State saying exactly that and --

7 MR. EVANS: But not in an attempt to try to
8 inflame a juror.

9 MRS. STEINER: Whatever the attempt is this is
10 a juror who by her responses here during individual voir
11 dire displayed that, despite an attempt not to inflame.
12 She would because of her experience with respect to this
13 be inflamed.

14 MR. EVANS: And for the record, I didn't see
15 any emotion. I saw the attorney trying to say well, I
16 don't want you to be upset and things like that, and she
17 said I'm fine.

18 MRS. STEINER: I, I think she said she was
19 tearing up a little. She then recovered herself.

20 MR. EVANS: I didn't hear that.

21 THE COURT: I am going to allow her for cause.
22 I saw tears when she was being questioned about it. I
23 think if the mere asking about the case would reduce her
24 to tears, then I think that would show an indication that
25 she would have real difficulty being fair and impartial.

26 MRS. STEINER: Actually, this -- the next one I
27 have on my list is 93, Miss Marjorie Pearson. I thought
28 her ultimate response was that she could not sit in
29 judgment. I was a little surprised that wasn't on the

1 Court's preface.

2 MR. EVANS: I agree.

3 THE COURT: She did say that, and I overlooked
4 that one. I, I -- she definitely said that. I think we
5 have all marked our notes up so many times it is
6 difficult to, to read some of them. But she definitely
7 said that, and I agree with that one for cause.

8 MRS. STEINER: In fact, my note taker kept
9 arguing with me that she hadn't already been struck.
10 Thank you, Your Honor.

11 The next cause challenge we would have is to Mr.
12 Golding. Again, under the motions of implied bias and
13 *Murphy* and *Reynolds* and *Irvin* versus *Dowd*, under the
14 Sixth Amendment right to an impartial jury, he expressed
15 that he had a fixed opinion. And I know he expressed his
16 aspirations that it could be changed, and that he could
17 obey the Court's rulings. But I believe this is a case
18 where once again the juror's assurances of ability to set
19 aside a fixed opinion at present simply are insufficient
20 to meet the requisite of the Sixth Amendment fair trial,
21 and we would therefore move to strike Juror 107 as well.

22 MR. EVANS: Your Honor, he said specifically he
23 would make his decision strictly on the evidence and he
24 had no doubt that he could do that.

25 THE COURT: That is what he said. And there is
26 nothing that indicates that he will do anything other
27 than base the decision on the verdict -- I mean the
28 verdict on the evidence as presented. He said he would
29 lay aside any outside facts and base his decision on the

1 evidence. And so I will deny that one.

2 MRS. STEINER: Okay. Juror 108, Your Honor.
3 This one of the person's self-characterized as the best
4 friend of the person -- one of the victims in this case
5 He was a 17-year-old boy. He remembers 16 years later
6 that he was an honorary pall bearer. His -- if ever
7 there is a case in which this Court's duty to protect the
8 Sixth Amendment right to resolve questionable issues in
9 favor of impartial jurors, I, I think -- I just think
10 that despite his protestation that, that he could be
11 fair, he is real close. He is tantamount, I would say.

12 I know teenage friendships, especially team sport
13 friendships are very fraternal, very close. This is
14 tantamount to having someone who at the time was a
15 brother in, in their activities whom he characterized as
16 a best friend. This is not like Mr. Carpenter where he,
17 I agree, although he attended the funeral, had done so
18 more out of courtesy as a fellow baseball vet. This is a
19 teammate. This is tantamount to a brother.

20 I think he is aspiring to fairness. I think that if
21 there's anybody under *Murphy* and *Reynolds*, this Court
22 needs to say I am going to excuse you because of this
23 relationship. This is the juror who needs to go, and it
24 will be reversible error if he is not struck.

25 MR. EVANS: Your Honor, on this one, very
26 clearly he said that he was there with the team as an
27 honorary pall bearer. I think the Court can take into
28 consideration his demeanor. He was as positive as any
29 juror that I have ever seen that it would have absolutely

1 no affect on him. He would come in here and strictly
2 listen to the evidence and base his decision on nothing
3 else.

4 THE COURT: I am going to allow this one for
5 cause. I agree with the defense. I don't think -- when
6 you characterize somebody as your best friend, I don't
7 think you could then sit in judgment on the person
8 charged with murdering your best friend. I think that he
9 believes he could, but I think that would require super
10 human ability and emotion that I just do not think is
11 possible.

12 So for that reason, again, you know, I mean he said
13 it would have -- the death had a profound effect on him.
14 They were very close friends. And he has formed an
15 opinion of the case. He was a honorary pall bearer. He
16 was a classmate of Mr. Stewart. And I just do not think
17 it would be, you know, humanly possible to lay all those
18 facts aside.

19 MRS. STEINER: Your Honor, and I don't want to
20 waive the possibility that in this tangle I have missed
21 something else that I should have done.

22 But the last one I have before the Court tonight is
23 Juror 111, who is Brooks Jones. He is actually -- I mean
24 this is *Taylor versus State*. He is a close, 25 years
25 brother-in-law to an employee of the district attorney's
26 office, Miss Margie. I think he just assumed everybody
27 understood and knew that. You know, he didn't put down
28 on his questionnaire. I mean it's so obvious.

29 THE COURT: There wasn't any place on the

1 questionnaire that asked.

2 MRS. STEINER: For law enforcement.

3 THE COURT: Well, she is not in law
4 enforcement.

5 MRS. STEINER: Okay. Thank you, Your Honor. I
6 mean I don't think he meant to conceal it. I think he
7 just assumed everybody had to know it.

8 This, this has been a relationship for 25 years.
9 And frankly, you know, I, I don't think he was being
10 concealing. I just think it was so self-evident. And
11 this is the situation where the brother, a man who is a
12 brother of an A.D.A. and a sister who is employed with
13 A.D.A., he said it wouldn't affect. And the Supreme
14 Court wrote in reversing because that juror had not been
15 struck for cause, we must endeavor to ensure that every
16 defendant receives a fair trial, free of implied bias.
17 And they found that the relationship alone, despite
18 eschewing any bias resulting from it, did require the
19 excusal of that juror notwithstanding his protestation
20 of neutrality.

21 MR. EVANS: Your Honor, this is not an A.D.A.
22 It is not someone that is going to be trying to argue the
23 case or put on any type of evidence in the case. It is
24 only an employee of the office. That is a victim
25 assistance coordinator. He has never talked to her about
26 the case. He has no knowledge of anything that she knows
27 about the case.

28 And it's similar to *the Vale* case in that there was
29 a relative of a prosecutor in that case and the Supreme

1 Court said it didn't matter, because they didn't know
2 anything about it and hadn't ever talked to them about
3 the case.

4 THE COURT: I do not see Mr. Jones' situation
5 to be similar to the situation where an assistant
6 district attorney's brother being on a panel. Mrs.
7 Scruggs is not in law enforcement. She is employed as a
8 victim's assistance coordinator.

9 I asked Mr. Jones, even though you objected. But I
10 asked him. I said would you be concerned that Miss
11 Scruggs' job might be on the line if you were to rule
12 against the prosecution. And I think I could tell by his
13 answer that he found my mere question to be somewhat
14 absurd. He definitely said that it would not influence
15 him in any way.

16 So I do not see any reason -- you know, if Miss
17 Scruggs were a prosecutor, and he was her brother. But
18 he is not even her brother. He is her brother-in-law.
19 He happens to be married, I believe, he said to her
20 sister. There is nothing that would indicate any bias or
21 anything, and he stated affirmatively that it would not
22 be an influence on him.

23 MRS. STEINER: Thank you. Thank you, Your
24 Honor.

25 I am reminded that on the list I had written up,
26 there is another number here. Number 120. Juror, juror
27 Steven Bennett. He also did say that, however briefly,
28 and in the course of his duties as guard, he was in the
29 courtroom during the testimony in the trial two years

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT # : 2003-0071-CR

1 ago, which I assume he means the one in 2008. And I
2 believe that that in and of itself does render him
3 unable -- I mean -- it's not just that he read, read
4 publicity.

5 He heard actual testimony, if only for a few
6 minutes. And that that -- and he was a court officer
7 during that. He testified it was during his official
8 duties. So he was acting as a court officer. I think he
9 also testified that he transported the defendant, but
10 that wouldn't make any difference. But taken as a whole,
11 his connection to this trial in a capacity other than an
12 unattached individual, I think, renders him unable to
13 serve, whether by implied bias or under the notions of
14 *Murphy versus Florida*, where the juror's assurances that
15 all this could be set aside, there is too much there.

16 MR. EVANS: In response, Your Honor, he said he
17 may have been in the courtroom for 10 minutes. And there
18 was no indication of anything that he heard, just that he
19 may have been in the courtroom for 10 minutes.

20 THE COURT: That's exactly what I wrote. He
21 said two years ago he may have been in here for 10
22 minutes. He said that nothing that he has heard caused
23 him to form any opinions as to guilt or innocence of Mr.
24 Flowers. He said that he would lay aside anything he has
25 heard in the past. I think he said he hadn't heard much.
26 And given he is just 24, when the case occurred, the
27 original incident occurred in 1996, heck, he wasn't even
28 but eight years old when it happened. So he stated very
29 affirmatively that that would not be a factor or

1 influence him in his deliberation.

2 If you will bring the jury in now.

3 (THE PROSPECTIVE JURORS RETURNED TO THE COURTROOM.)

4 THE COURT: Court will come back to order. And
5 we are going to recess for the day, but there are a few
6 people whose names I call who will not have to come back
7 tomorrow. If your name is not called, you will need to
8 be back.

9 But Number 57, Mr. Scott, you do not have to come
10 back tomorrow. You are excused.

11 And then Number 65, Miss Woods, you are excused.

12 Number 76, Mr. King, you are excused.

13 Number 80, Miss Simmons, you are excused.

14 Number 92, Miss Crowley, you are excused.

15 Number 93, Miss Pearson, you are excused.

16 Number 95, Miss Crawford, you are excused.

17 Number 96, Miss Winters, you are excused.

18 Number 98, Mr. Robinson, you are excused.

19 Number 106, Miss Swindoll, you are excused.

20 Number 108, Mr. Surrell, you are excused.

21 And Number 118, Mr. Golden, you are excused.

22 Ladies and gentlemen, I'll ask you be back at 9:00
23 in the morning. And if you have not packed belongings in
24 anticipation of staying, please be sure you have those
25 tomorrow. I do anticipate that we will have a jury
26 seated tomorrow. So again, if you have not already
27 packed belongings, please do that in anticipation that
28 you might be selected.

29 During this recess, please do not discuss this case

1 with anyone or among yourselves. You can't talk to any
2 of the parties, the witnesses or anybody, family members
3 or anybody involved with the case.

4 With that, ladies and gentlemen, we will resume in
5 the morning at 9:00.

6 THE BAILIFF: Your Honor, they want to know if
7 they can bring portable DVD's.

8 THE COURT: I've got an inquiry about whether
9 jurors can bring portable DVD players if they are
10 sequestered. And I don't see any problem with a portable
11 DVD player. That is not something that they would be
12 watching that would give them any information. That is
13 so long as there is no internet capacity or any way that
14 there could be communications through this device with
15 anyone.

16 MRS. STEINER: Yes, Your Honor. I would assume
17 the bailiffs would know the contents of any DVD that came
18 in and made sure it wasn't news about the case or
19 something like that.

20 THE COURT: Well, I will -- I will instruct
21 everybody as to that.

22 MRS. STEINER: Thank you.

23 (THE PROCEEDING ON THIS DATE WAS CONCLUDED.)
24
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27
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29

1 (COURT WAS DULY OPENED ON JUNE 10, 2010.)

2 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
3 AND THE DEFENDANT WERE PRESENT. PROCEEDINGS WERE AS FOLLOWS:)

4 THE COURT: Ladies and gentlemen, we are going
5 to continue the process that we started -- I don't know
6 when we started it, but we, we have been doing it awhile
7 anyway. And so there are, you know, some more people who
8 we need to ask questions of outside the presence of the
9 others of you here.

10 And I believe, Mr. Austin is the next one.

11 So Mr. Austin, if you will come on down, please.

12 And then, ladies and gentlemen, if you will, the
13 rest of you, just step out, please.

14 MRS. STEINER: If the Court please, I have a
15 preliminary matter to bring up before we start.

16 THE COURT: Mr. Austin, if you will step back
17 out. I think we have some other matters.

18 BAILIFF: Your Honor, could I bring up
19 something before I forget to say something?

20 THE COURT: Yes, ma'am.

21 BAILIFF BROWNING: Juror Number 94, Miss Acy,
22 she said she needs to come back into the courtroom.
23 There is something that she failed to say yesterday that
24 she found out about and she needs to just come back in.

25 THE COURT: Okay. We'll have her come in in a
26 little bit.

27 BAILIFF BROWNING: Okay.

28 THE COURT: You said you had some issue.

29 MRS. STEINER: Yes, Your Honor. Although

Individual Voir Dire

1 yesterday we were attempting to get a picture of the
2 party's cause challenges, we did not think that anything
3 in the voir dire with respect to knowledge of the case or
4 death penalty or anything would justify a cause challenge
5 of any of the four Davis family members individually.
6 But we would object to this Court even attempt having the
7 parties have to strike from the panel that has four close
8 relations on it in such close sequence. It is there in
9 sequence that they could turn up in the same panel to be
10 either tendered and struck.

11 And I believe that -- frankly, we have looked. This
12 has never come before Mississippi appellate courts. But
13 the principles that people who are in close family
14 relationships are presumptively influenced by that family
15 relationship is clear from the *Taylor* case. And I
16 think -- and the fact that simply saying I won't be
17 influenced, I can set it aside is not in such instances a
18 sufficient, under the Sixth Amendment, statement. And I
19 think we would object to having to strike any panel from
20 which we would be tendered these family members as a
21 matter of Sixth Amendment impartial fair jury problems.

22 This is not anything to do with the fact this was
23 high publicity. This was a computer glitch in the
24 drawing of the venire. We had the problem of relatives
25 on the jury in the last trial, but they were other ends
26 of the venire. And we never actually reached the second
27 relative after the first one had been tendered.

28 And we would move that either some sort of -- form
29 of lot process be done prior to tendering the panel to

1 eliminate three of the four family members could be
2 tendered the same panel. Or at the very least, at the
3 point at which the first such family member is tendered
4 by, you know, comes up in a -- in a -- in a group from
5 which either the State will have to tender or the defense
6 will have to strike, that the other members be dropped to
7 the heel of the jury so that we can avoid this problem.

8 Because I think this is notwithstanding anything --
9 I mean either this is just -- this is just a totally
10 inappropriate, influence in the jury room from outside
11 the family relationships and the ties that bind in that
12 and that does need to be addressed by the Court. And we
13 would object to having to strike from a jury or having
14 the final venire have these four family members in a
15 place where they could be tendered in the same panel for
16 the consideration of the other parties.

17 MR. EVANS: That is completely ridiculous.
18 There is absolutely nothing in the record that shows any
19 reason to strike any of these jurors. If the defense
20 doesn't like them, they can strike them on their
21 peremptories if they have a reason to. But there is
22 absolutely nothing in the record to strike any of them.

23 THE COURT: Let me say it wasn't a computer
24 glitch, as you referred to it. Because a computer glitch
25 would indicate there was some malfunction in the
26 computer, and that was not the case. They were randomly
27 selected and their names came up, just like the names of
28 the other 496 people who -- or 596 who were asked to be
29 here. So there is no glitch of any kind.

1 MRS. STEINER: A function of the computer, the
2 existence of the computer random draw.

3 THE COURT: Also, you know, a, a strike for
4 cause is, is required to be something that a juror has
5 said during the voir dire that would indicate some bias
6 or prejudice or preconception that cannot be set aside.
7 All of those individuals have clearly stated that they
8 would judge the case independently of each other. I
9 didn't get any -- I didn't get any impression at all that
10 any of them would do anything other than judge it
11 independently, and I trust them at their word.

12 You know, you have got 12 peremptory strikes that
13 are available to exercise, and that is what peremptory
14 strikes are for, if you feel like you don't want somebody
15 that is a relative of somebody else on the panel. But
16 there is absolutely no grounds, no -- I have never seen
17 any case law or read anything that would indicate that.
18 And I have actually had cases before where, you know,
19 parent and child sat on juries at the same time.

20 It doesn't happen often, but, you know, when we have
21 a random -- and I wouldn't have it any other way. We
22 have to have random selection of the jury. The old days
23 when the supervisor used to pick the juries is long since
24 passed, as it should be. But there is just absolutely no
25 basis for granting that motion. So it's denied.

26 MRS. STEINER: Thank you, Your Honor.

27 This is just a technical thing. The -- during the
28 voir dire and jury striking process when the witnesses
29 have not been there, defense has been using the defense

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1 witness room as its meeting place and storage place.
2 Miss Martin is the keeper of the keys on that, and she
3 understandably does not want to relinquish that to
4 anybody. I am just wondering if some arrangements can be
5 made, particularly over the lunch hour, when Miss Martin
6 and her staff are rotating lunch that keys could be made
7 available in the office for a bailiff to unlock the door,
8 should that become necessary. I think there was a brief
9 delay when we came back from lunch yesterday because --

10 THE COURT: You know, I have to wait for the
11 judge's chambers to be unlocked too. I mean a brief
12 delay, you know, is not a problem. But I mean -- I
13 certainly think that you can be accommodated in that
14 fashion. But, you know, I don't think that it would have
15 any bearing on the way the trial is proceeding. But they
16 lock these doors to keep people from straying in and
17 taking belongings that --

18 MRS. STEINER: Your Honor.

19 THE COURT: -- you know, that are valuable.

20 MRS. STEINER: Yes. Thank you. And
21 absolutely --

22 THE COURT: If you had something stolen --

23 MRS. STEINER: -- we like having the door
24 locked.

25 THE COURT: -- then you would be complaining,
26 because you would have something stolen out of there.
27 And justifiably so.

28 MRS. STEINER: And, Your Honor, we are very
29 grateful that we have a secure and private place to store

1 our things and to meet. We, we -- that is a facility
2 that we are greatly -- I am just saying for the
3 convenience of the Court if, you know, we could make sure
4 that the keys are in the building at any time that, that
5 we may require them.

6 THE COURT: Well, if you can give the clerk
7 some estimation of when y'all leave and what time -- when
8 you leave, what time you will be back.

9 MRS. STEINER: We certainly will.

10 THE COURT: Then that can possibly -- that is
11 something you can work out with the clerk. I don't think
12 it needs a court order. But as I say, if you give them
13 some idea of when you will be back, I think that will
14 take care of that situation.

15 MRS. STEINER: Right. Thank you.

16 Your Honor, I would note Miss Mary went running
17 after a juror who absent-mindedly left her keys on the
18 front bench.

19 Did Juror 17 get her keys back from you?

20 BAILIFF BROWNING: Yes, she did.

21 MRS. STEINER: Okay. Thank you.

22 And, Your Honor, in addition to Juror Number 94,
23 prior to Your Honor making a final ruling with respect to
24 our cause challenge to Juror 51, I would like him
25 recalled for some questions again. This may be my own
26 obvious shortcomings as a lawyer in the conduct of voir
27 dire, but he was one of the jurors where Your Honor -- I
28 had another area that was of essence to voir diring this
29 juror that I simply did not pursue. I didn't even ask

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1 the Court to do so at the time, as I did with Mr.
2 Carpenter, I think it was. But it is an essential area
3 of voir dire, and I would ask he be recalled before --
4 that's Burrell Huggins, prior to -- for questioning in
5 one very specific area on -- depending on his responses,
6 it could be one question or --

7 THE COURT: Well, if we are going to have him
8 brought in, then I think it is appropriate to also bring
9 in these other three that I was considering. Number 62,
10 48 and 51 were all jurors that, I think, two of them
11 y'all moved to strike for cause and one of them the State
12 of Mississippi moved to strike for cause. But if we are
13 going to --

14 MRS. STEINER: Well, Your Honor, it's, it's
15 continuing to pend. The only one -- I mean I think I
16 have no other questions for any of these others.

17 THE COURT: Well, I mean what question did you
18 not ask that you should have asked?

19 MRS. STEINER: It has to do with the fact that
20 he was in a prior venire. And I, I understood one of his
21 responses to be really all he knew about this was what he
22 learned when he walked into the courtroom for this voir
23 dire.

24 THE COURT: When was he voir dired in the past?

25 MRS. STEINER: He was a juror -- he was
26 summonsed in connection with the 2008 -- yeah, the
27 September 2008. He was specifically voir dired in that.
28 He filled out a juror questionnaire and submitted it. He
29 was voir dired, was present and responded to voir dire

1 questions with respect to knowing Miss Rigby and his
2 wife's having acquaintance with Miss Rigby at Page 82 and
3 83 of the voir dire transcript.

4 THE COURT: Let me just say this. If --

5 MRS. STEINER: And --

6 THE COURT: If I look at and, and if what he
7 said is not justification for cause, because you made --
8 you have got a pending strike for cause -- challenge for
9 cause already.

10 MRS. STEINER: I understand, Your Honor.

11 THE COURT: And if I grant that then there
12 won't be any necessity for asking.

13 MRS. STEINER: Absolutely.

14 THE COURT: So I'll wait and then, you know,
15 because the court reporter's close to having that done or
16 at least calling up on the computer where I can look at
17 the ones I had questions about.

18 MRS. STEINER: Okay.

19 THE COURT: We'll do that if it comes -- if, if
20 he is not stricken for cause.

21 MRS. STEINER: Thank you.

22 MR. EVANS: Your Honor, does that mean that any
23 that we have that we want to ask other questions too we
24 can bring back in also?

25 THE COURT: I think due to the uniqueness of
26 having him voir dired in the past and in fairness, I am
27 going to allow a couple of questions about him that are
28 going to be strictly limited to that issue.

29 I am going to go on with Mr. Austin. We will have

1 Miss Acy come in, but we will go ahead with Mr. Austin
2 right now.

3 (JUROR NUMBER 121, MICHAEL AUSTIN, ENTERED THE COURTROOM
4 AND WAS SEATED ON THE WITNESS STAND.)

5 THE COURT: Mr. Austin, what we are doing now
6 is we are asking questions outside the presence of other
7 jurors on a couple of issues, because we just felt it
8 appropriate to ask them privately.

9 And first, I want to know about knowledge of the
10 case, if you have heard anything about -- I mean you're a
11 businessman.

12 JUROR MICHAEL AUSTIN: Yeah.

13 THE COURT: And on the board of alderman.

14 JUROR MICHAEL AUSTIN: Right.

15 THE COURT: So I would assume there would have
16 been a situation where you would have heard about this
17 case.

18 JUROR MICHAEL AUSTIN: Well, yeah, just like
19 most folks who live here in town.

20 THE COURT: What sources have, have you seen
21 things about this case?

22 JUROR MICHAEL AUSTIN: Just people talking and
23 newspaper and, you know, stuff like that.

24 THE COURT: And I know you are on the board of
25 alderman. How long have you been on the board?

26 JUROR MICHAEL AUSTIN: About two years.

27 THE COURT: Okay. So you were not a board
28 member back in 1996.

29 JUROR MICHAEL AUSTIN: No.

1 THE COURT: And have you ever had an occasion
2 where through your capacity as -- or through your
3 capacity or not in your capacity as an alderman to
4 discuss it with the chief who was, I guess, the first man
5 on the scene.

6 JUROR MICHAEL AUSTIN: No. I never talked with
7 him about it.

8 THE COURT: And is there anything that you have
9 heard about the case or read or seen that has caused you
10 to form an opinion as to the guilt or innocence of Mr.
11 Flowers?

12 JUROR MICHAEL AUSTIN: You know, everybody may,
13 may, you know, may, you know, from it. Because there has
14 been previous trials and stuff. And everybody may, you
15 know, know about that and sort of have an opinion. But
16 you still -- you go by what's presented to you here,
17 facts.

18 THE COURT: So could you lay aside any facts
19 you have heard outside the court and base your decision
20 strictly on what is presented here in court?

21 JUROR MICHAEL AUSTIN: I could.

22 THE COURT: And if you heard something outside
23 the courtroom in the past and you don't hear it, you
24 know, during the course of the trial --

25 JUROR MICHAEL AUSTIN: Right.

26 THE COURT: -- would that be an influence or in
27 anyway come into your deliberations if you were a juror
28 on the case?

29 JUROR MICHAEL AUSTIN: No, sir.

1 THE COURT: Next involves the possible sentence
2 that could be imposed. What happens in this type case is
3 the State of Mississippi, if they prove Mr. Flowers
4 guilty beyond a reasonable doubt at the guilt phase, then
5 we would move into a penalty phase. The State is seeking
6 the death penalty. The State at that time would be
7 putting on aggravating factors, which would show in the
8 State's mind why the death penalty would be appropriate.

9 JUROR MICHAEL AUSTIN: Right.

10 THE COURT: And Mr. Flowers would be putting on
11 evidence called mitigating factors that would show in his
12 mind why the death penalty should not be imposed. That
13 could be any number of issues from his childhood on up to
14 the present.

15 JUROR MICHAEL AUSTIN: Right.

16 THE COURT: And at that time the jury would
17 deliberate to decide what the appropriate verdict would
18 be. If it is not the death penalty, it would be life in
19 prison without parole.

20 JUROR MICHAEL AUSTIN: Right.

21 THE COURT: Now, I want to know, as you sit
22 here today could you consider both of those as sentencing
23 options?

24 JUROR MICHAEL AUSTIN: I could consider both of
25 them.

26 THE COURT: And do you have any preconceived
27 idea of what you think an appropriate sentence would be?

28 JUROR MICHAEL AUSTIN: I don't. I don't.

29 THE COURT: So will you remain completely

1 open-minded as to both sentencing options?

2 JUROR MICHAEL AUSTIN: I will.

3 THE COURT: Mr. Evans.

4 MR. EVANS: Thank you, Your Honor.

5 Good morning, Mr. Austin.

6 JUROR MICHAEL AUSTIN: How you doing?

7 MR. EVANS: Now, like we have told you on voir
8 dire earlier, what we are attempting to do is get a jury
9 that can come in here, completely disregard anything that
10 they may have heard.

11 JUROR MICHAEL AUSTIN: Right.

12 MR. EVANS: Anybody that they may know, not
13 lean toward one side or the other. But base their
14 decision strictly on what they see and hear here in
15 court.

16 JUROR MICHAEL AUSTIN: Right.

17 MR. EVANS: You are telling us you can do that.

18 JUROR MICHAEL AUSTIN: I can.

19 MR. EVANS: And as far as the sentence, you
20 know from what the judge has told you, you can't even
21 consider what penalty should be appropriate until the
22 judge tells you to think about that.

23 JUROR MICHAEL AUSTIN: I understand.

24 MR. EVANS: What that means is in the first
25 phase of the trial, the jury is not even supposed to
26 think about what the penalty should be.

27 JUROR MICHAEL AUSTIN: Right.

28 MR. EVANS: Even if he is convicted in the
29 first trial, that shouldn't have any bearing on the

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1 penalty. The only time that you would -- the jury should
2 consider the penalty is after the second phase is over,
3 we have put on our proof, the defense has put on their
4 mitigation, the judge has told you what the law is. Can
5 you tell us that you could wait until then to even think
6 about what penalty --

7 JUROR MICHAEL AUSTIN: Yeah. I could.

8 MR. EVANS: And in mitigation the defense will
9 be able to tell the jury about anything related to the
10 defendant's life. That can be childhood. It can be
11 after the crime was committed. It can be almost
12 anything. And will you tell us that you will openly
13 consider what we put on, openly consider what they put
14 on?

15 JUROR MICHAEL AUSTIN: Right. I can.

16 MR. EVANS: And then only make your decision.

17 JUROR MICHAEL AUSTIN: I can.

18 MR. EVANS: Tender the witness, Your Honor.

19 MRS. STEINER: Your Honor, I believe he is a
20 juror not a witness.

21 Good morning, Mr. Austin.

22 JUROR MICHAEL AUSTIN: Good morning.

23 MRS. STEINER: Your grandchild was born healthy
24 yesterday?

25 JUROR MICHAEL AUSTIN: Oh, yes.

26 MRS. STEINER: Congratulations. So you have no
27 worries --

28 JUROR MICHAEL AUSTIN: No.

29 MRS. STEINER: -- about your family.

1 JUROR MICHAEL AUSTIN: No. No.

2 MRS. STEINER: The -- I see you run a car
3 dealership.

4 JUROR MICHAEL AUSTIN: Right.

5 MRS. STEINER: Have you heard talk from the
6 customers and people that work at your car dealership
7 regarding this matter?

8 JUROR MICHAEL AUSTIN: Over the years. Sure.

9 MRS. STEINER: The day it happened, did you
10 learn about it immediately?

11 JUROR MICHAEL AUSTIN: Immediately.

12 MRS. STEINER: How did you hear about it?

13 JUROR MICHAEL AUSTIN: Somebody called.
14 Telephone.

15 MRS. STEINER: All right. Was anybody at the
16 car dealership personally involved with any of the people
17 who had died at Tardy's? Did anybody have to take off
18 because of grief or anything like that?

19 JUROR MICHAEL AUSTIN: No.

20 MRS. STEINER: All right. Did -- when did you
21 learn that your friend, Frank and Roxanne's
22 mother-in-law, mother, Miss Tardy, was one of the people
23 who had died?

24 JUROR MICHAEL AUSTIN: First -- when I first
25 heard about it.

26 MRS. STEINER: That's who you heard about it
27 from.

28 JUROR MICHAEL AUSTIN: No, I didn't hear it
29 from them. That is when I learned that she was one of

1 them.

2 MRS. STEINER: All right. And you also learned
3 that a member of the whole Rigby family that you are
4 friends with, Miss Carmen, had -- was one of the ones who
5 died.

6 JUROR MICHAEL AUSTIN: Right.

7 MRS. STEINER: And that your friend Randy
8 Stewart's son, Bobo, was at that --

9 JUROR MICHAEL AUSTIN: Right.

10 MRS. STEINER: -- point gravely wounded.

11 JUROR MICHAEL AUSTIN: Right. Right.

12 MRS. STEINER: Have you ever with any of these
13 individuals had any kind of conversations concerning
14 the -- that they lost their loved one in this incident?

15 JUROR MICHAEL AUSTIN: Conversation that they
16 lost their loved one?

17 MRS. STEINER: Any conversations pertaining to
18 this case or their loss related to it?

19 JUROR MICHAEL AUSTIN: Well, my, my wife has
20 talked, talked with Roxanne in different -- you know, but
21 not really about, you know, the facts or anything. Just
22 that they -- in 1999 my wife's mother died in a car
23 accident.

24 MRS. STEINER: I'm sorry.

25 JUROR MICHAEL AUSTIN: And so Roxanne, you
26 know, kind of talked to her as a friend, you know, about
27 losing your mom and stuff.

28 MRS. STEINER: And so she was her -- they
29 actually talked about the processes a sudden loss of a

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1 relative --

2 JUROR MICHAEL AUSTIN: Right.

3 MRS. STEINER: Grief.

4 JUROR MICHAEL AUSTIN: Right. Grief. Grief.

5 MRS. STEINER: And, you know, Miss Roxanne is
6 going to be a witness, probably --

7 JUROR MICHAEL AUSTIN: Yeah.

8 MRS. STEINER: -- at the fact stage --

9 JUROR MICHAEL AUSTIN: Um-hum.

10 MRS. STEINER: -- and at the penalty phase.

11 JUROR MICHAEL AUSTIN: Right.

12 MRS. STEINER: And having grief counseled your
13 wife about the very thing she is going to be testifying
14 at the penalty phase, that would, of course, bring back
15 your own emotions of the loss of your own mother-in-law,
16 would it not?

17 JUROR MICHAEL AUSTIN: I don't think so.

18 MRS. STEINER: You were grieved at the loss of
19 your mother-in-law.

20 JUROR MICHAEL AUSTIN: At the time, yeah.

21 Yeah, you know.

22 MRS. STEINER: And certainly your wife --

23 JUROR MICHAEL AUSTIN: Right. Right.

24 MRS. STEINER: -- was grieved.

25 JUROR MICHAEL AUSTIN: Still does. Yeah.

26 MRS. STEINER: Did you attend the funeral of
27 your friend Frank and Roxanne's mother, Miss Bertha?

28 JUROR MICHAEL AUSTIN: No, I didn't.

29 MRS. STEINER: Did you go to your friend Randy

1 Stewart's funeral?

2 JUROR MICHAEL AUSTIN: I went to visitation.

3 MRS. STEINER: To visitation. And what about
4 any of Miss Carmen's?

5 JUROR MICHAEL AUSTIN: No.

6 MRS. STEINER: And did you send notes of
7 condolence to anybody?

8 JUROR MICHAEL AUSTIN: No.

9 MRS. STEINER: Did you offer personal
10 condolence at the visitation to Frank and Roxanne?

11 JUROR MICHAEL AUSTIN: If I saw them, yeah.

12 MRS. STEINER: To, to Randy Stewart.

13 JUROR MICHAEL AUSTIN: Yeah. Yeah. Not the
14 Stewarts. I didn't see any of them any time after that.

15 MRS. STEINER: But you signed the book and that
16 sort of thing.

17 JUROR MICHAEL AUSTIN: I what?

18 MRS. STEINER: You signed the book at the
19 visitation?

20 JUROR MICHAEL AUSTIN: I don't remember if I
21 did or not. It was a lot of people there and a long
22 line.

23 MRS. STEINER: Did you attend the -- do you --
24 do you have anything -- did you attend the fundraiser
25 held a couple of months after this in Kosciusko at which
26 Bennie Rigby's gospel group performed, fundraiser for the
27 reward fund in this matter?

28 JUROR MICHAEL AUSTIN: I don't -- I don't
29 remember.

1 MRS. STEINER: You don't remember. You could
2 have done.

3 JUROR MICHAEL AUSTIN: I don't think so.

4 MRS. STEINER: Now, His Honor has explained you
5 do have to consider mitigating evidence, and you said you
6 can.

7 JUROR MICHAEL AUSTIN: Yeah.

8 MRS. STEINER: He has talked about the scope
9 can be anything from before this to after this. Do you
10 understand that it may not -- that it could have nothing
11 to do with the specifics of this crime? That
12 mitigation can --

13 JUROR MICHAEL AUSTIN: Yeah.

14 MRS. STEINER: -- is relevant and must be
15 considered regardless of whether --

16 JUROR MICHAEL AUSTIN: Yeah.

17 MRS. STEINER: -- it has to do with specifics
18 of the crime.

19 JUROR MICHAEL AUSTIN: Right.

20 MRS. STEINER: And I assume you know that from
21 His Honor.

22 JUROR MICHAEL AUSTIN: Yeah.

23 MRS. STEINER: Have, have you been to any of
24 the other trials in this matter?

25 JUROR MICHAEL AUSTIN: No.

26 MRS. STEINER: And when -- as, as explained
27 aggravation is -- to find aggravating circumstances in
28 the death penalty it must be unanimous verdict of all 12
29 of you beyond a reasonable doubt.

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1 JUROR MICHAEL AUSTIN: Right.

2 MRS. STEINER: His Honor is going to instruct
3 you that in mitigation, it is not required that all 12 of
4 you agree either that a fact is mitigating or that a life
5 sentence is warranted. Do you understand that? That is
6 the individual juror's personal conscience.

7 JUROR MICHAEL AUSTIN: This is during the
8 sentencing phase?

9 MRS. STEINER: At a penalty phase.

10 JUROR MICHAEL AUSTIN: Okay. Yeah.

11 MRS. STEINER: All right. And that your right
12 -- you don't have to agree with anybody. Everybody goes
13 home, even if y'all don't agree, at the penalty phase.

14 JUROR MICHAEL AUSTIN: Right.

15 MRS. STEINER: Do you understand that?

16 JUROR MICHAEL AUSTIN: Yeah.

17 MRS. STEINER: Are you okay with that --

18 JUROR MICHAEL AUSTIN: Yeah.

19 MRS. STEINER: -- law? Are you able to agree
20 to disagree in respect if someone disagrees with you no
21 matter how strongly you feel?

22 JUROR MICHAEL AUSTIN: That's right.

23 MRS. STEINER: And do you expect to have that
24 same respect from another juror?

25 JUROR MICHAEL AUSTIN: Yeah.

26 MRS. STEINER: Nothing further, Your Honor.

27 THE COURT: Mr. Austin, you may step down. And
28 if you'll not talk about the case. You know, don't go
29 back and talk with your fellow jurors --

1 JUROR MICHAEL AUSTIN: Right.

2 THE COURT: -- about what we have discussed in
3 here.

4 JUROR MICHAEL AUSTIN: Right. Thank you.

5 THE COURT: We need Miss Sledge, Number 123,
6 next.

7 (JUROR NUMBER 123, SHEILA SLEDGE, ENTERED THE COURTROOM.)

8 If you will come up down, ma'am, and have a seat.

9 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

10 What we are doing now, Miss Sledge, is asking
11 questions of, of the prospective jurors outside the
12 presence of other jurors, because there are just some
13 issues we felt more appropriate to do without everybody
14 sitting here.

15 First of all concerns whether you have heard
16 anything about this case or have any knowledge about this
17 case.

18 JUROR SHEILA SLEDGE: No, sir. I don't have
19 knowledge of the case. I mean I heard about it. But as
20 far as keeping up with what goes on in a small town, I
21 have lived here, but I worked away. I work jobs that
22 curtail a lot of hours, so I don't have time to look,
23 listen. And I don't even have television. That's
24 something I don't deal with. I just -- we don't have it.
25 We don't have time to work cattle.

26 THE COURT: And has anything you might have
27 seen caused you in any way to form an opinion as to the
28 guilt or innocence of Mr. Flowers?

29 JUROR SHEILA SLEDGE: No, sir.

1 THE COURT: And could you lay aside anything
2 you might have seen or heard and just base your decision
3 strictly on the evidence here as presented in court if
4 you were called as a juror?

5 JUROR SHEILA SLEDGE: Yes, sir.

6 THE COURT: The next issue involves the
7 sentencing phase, if the trial got to the point where
8 there was a sentencing phase. What happens on a capital
9 murder case is first the jury would decide guilt or
10 innocence. If the jury found Mr. Flowers not guilty, the
11 proceedings would cease at that point. Do you understand
12 that?

13 JUROR SHEILA SLEDGE: Yes, sir.

14 THE COURT: Now, if they did find Mr. Flowers
15 guilty, then we would proceed into a sentencing phase,
16 which is a situation where the juror would determine the
17 appropriate sentence.

18 The State of Mississippi is seeking the death
19 penalty. They would put on aggravating factors, which
20 are reasons why in the State's mind the death penalty
21 would be appropriate. Mr. Flowers would then put on
22 mitigating evidence which would be reasons why he
23 believes that the death penalty should not be imposed.
24 That could be anything, you know, anything that's
25 happened at any time in his life up to and including the
26 present.

27 At that time the jury would then decide what the
28 appropriate sentence would be. If the jury found -- the
29 jury would have the option of finding that Mr. Flowers

1 should receive the death penalty. And if the death
2 penalty was not the option the jury chose, then the
3 sentence would be life in prison without parole. So as
4 you sit here today, could you consider the -- could you
5 consider imposing both the death penalty and/or allowing
6 the Court to impose the sentence of life without parole?

7 JUROR SHEILA SLEDGE: Yes, sir.

8 THE COURT: So both would be things that you
9 would consider and have an open mind to?

10 JUROR SHEILA SLEDGE: Yes, sir.

11 THE COURT: And do you have any preconceived
12 notions of what you believe the more appropriate sentence
13 would be?

14 JUROR SHEILA SLEDGE: No, sir.

15 THE COURT: Okay. Thank you.

16 MR. EVANS: Good morning.

17 JUROR SHEILA SLEDGE: Good morning.

18 THE COURT: Now, as far as the first phase of
19 the trial, what you are telling us is that you have
20 nothing, no -- nothing you have heard or no contacts or
21 anything else that would cause to you lean one way or the
22 other.

23 JUROR SHEILA SLEDGE: No, sir.

24 MR. EVANS: You would come into court, base
25 your decision of guilt or innocence strictly on what you
26 see and hear in the courtroom.

27 JUROR SHEILA SLEDGE: Yes, sir.

28 MR. EVANS: Nothing else. And you can be fair
29 and impartial to both sides.

1 JUROR SHEILA SLEDGE: Yes, sir.

2 MR. EVANS: As far as the second phase, if he
3 is convicted, we go into the sentencing phase. The judge
4 will instruct you on the law. He will tell you the
5 things that you can consider on both sides, but he'll
6 also tell you that you should consider, seriously
7 consider, everything that he allows us to put on and
8 everything that he allows the defense to put on.

9 Some of what they will put on or all of what they
10 put on, it doesn't matter, can be things about his life.
11 It can be childhood. It can be even things that he has
12 done or hadn't since this crime occurred. Can you
13 consider all of those things?

14 JUROR SHEILA SLEDGE: Yes, sir.

15 MR. EVANS: All right. And could you go into
16 that phase -- even though you had already convicted him,
17 can you go into that phase with a completely open mind
18 about the sentence until you have heard all of those
19 things?

20 JUROR SHEILA SLEDGE: Yes, sir.

21 MR. EVANS: All right. Now, I understand from
22 your questionnaire that you showed you strongly believe
23 in the death penalty. Is that you just -- that you
24 strongly believe in the law that says that both of those
25 penalties are correct?

26 JUROR SHEILA SLEDGE: Yes.

27 MR. EVANS: And it would depend on the case and
28 the facts of that case.

29 JUROR SHEILA SLEDGE: Yes, sir.

1 MR. EVANS: Nothing further.

2 MRS. STEINER: Good morning, Miss Sledge.

3 JUROR SHEILA SLEDGE: Good morning.

4 MRS. STEINER: Miss Sledge, I believe you said
5 in the -- that Friday when we were here that you have
6 served on a grand jury in the last two years, but you
7 elected not to excuse yourself.

8 JUROR SHEILA SLEDGE: Yes.

9 MRS. STEINER: Is there a reason for that?

10 JUROR SHEILA SLEDGE: No. Nothing in
11 particular. I just thought well, since you called me
12 again, I might as well just hang in there and see if you
13 quit calling me.

14 MRS. STEINER: All right. Have you -- when you
15 received the instructions from His Honor in this case
16 when you are deliberating whether or not to find Mr.
17 Flowers guilty or not guilty, they are going to be a
18 little different from the instructions you received as a
19 grand juror, and I want to make sure you understand the
20 difference.

21 You understand that as a grand juror your charge was
22 to review preliminary evidence and if there was - I can't
23 even remember the technical term now - probable cause to
24 believe that a crime had been committed and that a
25 particular individual had been the -- committed the crime
26 that you should -- you could vote and should vote to
27 return an indictment to charge that person. You
28 understand that --

29 JUROR SHEILA SLEDGE: Yes, yes, I do.

1 MRS. STEINER: -- that is a very light sentence
2 and you didn't even have to be unanimous about that.

3 JUROR SHEILA SLEDGE: Right.

4 MRS. STEINER: Here the proof is beyond a
5 reasonable doubt. You know, if you think he might have
6 done it, if you think he could have done it, you think
7 some of the evidence suggests he probably did do it, do
8 you understand what your verdict needed to be at the end
9 of the first phase of the trial? If you believed all
10 those things and you were a grand juror, how would you
11 vote? You would vote to indict; correct?

12 JUROR SHEILA SLEDGE: Yes, ma'am.

13 MRS. STEINER: How would you vote at the end of
14 the trial if you believed all those things --

15 MR. EVANS: Your Honor, that is inappropriate.

16 MRS. STEINER: I'm sorry. I'm just -- I'm
17 trying to -- you understand that it is not the same
18 standard.

19 JUROR SHEILA SLEDGE: Yes, ma'am, I understand.

20 MRS. STEINER: And you can set aside anything
21 you have absorbed about the law, what proof is required.

22 JUROR SHEILA SLEDGE: Yes, ma'am.

23 MRS. STEINER: And, now, did you say you have
24 heard talk about this case?

25 JUROR SHEILA SLEDGE: I just heard about it, as
26 far as -- that it happened. As far as me personally
27 knowing any of the people or -- of any, either side, I
28 don't know these people. I mean I have lived here all my
29 life, and there is people I couldn't tell you who lives

1 here.

2 MRS. STEINER: And you did not say you were
3 acquainted with any of Mr. Flowers' family.

4 JUROR SHEILA SLEDGE: (Shook head.)

5 MRS. STEINER: Or Mr. Goldens.

6 JUROR SHEILA SLEDGE: No. No.

7 MRS. STEINER: Miss Tardy?

8 JUROR SHEILA SLEDGE: I don't know any of these
9 people.

10 MRS. STEINER: Now, were you working at
11 Heatcraft, or were you at Burt's Livestock the day this
12 happened?

13 JUROR SHEILA SLEDGE: The day -- I believe from
14 what y'all have said when the day was, because I don't
15 even remember that, because that has been so long ago, I
16 was working with Dr. Jan Bailey, Jr. I was working as a
17 veterinary assistant.

18 MRS. STEINER: All right. And did you learn
19 about that -- an incident at the store that day? Or did
20 you --

21 JUROR SHEILA SLEDGE: No, I don't think I
22 even -- because I was at the sale barn working cattle. I
23 work 80 hour weeks so...

24 MRS. STEINER: So you don't recall the content
25 of what you heard?

26 JUROR SHEILA SLEDGE: No, ma'am.

27 MRS. STEINER: Are you aware there has been
28 prior proceedings in this matter, prior trials?

29 JUROR SHEILA SLEDGE: I heard someone say it.

1 But as far as me knowing about it or when they were, I
2 don't have a clue.

3 MRS. STEINER: All right. Thank you. You did
4 not attend any of them.

5 JUROR SHEILA SLEDGE: No.

6 MRS. STEINER: And you said you don't take
7 *Winona Times*.

8 JUROR SHEILA SLEDGE: No, ma'am.

9 MRS. STEINER: All right. Now, your response
10 "A" on the juror questionnaire that you strongly support
11 the death penalty, that was just your first gut reaction.
12 Yes, that is a true statement. I support it.

13 JUROR SHEILA SLEDGE: Yeah.

14 MRS. STEINER: Strongly. You could have said
15 you sorta do, generally supported it or you had no
16 opinion or that you had some -- you generally opposed or
17 you strongly opposed. You had five choices, and you read
18 it.

19 JUROR SHEILA SLEDGE: Well, I read it in kind
20 of a hurry. And when I filled it out, there was actually
21 a gentleman standing next to me when I was trying to fill
22 this out talking to me. And I was like okay, um-hum.
23 And I am trying to read and check to. So I didn't even
24 remember that my own brother was a police officer.

25 MRS. STEINER: Okay. I was going to say, I
26 think you said -- right. Where is your brother a police
27 officer?

28 JUROR SHEILA SLEDGE: He is in Oxford.

29 MRS. STEINER: In Oxford, Mississippi.

1 JUROR SHEILA SLEDGE: Right. Right.

2 MRS. STEINER: Are you from Oxford?

3 JUROR SHEILA SLEDGE: No. I'm -- we are from
4 here.

5 MRS. STEINER: All right. Now, there is
6 nothing wrong with strongly favoring the death penalty,
7 but you understand that that has to stay outside the
8 door. When you go in and you consider whether or not the
9 State has proved aggravating factors, you have to look at
10 those as passionately beyond a reasonable doubt as you
11 would anything else, no matter how strongly you support
12 the death penalty. Do you understand?

13 JUROR SHEILA SLEDGE: Yes, ma'am.

14 MRS. STEINER: Do you understand that in
15 addition to aggravating and mitigating circumstances, you
16 may hear testimony from members of the family of the
17 people who died? That is not an aggravating factor.
18 How, how would you feel about hearing --

19 MR. EVANS: Your Honor, I object.

20 MRS. STEINER: -- hearing peoples' grief?

21 MR. EVANS: How she would feel at this point --

22 THE COURT: I sustain. She can't say how she
23 would feel. And I will tell you, your -- time to wrap it
24 up, because you had gone way over the time I had --
25 limits that I had given to both sides.

26 MRS. STEINER: Thank you, Your Honor. I am
27 just -- she is the only person who served only on grand
28 jury previously. I felt I had to go into that.

29 Would you be able to listen to that with sympathy

1 but without allowing it to overshadow your other
2 deliberative process?

3 JUROR SHEILA SLEDGE: Yes, ma'am.

4 MRS. STEINER: Could you -- and you said you
5 could consider mitigation even if it has nothing to do
6 with the crime itself; is that correct?

7 JUROR SHEILA SLEDGE: Yes, ma'am.

8 MRS. STEINER: And you understand that the
9 Court will instruct you that with respect to deciding
10 whether mitigation exists or a life sentence instead of a
11 death sentence should be entered, it's more like the
12 grand jury. Any evidence that you pick -- think warrants
13 a vote for life or against the death penalty, you may
14 consider that. And you don't have to agree with anybody
15 else. You can keep your own vote. Do you understand
16 that?

17 JUROR SHEILA SLEDGE: Yes, ma'am.

18 MRS. STEINER: And that every juror has his or
19 her same rights. And that part -- it's as in the grand
20 jury. Part of this is not reaching a consensus but
21 realizing there are going to be people who agree to
22 disagree.

23 JUROR SHEILA SLEDGE: Yes, ma'am.

24 MRS. STEINER: And in the grand jury sometimes
25 12 of you voted one way and four the other. It came out
26 six voted one way and 18 the other. Do you -- so you
27 have that --

28 THE COURT: You, you have covered that
29 thoroughly with her.

1 MRS. STEINER: Okay. Thank you, Your Honor.

2 THE COURT: Miss Sledge, you may step down.
3 And I ask that you not discuss with your fellow jurors
4 the -- what we have discussed in here.

5 JUROR SHEILA SLEDGE: Yes, sir.

6 THE COURT: And I -- you looked like you
7 thought well, how dare you tell me that, but I am telling
8 everybody that. I, I didn't for a moment think you
9 would. I was just telling you that, because I want
10 everybody to follow those same rules. And so that was
11 why I was telling you.

12 JUROR SHEILA SLEDGE: Okay. Thank you.

13 THE COURT: Yes, ma'am.

14 Miss Britt next. Number 124.

15 (JUROR NUMBER 124, MARTHA BRITT, ENTERED THE COURTROOM.)

16 THE COURT: Miss Britt, if you will come
17 forward, please, ma'am, and have a seat.

18 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

19 What we are doing now is asking questions of
20 prospective jurors outside the presence of others,
21 because there is just some items we felt more appropriate
22 to discuss and bring up when others were not present.

23 And the first line of questioning concerns knowledge
24 about the case. I think you've -- you teach in Grenada,
25 but you live here.

26 JUROR MARTHA BRITT: Yes, sir.

27 THE COURT: Is that -- and you have been a
28 resident here most of your life.

29 JUROR MARTHA BRITT: Yes, sir.

1 THE COURT: And how long have you worked in
2 Grenada?

3 JUROR MARTHA BRITT: For 13 years.

4 THE COURT: Thirteen. So would you -- can you
5 tell us now about what you have heard about this case or
6 how you came to hear about this case?

7 JUROR MARTHA BRITT: I, I probably don't know
8 more than anybody else, other than what we have heard on
9 the news. I've come to court several times, but I always
10 work. So when I come to court it's usually late in the
11 afternoon, and I have not heard very much of that. But I
12 don't know any specific details.

13 THE COURT: So you sat at times in on different
14 court proceedings.

15 JUROR MARTHA BRITT: Um-hum.

16 THE COURT: But you say you have not sat
17 through a complete trial.

18 JUROR MARTHA BRITT: No, sir. No, sir.

19 THE COURT: So how much of the previous trials
20 would you have probably heard? Do you know?

21 JUROR MARTHA BRITT: Very little. Because, you
22 know, usually if I get here, it is late in the afternoon.
23 You know, court doesn't last for very much longer. I
24 have not sat in for -- if you add it all up, it probably
25 wouldn't add up to more than a day.

26 THE COURT: That would be over the course of
27 how many trials?

28 JUROR MARTHA BRITT: Just the last few.

29 THE COURT: And has -- have you based on what

1 you've heard, you know, just talk about the case or based
2 on anything that you have just heard from sitting out and
3 maybe listening to portions of the trial, have you formed
4 any opinions as to the guilt or innocence of Mr. Flowers?

5 JUROR MARTHA BRITT: Well, you know, I, I just
6 based on the fact that, you know, what I've heard, I have
7 an opinion. But not knowing all the evidence and not
8 knowing all the details, you know, that opinion could be
9 changed, you know, depending on what I learn.

10 THE COURT: Can you lay the opinion that you
11 have aside and base your decision on the evidence?

12 JUROR MARTHA BRITT: Yes, sir.

13 THE COURT: And will you lay that opinion aside
14 and base your decision on the evidence?

15 JUROR MARTHA BRITT: I will do that.

16 THE COURT: If you had at some prior hearing
17 heard some testimony and testimony is not presented at
18 this trial --

19 JUROR MARTHA BRITT: Um-hum.

20 THE COURT: -- would anything that has happened
21 in the past influence you?

22 JUROR MARTHA BRITT: To be truthful, I couldn't
23 even tell you whose testimony I've heard.

24 THE COURT: And would anything you've read or
25 even or -- do you recall any specifics that you might
26 have read or heard about the case?

27 JUROR MARTHA BRITT: No.

28 THE COURT: So --

29 JUROR MARTHA BRITT: I mean I don't know

1 anything concrete, you know. I just know what has been
2 in the newspaper and on the news over the years.

3 THE COURT: And if as we progress in the course
4 of the trial, if there is things that you might have read
5 about in the paper or seen on the news that do not occur
6 in the courtroom at this trial, would those be influences
7 or factors that would enter into your deliberations?

8 JUROR MARTHA BRITT: No, sir.

9 THE COURT: And the next question involves the
10 possible sentence that might be imposed. If the jury
11 found Mr. Flowers guilty beyond a reasonable doubt of
12 capital murder, then it would get to the second phase,
13 which would be the sentencing phase. You understand
14 that?

15 JUROR MARTHA BRITT: Yes, sir.

16 THE COURT: So if the jury found him not guilty
17 it would be over and there would not even be a second
18 phase at all. The State of Mississippi is seeking the
19 death penalty in this case.

20 JUROR MARTHA BRITT: Yes, sir.

21 THE COURT: They will be putting on -- if it
22 got to the point where there was a second phase, they
23 would be putting on proof that in their view would
24 justify the imposition of the death penalty. That would
25 be what is called aggravating factors.

26 JUROR MARTHA BRITT: Right.

27 THE COURT: Then Mr. Flowers, through his
28 attorneys, would put on mitigating factors. That would
29 be reasons why in his view the death penalty would not be

1 appropriate.

2 JUROR MARTHA BRITT: Yes, sir.

3 THE COURT: If the death penalty were not the
4 sentence from the jury, the Court would sentence Mr.
5 Flowers by law to life without parole. So can you
6 consider both those sentencing possibilities as options?

7 JUROR MARTHA BRITT: Yes, sir, I could.

8 THE COURT: And as you sit here today without
9 knowledge of what might be presented at that second
10 phase, do you already lean one way or the other toward
11 what the appropriate penalty would be or should be if it
12 got to that point?

13 JUROR MARTHA BRITT: No, sir.

14 THE COURT: And I think you said maybe you had
15 -- you sang some with Mr. Rigby.

16 JUROR MARTHA BRITT: Yes, sir.

17 THE COURT: Were you singing with him back in
18 1996?

19 JUROR MARTHA BRITT: No, sir. We did not start
20 singing together until about seven years ago. And I, I
21 can honestly say that we have never talked about the
22 specifics of the case. I have always felt like if he
23 needed to talk about it, he could. And I didn't want to
24 bring it up, if he didn't want to talk about it. So we
25 just...

26 THE COURT: Well, if you were to sit as a juror
27 in this case and if you were to find Mr. Flowers not
28 guilty, would you feel you owed Mr. Rigby any explanation
29 for how your verdicts had gone? Or would you feel you in

1 any way had to justify that verdict?

2 JUROR MARTHA BRITT: No, sir. I have to look
3 at myself in the mirror every day. I have to live with
4 what I do.

5 THE COURT: So that would override any other --

6 JUROR MARTHA BRITT: Yes, sir.

7 THE COURT: -- factor; is that correct?

8 JUROR MARTHA BRITT: Yes, sir.

9 THE COURT: Okay. Mr. Evans.

10 MR. EVANS: Thank you, Your Honor.

11 Good morning, Miss Britt.

12 JUROR MARTHA BRITT: Good morning.

13 MR. EVANS: What we need to know is if you can
14 completely disregard anything you may have heard or
15 anybody that you may know involved in this case and walk
16 into the courtroom on the jury, only base your decision
17 on what you hear and see in court and nothing else?

18 JUROR MARTHA BRITT: Yes, sir.

19 MR. EVANS: And can you leave anything outside
20 and not lean one way or the other when you walk in here?

21 JUROR MARTHA BRITT: Yes, sir, I believe that I
22 can.

23 MR. EVANS: All right. And as far as the
24 sentence, you are not leaning one way or the other on
25 that.

26 JUROR MARTHA BRITT: No, sir.

27 MR. EVANS: You understand that even in the
28 first phase, the jury is going to be told not to even
29 consider what sentence is appropriate. Can you follow

1 that instruction?

2 JUROR MARTHA BRITT: Yes, sir.

3 MR. EVANS: Even if the jury convicts him, the
4 jury is still not to consider that at that point as what
5 sentence should be appropriate.

6 JUROR MARTHA BRITT: Yes, sir.

7 MR. EVANS: Can you tell us that once he is
8 convicted, if he is, that you wouldn't even consider the
9 sentence at that point?

10 JUROR MARTHA BRITT: Yes, sir.

11 MR. EVANS: Both sides will be allowed to put
12 on whatever -- well, not whatever they want to. But both
13 sides will be able to put on what the Court allows. You
14 are to consider, seriously consider, everything that we
15 put on, everything the defense puts on.

16 JUROR MARTHA BRITT: Yes, sir.

17 MR. EVANS: Can you do that?

18 JUROR MARTHA BRITT: Yes, sir, I can.

19 MR. EVANS: The defense will be allowed to put
20 on what is called mitigating evidence and that can be
21 almost anything. It can be something about the case. It
22 can be something that hadn't got anything to do with the
23 case. It can be about his life growing up. It can even
24 be about the time after the crime was committed, what he
25 has or hasn't done since then. Can you consider all of
26 those things?

27 JUROR MARTHA BRITT: Yes, sir, I can.

28 MR. EVANS: And can you only base your decision
29 after you have heard that?

1 JUROR MARTHA BRITT: Yes, sir.

2 MR. EVANS: And the fact that you have sung
3 with Bennie, can you completely disregard that and not
4 let it affect your decision one way or another?

5 JUROR MARTHA BRITT: Yes, sir, I can.

6 MR. EVANS: Even if evidence comes up in court
7 or pictures or something else about the case, can you
8 disregard that?

9 JUROR MARTHA BRITT: Yes, sir.

10 MR. EVANS: Thank you.

11 MRS. STEINER: Good morning, Miss Britt.

12 I, I don't know you well enough. When you were
13 talking about having to face Mr. Rigby or consider
14 mitigation, and now I look at you. You've got your lips
15 kind of pressed together and, and squinting. Is that
16 because there is some emotions there as you think about
17 this?

18 JUROR MARTHA BRITT: It's just been a long four
19 days.

20 MRS. STEINER: Been a long four days. But it
21 happened. Thinking about singing again with Mr. Rigby --

22 JUROR MARTHA BRITT: Oh, it would be a
23 difficult thing. I'm not -- you know, I'm human. It's
24 going to be difficult no matter what I do.

25 MRS. STEINER: And you understand -- I assume
26 you sing in harmony with Mr. Rigby.

27 JUROR MARTHA BRITT: Sometimes.

28 MRS. STEINER: That is your goal.

29 JUROR MARTHA BRITT: Yeah.

1 MRS. STEINER: Is to make beautiful harmony
2 with Mr. Rigby when you sing a duet; correct?

3 JUROR MARTHA BRITT: Right.

4 MRS. STEINER: He may be a witness in this
5 proceeding about --

6 JUROR MARTHA BRITT: Yes, ma'am.

7 MRS. STEINER: He may be talking to the entire
8 jury about his feelings about his loss --

9 JUROR MARTHA BRITT: Yes, ma'am.

10 MRS. STEINER: -- of his wife. You say you're
11 ready to hear them as a friend and colleague in music.
12 Can you be -- and you'll still have those things with you
13 when you --

14 JUROR MARTHA BRITT: Right.

15 MRS. STEINER: -- walk through that door to
16 hear his testimony about that.

17 JUROR MARTHA BRITT: Yes, ma'am.

18 MRS. STEINER: And now, so you were not singing
19 with him at this time.

20 JUROR MARTHA BRITT: No, I did not even know
21 Mr. Rigby at the time.

22 MRS. STEINER: Were you in any kind of singing
23 group --

24 JUROR MARTHA BRITT: No.

25 MRS. STEINER: -- back then?

26 JUROR MARTHA BRITT: No, ma'am.

27 MRS. STEINER: So you did not attend the
28 fundraiser for the reward.

29 JUROR MARTHA BRITT: Oh, no, ma'am.

1 MRS. STEINER: Now, you said -- I think even --
2 I heard you say it when Mr. Carter was talking to you. I
3 heard you say it when Mr. Evans was talking to you. I
4 believe I could set all these things about my
5 relationship aside. You want to set them aside, --

6 JUROR MARTHA BRITT: Yes, ma'am.

7 MRS. STEINER: -- I know, and be able to be a
8 fair juror. But you do have doubts that you could, in
9 fact, do so.

10 JUROR MARTHA BRITT: I don't think that I have
11 doubts. I think that I, I can look at the evidence and
12 see it for what it is.

13 MRS. STEINER: I appreciate that. Are you or
14 your husband related to the Britt family in Grenada? Any
15 Britts up in Grenada?

16 JUROR MARTHA BRITT: His family is from the
17 Duck Hill, Alva area. I don't know of anybody in Grenada
18 that we are related to.

19 MRS. STEINER: Does he have any relation to the
20 late Reuben Britt?

21 JUROR MARTHA BRITT: I don't know the name.

22 MRS. STEINER: Okay. Thank you. Just making
23 sure. Do you do internet?

24 JUROR MARTHA BRITT: I have it at school. I
25 don't have it at home.

26 MRS. STEINER: Did you ever when you missed a
27 few days, times at trial, go back on the internet and see
28 what --

29 JUROR MARTHA BRITT: No, ma'am. I have never

1 looked it up on the internet.

2 MRS. STEINER: But you did read *The Winona*
3 *Times* for what you missed when you couldn't be at trial
4 after school.

5 JUROR MARTHA BRITT: Yes, ma'am, I read *The*
6 *Times*.

7 MRS. STEINER: That was your association with
8 Mr. Rigby that brought you here.

9 JUROR MARTHA BRITT: Yes, ma'am, when we
10 started singing together.

11 MRS. STEINER: You became very interested in
12 anything that affected him.

13 JUROR MARTHA BRITT: Right. Yes, ma'am.

14 MRS. STEINER: Because you were a friend.

15 JUROR MARTHA BRITT: Yes, ma'am.

16 MRS. STEINER: And you sing harmony with him.

17 JUROR MARTHA BRITT: Sometimes.

18 MRS. STEINER: Or try too. Now, His Honor,
19 has, has explained mitigation. Let me just put it this
20 way. I am going to talk about as if you found Mr.
21 Flowers guilty. But neither His Honor or I expect or are
22 assuming that will happen.

23 JUROR MARTHA BRITT: Um-hum.

24 MRS. STEINER: I want to understand. You
25 strongly support the death penalty; is that correct? You
26 put that on your questionnaire.

27 JUROR MARTHA BRITT: Yes, ma'am.

28 MRS. STEINER: And you answered honestly.

29 JUROR MARTHA BRITT: Yes, ma'am.

1 MRS. STEINER: And that strong support is going
2 to follow you into the jury room; although, you have said
3 you could set it aside and consider instructions.

4 MR. EVANS: Your Honor, she keeps arguing that
5 it's going to follow her to the jury room. The juror has
6 said that it will not. I object to her phrasing it like
7 that.

8 MRS. STEINER: I think -- well, she said she
9 could set it aside, her feelings.

10 THE COURT: So I sustain his objection.

11 MRS. STEINER: And you said you did have an
12 opinion with respect to this case but it could be
13 changed.

14 JUROR MARTHA BRITT: Based on what I know at
15 this point.

16 MRS. STEINER: Right. And you understand if
17 you were considering penalty and mitigation and
18 aggravation, you will have found Mr. Flowers guilty of up
19 to four capital murders, beyond a reasonable doubt,
20 intentionally, no excuses, no insanity, nothing like
21 that. You understand that?

22 JUROR MARTHA BRITT: Yes, ma'am.

23 MRS. STEINER: And that you will be looking at
24 him having made that decision in your heart.

25 JUROR MARTHA BRITT: Um-hum.

26 MRS. STEINER: And your strong support for the
27 death penalty has been in your mind, and you will not
28 have an opinion at the point of which you found him
29 guilty as to a more appropriate punishment.

1 JUROR MARTHA BRITT: I support the death
2 penalty, but I don't -- I am not someone who thinks that
3 you ought to enforce the death penalty for everything. I
4 think the penalty ought to match the crime that the
5 person has been convicted of.

6 MRS. STEINER: All right. I -- once, once
7 you've convicted the person of a crime you think deserves
8 the death penalty, that is about it for you.

9 MR. EVANS: Your Honor, I object. That is not
10 what she said.

11 THE COURT: You are not -- I sustain. That is
12 not what she said. And it's time you wrapped it up. You
13 have already gone several minutes over what I had --

14 MRS. STEINER: Your Honor, this witness has a
15 close, personal relationship and --

16 THE COURT: I had gotten into all of that.
17 Here you are spending most of your time asking things I
18 already asked. So if you are being repetitive, it is
19 your fault.

20 MRS. STEINER: Your Honor, I --

21 THE COURT: And you need to move on.

22 MRS. STEINER: All right.

23 THE COURT: I will give you an additional
24 minute to finish this up.

25 MRS. STEINER: All right. Miss Britt.

26 JUROR MARTHA BRITT: Yes, ma'am.

27 MRS. STEINER: At the point at which you had
28 found Mr. Flowers guilty of a capital crime, capital
29 murder, you would then have an opinion as to the

1 appropriate punishment, yes or no.

2 JUROR MARTHA BRITT: I would take the
3 recommendations of the Court and apply them to what he
4 has been convicted of.

5 MRS. STEINER: And you understand that if it
6 comes deciding between life and death, although the jury
7 has to be unanimous beyond a reasonable doubt --

8 JUROR MARTHA BRITT: Yes, ma'am.

9 MRS. STEINER: -- for a death sentence, each
10 individual juror's conscience dictates how he or she
11 votes with respect to a life sentence.

12 JUROR MARTHA BRITT: Yes, ma'am.

13 MRS. STEINER: Or against death sentence.

14 JUROR MARTHA BRITT: Yes, ma'am.

15 MRS. STEINER: Can you respect the opinions of
16 a juror who disagrees with you with respect to sentence?

17 JUROR MARTHA BRITT: Yes, ma'am.

18 MRS. STEINER: And agree to disagree.
19 Everybody goes home no matter what after that.

20 JUROR MARTHA BRITT: Yes, ma'am.

21 MRS. STEINER: Okay. Thank you.

22 That's all I have.

23 THE COURT: Miss Britt, that will be all. If
24 you will step back outside. And I am telling everybody
25 not to go out and talk about with your fellow jurors what
26 we have talked about in here.

27 JUROR MARTHA BRITT: Okay.

28 THE COURT: Mr. Robinson. Number 125.

29 (JUROR NUMBER 125, RICHARD ROBINSON, ENTERED THE

1 COURTROOM.)

2 Come forward, Mr. Robinson. Have a seat, please.

3 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

4 THE COURT: Mr. Robinson, what we are doing now
5 is we are asking questions outside the presence of other
6 jurors about different matters that we felt appropriate
7 to discuss without everybody sitting in and hearing it.
8 First concerns any knowledge you might have about the
9 case. Have you heard anything through the years about
10 this case that we are here about?

11 JUROR RICHARD ROBINSON: No more than what you
12 see and hear on the news, newspapers.

13 THE COURT: And have you followed the case very
14 closely?

15 JUROR RICHARD ROBINSON: No.

16 THE COURT: And has anything you saw, heard or
17 read caused you to form any opinion as to the guilt or
18 innocence of Mr. Flowers?

19 JUROR RICHARD ROBINSON: No.

20 THE COURT: And will you lay aside anything
21 that you have seen, heard or read and base your decision
22 only on the evidence that is presented here in court?

23 JUROR RICHARD ROBINSON: Yes.

24 THE COURT: And the next questions concern the
25 possibility of the sentencing phase. What happens is the
26 jury would first determine whether Mr. Flowers is guilty
27 or not guilty. If they found him not guilty, there would
28 not be any second phase of the trial. The case would be
29 over and concluded. However, if Mr. Flowers were found

1 guilty beyond a reasonable doubt, then we would go to the
2 second phase, which is called the penalty phase.

3 Are you with me so far?

4 JUROR RICHARD ROBINSON: Yes.

5 THE COURT: Now, during the penalty phase the
6 State would be asking for the death penalty. And they
7 would put on what's called aggravating factors, which are
8 things that the State believes would justify imposition
9 of the death penalty.

10 Mr. Flowers would then put on mitigating facts,
11 which will be things that in his view would justify or
12 would show that the death penalty was not appropriate.
13 He wouldn't have to justify it. He would just have to
14 show -- he doesn't even have to show it. I mean the jury
15 would be ultimately determining it.

16 But what I'm saying is the mitigating factors could
17 be any factors about his childhood on up to and including
18 the present time. And those mitigating factors would be
19 reasons why in their view the death penalty would not be
20 appropriate.

21 JUROR RICHARD ROBINSON: Um-hum.

22 THE COURT: The jury would then decide what the
23 appropriate punishment would be. Again, only if we got
24 to the second phase of the trial. And if he was found --
25 if the jury found the death penalty was not appropriate,
26 then he would be sentenced to life without parole.

27 So as you sit here today, could you consider both
28 the death penalty and life without parole as sentencing
29 options?

1 JUROR RICHARD ROBINSON: Yes.

2 THE COURT: And do you have -- as you sit here
3 today, do you have any prefixed notion of what would be
4 the more appropriate punishment, having not heard any of
5 the case?

6 JUROR RICHARD ROBINSON: Just -- well, just
7 saying my opinion of him? Or what you saying?

8 THE COURT: No, I'm just saying do you before
9 you heard anything already have an idea about what would
10 be the appropriate sentence.

11 JUROR RICHARD ROBINSON: Life without parole.

12 THE COURT: I wasn't going to ask you what that
13 was but I mean -- but you -- could you consider the death
14 penalty and life without parole?

15 JUROR RICHARD ROBINSON: I consider life
16 without parole, but I couldn't consider the death
17 penalty.

18 THE COURT: You're just -- if the facts
19 justified it and the law allowed it, could you consider
20 the death penalty as an option?

21 JUROR RICHARD ROBINSON: No.

22 THE COURT: So there is no way, no matter what
23 you could even consider that.

24 JUROR RICHARD ROBINSON: No.

25 THE COURT: On, on your questionnaire, you, I
26 think said you generally favored it and could consider
27 it. Did, did you mark something wrong, or have you just
28 given it further thought?

29 JUROR RICHARD ROBINSON: Well, I can't remember

1 exactly what I marked. I thought, you know, I really
2 wouldn't want to be the judge of that.

3 THE COURT: Well, I know nobody wants -- nobody
4 wants to be, you know. But could you consider that as an
5 option if it got to the point where there was a second
6 phase?

7 JUROR RICHARD ROBINSON: I really wouldn't like
8 to, but if I had to I would.

9 THE COURT: So you could then consider it as an
10 option if you had to.

11 JUROR RICHARD ROBINSON: Yeah.

12 THE COURT: Okay. Thank you.

13 MR. EVANS: Good morning, Mr. Robinson.

14 JUROR RICHARD ROBINSON: Good morning.

15 MR. EVANS: Nobody is ever going to tell you
16 that you have to consider anything. But what we need to
17 know at this point, because of your view, apparently, you
18 don't believe in the death penalty; is that right?

19 JUROR RICHARD ROBINSON: Right.

20 MR. EVANS: Because of that views, could you
21 ever honestly consider giving anybody the death penalty?

22 JUROR RICHARD ROBINSON: (No response.)

23 MR. CARTER: Your Honor, first of all, I object
24 to it, because he just answered it when you asked him.

25 THE COURT: Both the State and you have gotten
26 up constantly and asked the same questions that I had
27 asked so, you know, I don't -- I have given five minutes
28 to both sides to ask whatever they want. If he wants to
29 ask the same question I asked, he can.

1 MR. EVANS: Would you ever seriously consider
2 giving anybody the death penalty?

3 JUROR RICHARD ROBINSON: No.

4 MR. EVANS: Okay. Thank you, sir.

5 And nobody is questioning anybody's beliefs. We all
6 have a right to have our own beliefs. I appreciate you
7 being honest and telling us that. But as far as the
8 first phase, you don't know anybody involved in this
9 case, do you?

10 JUROR RICHARD ROBINSON: No.

11 MR. EVANS: Victims? Defendants? Anybody?

12 JUROR RICHARD ROBINSON: No.

13 MR. EVANS: Okay. And is that because you're
14 from Duck Hill, you don't live here in town?

15 JUROR RICHARD ROBINSON: Exactly. Yes.

16 MR. EVANS: All right. As far as the first
17 phase, you could come in with an open mind, listen to the
18 evidence and decide guilt or innocence.

19 JUROR RICHARD ROBINSON: Yes.

20 MR. EVANS: You don't have any problem with the
21 judging. It's just that you can't do the death penalty
22 part.

23 JUROR RICHARD ROBINSON: Yes.

24 MR. EVANS: Nothing further, Your Honor.

25 MR. CARTER: Yes, Your Honor. One second.

26 Mr. Robinson.

27 JUROR RICHARD ROBINSON: Yes, sir.

28 MR. CARTER: It's real easy to be confused by
29 these words that you are not familiar with hearing. And

1 I want you to understand that we have to ask you these
2 questions. And we are not conceding or saying in any way
3 that we believe Mr. Flowers is guilty and that he is
4 going to be found guilty.

5 JUROR RICHARD ROBINSON: Um-hum.

6 MR. CARTER: And that you would be faced with
7 necessarily having to decide between a life without
8 possibility of parole and death but you might. We don't
9 know what is going to happen. Nobody can say what is
10 going to happen at this point.

11 JUROR RICHARD ROBINSON: Right.

12 MR. CARTER: And you were asked this question
13 about whether you could consider death and whether you
14 could consider life without possibility of parole. Do
15 you understand that you decide what you vote for?

16 The State of Mississippi, not talking about the
17 prosecutor, the legislature, the representative of
18 Mississippi who make laws have said that life without
19 possibility of parole and the death penalty are two
20 appropriate penalties for a person who has been found
21 guilty of capital murder.

22 You couldn't even get to weigh and consider either
23 option unless Mr. Flowers is found guilty. But if we get
24 to that point, we are asking you, can you, based on your
25 own conscience, your own make-up -- even though you are
26 not crazy about the death penalty. Lots of folks aren't.
27 But what we want to know is if Mr. Flowers got found
28 guilty, could you listen to the testimony from the
29 witness stand, and could you go back and deliberate and

1 weigh, weigh, we want you to consider, we mean weigh,
2 think about, both penalties, think about whether the
3 evidence warrants a death sentence, think about whether
4 the evidence warrant life without possibility of parole,
5 then vote, based on your conscience, whether you want to
6 vote for life without possibility of parole or the death
7 penalty.

8 JUROR RICHARD ROBINSON: Yes.

9 MR. CARTER: Could you do that?

10 JUROR RICHARD ROBINSON: Yes.

11 MR. CARTER: So we are not asking you if you
12 could vote for the death penalty. We are asking you if
13 you could consider the death penalty and consider the
14 life without possibility of parole and then vote your own
15 conscience. Can you do that?

16 JUROR RICHARD ROBINSON: Yes.

17 MR. CARTER: Thank you.

18 THE COURT: Okay. You may step down.

19 I am telling everybody this, but I almost forgot to
20 tell you. I am sorry. But this is something I am
21 telling everybody. But as you go back out, I don't want
22 you to discuss anything that you've testified -- or that
23 you stated in here or don't even go out and tell anybody
24 the questions or anything.

25 JUROR RICHARD ROBINSON: Okay.

26 THE COURT: And as I say, I have asked
27 everybody that has walked out this door to follow that
28 same rule. But I almost forgot to ask you.

29 JUROR RICHARD ROBINSON: Okay.

1 THE COURT: So anyway, that is all.

2 JUROR RICHARD ROBINSON: Okay.

3 THE COURT: And Curtis Wayne Britt next.

4 Number 126.

5 (JUROR NUMBER 126, CURTIS WAYNE BRITT, ENTERED THE
6 COURTROOM.)

7 THE COURT: Mr. Britt, if you will come on
8 down, please, sir, and have a seat.

9 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

10 THE COURT: Mr. Britt, what we are doing now is
11 asking questions of the prospective jury outside the
12 presence of other jurors, because we just felt that was
13 the best way to handle things. First of all, I want to
14 ask you about knowledge of the case. Have you through
15 the years heard anything about the case?

16 JUROR CURTIS BRITT: In the paper and on t.v.
17 mainly.

18 THE COURT: And have you followed it very
19 closely?

20 JUROR CURTIS BRITT: Not really. Not too
21 close. I have seen it on t.v. a few times, you know.

22 THE COURT: And is there anything that you have
23 seen, heard or read that has caused you to form an
24 opinion as to the guilt or innocence of Mr. Flowers?

25 JUROR CURTIS BRITT: Well, I have my opinions,
26 but, you know, I don't really know anything. I hadn't
27 heard any real facts other than just, as I say, talk,
28 t.v. and the paper.

29 THE COURT: Well, the opinion that you already

1 have, could you lay that opinion aside if you are a juror
2 in this case?

3 JUROR CURTIS BRITT: Yes, I could.

4 THE COURT: Would you lay that opinion aside?

5 JUROR CURTIS BRITT: (Nodded.) I would go by
6 the facts.

7 THE COURT: And what I -- first of all, I want
8 to know if you have got an opinion already, could, could
9 you leave that opinion at the door of the courtroom and
10 not have that come in and influence you in any way?

11 JUROR CURTIS BRITT: I could.

12 THE COURT: So will you lay that opinion aside?

13 JUROR CURTIS BRITT: I will.

14 THE COURT: And will you base your decision if
15 you are as a juror only on the evidence that's presented
16 here in court?

17 JUROR CURTIS BRITT: Oh, yeah.

18 THE COURT: And the next questions involve the
19 possible sentence that might be appropriate if it could
20 get -- if it got to the phase where the sentencing
21 hearing even took place. What happens is the jury
22 decides guilt or innocence.

23 JUROR CURTIS BRITT: Right.

24 THE COURT: If the jury finds Mr. Flowers not
25 guilty, there is no sentencing hearing.

26 JUROR CURTIS BRITT: Right.

27 THE COURT: Because there is no reason for it.
28 The case is over. But if the jury finds Mr. Flowers
29 guilty, then there is a sentencing phase. If the case

1 went to the sentencing phase, the State of Mississippi
2 would be seeking the death penalty. And they would put
3 on aggravating factors, which in the belief of the State
4 would be the justification for the imposition of the
5 death penalty. Mr. Flowers at that point would be
6 putting on mitigating proof, which would in his mind show
7 that the death penalty was not the appropriate sentence.
8 Those mitigating factors can be any number of things that
9 involved his past experiences or in his life or anything,
10 basically, about his background and history. As you sit
11 here today could you consider both life in prison without
12 parole and the death penalty as sentencing options?

13 JUROR CURTIS BRITT: I could.

14 THE COURT: And do you have any -- do you favor
15 one or the other option as you sit here?

16 JUROR CURTIS BRITT: Not really.

17 THE COURT: And will you wait until all the
18 evidence is heard at the second phase, if it gets to that
19 point, before you make that determination?

20 JUROR CURTIS BRITT: Oh, yeah.

21 THE COURT: Mr. Evans.

22 MR. EVANS: Good morning, Mr. Britt.

23 JUROR CURTIS BRITT: Good morning.

24 MR. EVANS: A lot of us have opinions on
25 different things, but an opinion that you already have
26 would not be appropriate in the courtroom. You
27 understand that?

28 JUROR CURTIS BRITT: I understand.

29 MR. EVANS: So you are telling us without any

1 doubt that you would leave any opinion that you have
2 aside, not let it influence your decision in any way and
3 base your decision of guilt or innocence strictly on what
4 you hear and see in court.

5 JUROR CURTIS BRITT: I will.

6 MR. EVANS: As far as the sentence, if the
7 defendant is convicted, we go into the sentencing phase.
8 The Court will tell you what the law is, tell you what to
9 consider and how you should weigh everything.

10 Now, once that is done, we will put on -- or it will
11 be after we do this. We will put on certain factors that
12 we will be saying justify the death penalty. The defense
13 will be putting on mitigating factors to say that they
14 think the crime justifies life without parole.

15 The factors they put on may not even have anything
16 to do with the case. They may be about his life. They
17 may be his childhood, may be about him singing with a
18 gospel group. They may be about things that happened or
19 that he has done or hadn't done after the crime was
20 committed. The Court will tell you that you should
21 consider all of those things.

22 Will you tell us that even if he is convicted, you
23 will not think about what sentence is appropriate until
24 after the second phase is over?

25 JUROR CURTIS BRITT: I will.

26 MR. EVANS: And you will truly consider
27 everything we put on, everything the defense puts on and
28 only start thinking about what sentence would be
29 appropriate at that point.

1 JUROR CURTIS BRITT: I will.

2 MR. EVANS: And you are not leaning one way or
3 the other. You could be fair and impartial and make your
4 decision at that point.

5 JUROR CURTIS BRITT: That's right.

6 MR. EVANS: Nothing further, Your Honor.

7 MRS. STEINER: Good morning, Mr. Britt.

8 JUROR CURTIS BRITT: Good morning.

9 MRS. STEINER: You were originally from
10 Grenada; is that correct?

11 JUROR CURTIS BRITT: That is where I was born
12 and raised.

13 MRS. STEINER: Okay. Are you kin to the late
14 Reuben Britt?

15 JUROR CURTIS BRITT: Who?

16 MRS. STEINER: The late Reuben Britt of
17 Grenada.

18 JUROR CURTIS BRITT: I think. Just I never
19 knew him.

20 MRS. STEINER: You are kin. And are you aware
21 of how he came to pass?

22 JUROR CURTIS BRITT: Now that you mention it, I
23 had forgot about that. I never knew him.

24 MRS. STEINER: Mr. Britt died in a robbery --

25 JUROR CURTIS BRITT: Right.

26 MRS. STEINER: -- in which he was shot to
27 death; is that correct?

28 JUROR CURTIS BRITT: That's right.

29 MRS. STEINER: And did you attend any of that

1 trial?

2 JUROR CURTIS BRITT: No, I didn't.

3 MRS. STEINER: Mr. Carter and I were the
4 attorneys appointed to represent the defendant in that
5 case.

6 JUROR CURTIS BRITT: Right.

7 MRS. STEINER: Can you set aside any feeling
8 you might have about the counsel who defended the man who
9 --

10 JUROR CURTIS BRITT: Right.

11 MRS. STEINER: -- was ultimately convicted of
12 shooting and killing your relative?

13 JUROR CURTIS BRITT: I forgot about that. That
14 is the reason I didn't say anything about it. I never
15 knew the people.

16 MRS. STEINER: You didn't know them, but you
17 are kin --

18 JUROR CURTIS BRITT: I never knew them at all.
19 I think, maybe, fourth cousin or something.

20 MRS. STEINER: You are fourth cousins to --

21 JUROR CURTIS BRITT: Something like that.

22 MRS. STEINER: -- to a man who died in a
23 capital murder.

24 JUROR CURTIS BRITT: Right.

25 MRS. STEINER: And you sat here throughout the
26 voir dire in the group and everybody was talking about my
27 second cousin did this. He was convicted of this.

28 JUROR CURTIS BRITT: Right.

29 MRS. STEINER: And that didn't even come to

1 mind.

2 JUROR CURTIS BRITT: That did not.

3 MRS. STEINER: You have the same name as a man
4 who died in the capital murder.

5 JUROR CURTIS BRITT: I never knew him. I never
6 even thought about that really. I am not going to lie
7 about it. I never knew him.

8 MRS. STEINER: All right. Now, should you --
9 should you be selected as a juror here today and consider
10 sentence, you will be having to decide whether or not the
11 State has proven its aggravating factors.

12 JUROR CURTIS BRITT: Right.

13 MRS. STEINER: Those only have to do with the
14 crime.

15 JUROR CURTIS BRITT: Right.

16 MRS. STEINER: Beyond a reasonable doubt and
17 agree all 12 of you. Do you understand that?

18 JUROR CURTIS BRITT: I understand.

19 MRS. STEINER: Now, Mr. Evans was talking about
20 mitigating factors. And I think he misspoke and said the
21 State may bring up things about Mr. Flowers life before
22 this crime or even since the crime. That's the defense
23 that will likely be doing that. Although, witnesses for
24 the State may also testify about that. You understand
25 that?

26 JUROR CURTIS BRITT: Right.

27 MRS. STEINER: His Honor will instruct you that
28 with respect to deciding whether or not a mitigating
29 factor exists or whether or not a life sentence without

1 parole should be imposed rather than the death penalty,
2 each juror -- the jury does not have to come to a
3 unanimous agreement. Do you understand that?

4 JUROR CURTIS BRITT: I understand.

5 MRS. STEINER: And each of you has your right
6 to your personal opinion on what is mitigating and what
7 might warrant a death penalty.

8 JUROR CURTIS BRITT: I understand.

9 MRS. STEINER: And that you have the right to
10 keep your views respected by the other jurors. You have
11 a right to say just, let's agree to disagree on this, I'm
12 saying. You can change your mind if you wish. And
13 similarly, if there is someone else sitting there that
14 says I feel very strongly. This is my opinion. Will you
15 respect their right to disagree with you if it happens to
16 be a different opinion?

17 JUROR CURTIS BRITT: I will.

18 MRS. STEINER: Excuse me, Your Honor.

19 Mr. Carter said that, I believe, when you arrived at
20 court, were waiting outside court, you were using a
21 wheelchair assistive device. Was that just because of a
22 place to sit?

23 JUROR CURTIS BRITT: I wasn't using a
24 wheelchair. I sat in one yesterday just resting.

25 MRS. STEINER: You don't use it. You don't
26 have a physical issue that would --

27 JUROR CURTIS BRITT: That wasn't my wheelchair.
28 I was just sitting in it.

29 MRS. STEINER: Oh, okay. Thank you. Just

1 wanted to make sure there was --

2 JUROR CURTIS BRITT: It was more comfortable
3 than the others.

4 MRS. STEINER: -- that would make you have to
5 have special accommodations, not that you can't serve
6 because of it.

7 JUROR CURTIS BRITT: Right.

8 MRS. STEINER: Just to make sure what the
9 accommodations might be.

10 THE COURT: Mr. Britt, you may step down. And
11 as you go back out, don't talk about with any of your
12 fellow jurors what we have discussed in here.

13 JUROR CURTIS BRITT: Okay. Is that it?

14 THE COURT: Yes, sir. You may step down.

15 Number 127 next. Mr. Campbell.

16 (JUROR NUMBER 127, DON CAMPBELL, ENTERED THE COURTROOM.)

17 THE COURT: Mr. Campbell, if you will come on
18 down, please, sir and have a seat.

19 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

20 THE COURT: Mr. Campbell, what we are doing now
21 is we are asking questions outside the presence of the
22 other jurors on a couple of issues that we just felt more
23 appropriate to ask without having to ask it and do it in
24 front of everybody.

25 I want to ask you if you have got knowledge about
26 this case or have heard anything about it through the
27 years.

28 JUROR DON CAMPBELL: Yes.

29 THE COURT: And how, how have you heard about

1 it through the years?

2 JUROR DON CAMPBELL: Just, just certain people,
3 basically talk and about different things that went on
4 and all that. That's all.

5 THE COURT: Have you seen t.v. or read the
6 paper or heard on the radio or internet anything?

7 JUROR DON CAMPBELL: No. Huh-huh.

8 THE COURT: So it's basically just been --

9 JUROR DON CAMPBELL: Basically off the streets.

10 THE COURT: People talking that you might --

11 JUROR DON CAMPBELL: (Nodded.)

12 THE COURT: I guess probably you have worked
13 for SuperValu for 18 years. You probably have heard a
14 lot.

15 JUROR DON CAMPBELL: Oh, yes, sir.

16 THE COURT: Have those things caused you to
17 form an opinion as to the guilt or innocence of Mr.
18 Flowers?

19 JUROR DON CAMPBELL: No. Huh-huh.

20 THE COURT: And if you were sitting as a juror
21 in this case, could you lay aside anything that you heard
22 outside of court and base your decision only on the
23 evidence that is presented here in court?

24 JUROR DON CAMPBELL: Yes, sir.

25 THE COURT: And would you do that?

26 JUROR DON CAMPBELL: I can do that.

27 THE COURT: Would you?

28 JUROR DON CAMPBELL: Yeah.

29 THE COURT: Now, the next area of inquiry I

1 want to ask about concerns the sentencing phase. And let
2 me say this. There would only be a sentencing phase at
3 this trial if the jury found Mr. Flowers guilty on the
4 first part of the -- phase of the trial, which is called
5 the guilt or innocence phase. If the jury found him not
6 guilty, it's over. There is not a second part.

7 But if the jury were to find him guilty, then we
8 would have the second phase. And that would be the
9 penalty phase where the jury would be called upon to
10 inquire or determine what they thought the penalty should
11 be.

12 The State of Mississippi is seeking the death
13 penalty in this case. And if the death penalty happened
14 not to be imposed, then the Court would impose a sentence
15 of life without parole.

16 The State will be putting on what they call
17 aggravating factors, which are reasons, in the State's
18 view, the death penalty is appropriate. Then Mr. Flowers
19 would be putting on mitigating factors, which are reasons
20 in his mind to show that the death penalty would not be
21 an appropriate sentence. And that can be anything about
22 his past history or life or anything that would be
23 relevant toward that issue.

24 But the jury, ultimately, after all of that, would
25 be called upon to make a determination as to what the
26 appropriate sentence might be. If the facts justified it
27 and the law allowed it, could you consider both the death
28 penalty and life without parole as sentencing options?

29 JUROR DON CAMPBELL: Well, I'm strongly against

1 the death penalty so...

2 MR. CARTER: I couldn't hear him.

3 JUROR DON CAMPBELL: I'm strongly against the
4 death penalty so I...

5 THE COURT: Well, could you lay that personal
6 feeling aside about being against it and listen to the
7 evidence and consider the death penalty?

8 JUROR DON CAMPBELL: No. I'm not going to be
9 able to do it about the death penalty.

10 THE COURT: You are saying you could not
11 consider it at all.

12 JUROR DON CAMPBELL: Not at all.

13 THE COURT: Mr. Evans.

14 They get to ask you questions of you now.

15 JUROR DON CAMPBELL: Yeah. Go ahead.

16 THE COURT: Mr. Evans and then the defense
17 attorney.

18 MR. EVANS: Good morning, Mr. Campbell.

19 JUROR DON CAMPBELL: Good morning.

20 MR. EVANS: How are you doing?

21 JUROR DON CAMPBELL: All right.

22 MR. EVANS: You know, as we said the other day,
23 nobody is questioning anybody's belief. We all have a
24 right to our own beliefs, but your views against the
25 death penalty are very strong; is that right?

26 JUROR DON CAMPBELL: Yes, sir.

27 MR. EVANS: And you, yourself, personally could
28 never consider the death penalty in any case, no matter
29 what the case was, could you?

1 JUROR DON CAMPBELL: I don't think so.

2 MR. EVANS: In addition to that, I want to
3 cover a couple of other things. I think that you said
4 you knew the defendant's brother, Archie, Jr.

5 JUROR DON CAMPBELL: Yes.

6 MR. EVANS: How do you know him?

7 JUROR DON CAMPBELL: Well, we played softball
8 together back in the years, in the days.

9 MR. EVANS: Y'all were friends?

10 JUROR DON CAMPBELL: I consider him a friend,
11 yes, sir.

12 MR. EVANS: Are you still friends?

13 JUROR DON CAMPBELL: Well, yes. Yes.

14 MR. EVANS: And knowing that your friend's
15 brother would be on trial, would that thought be entering
16 in your mind when you were listening to the evidence?

17 JUROR DON CAMPBELL: I'm pretty sure it would
18 be on my mind. Yes, sir.

19 MR. EVANS: Do you think it would affect you?

20 JUROR DON CAMPBELL: Not really affect me, but
21 it will be on my mind.

22 MR. EVANS: All right. And you are the only
23 one that can answer this question. But would it affect
24 you to the point that it might sway you one way or the
25 other?

26 JUROR DON CAMPBELL: I believe so.

27 MR. EVANS: You believe it would?

28 JUROR DON CAMPBELL: I believe.

29 MR. EVANS: Your Honor, I have nothing further.

1 THE COURT: I don't know which one -- Mr.
2 Carter.

3 MR. CARTER: Mr. Campbell, when the last time
4 you have seen Archie, Jr.?

5 JUROR DON CAMPBELL: I don't know.

6 MR. CARTER: Been awhile?

7 JUROR DON CAMPBELL: It's been awhile.

8 MR. CARTER: When was the last time you played
9 ball with him?

10 JUROR DON CAMPBELL: Oh, it's been years and
11 years. Back in the days.

12 MR. CARTER: So y'all don't see each other
13 often. While y'all might be friendly toward each other,
14 it's not the kind of friendship where y'all see each
15 other a lot and almost like brothers or anything like
16 that.

17 JUROR DON CAMPBELL: No. We just, you know,
18 speak whenever we see each other.

19 MR. CARTER: So whatever feelings you have
20 towards him, those feelings aren't so strong that you
21 would not be fair to the -- to the Ballards or the Tardys
22 or the Stewarts or the Rigbys or the Goldens. Is that
23 fair to say?

24 JUROR DON CAMPBELL: Yeah. That's fair to say.

25 MR. CARTER: Now, to hear these questions for
26 the first time, and if you are like most folks, you
27 probably don't know what is being asked of you. Let me
28 just tell you from the beginning. We are not conceding.
29 We are not saying Mr. Flowers is guilty of capital

1 murder. We are not saying he is going to be found guilty
2 of capital murder. We don't know what is going to
3 happen.

4 JUROR DON CAMPBELL: Um-hum.

5 MR. CARTER: But we do not intend for that to
6 happen. But let me just say that -- and people come here
7 and they bring their feelings with them. And there is
8 nothing wrong with anything that anybody feels. There is
9 nothing wrong with what you feel, what you think about
10 the death penalty, life without possibility of parole or
11 serving on a jury or anything else. Nothing wrong it.
12 We take them as we come.

13 What you are being asked and you might not fully
14 understand is that when you are asked can you consider
15 the death penalty, you are not being asked can you vote
16 for the death penalty and you are not being asked
17 necessarily that you can vote for life without
18 possibility of parole.

19 MR. EVANS: Your Honor, I, I disagree with
20 that, because if he cannot ever vote for the death
21 penalty he is being asked that.

22 MR. CARTER: Well, I don't care what you
23 disagree with.

24 MR. EVANS: Your Honor --

25 THE COURT: Well, I --

26 MR. EVANS: -- may I phrase --

27 THE COURT: Mr. Carter, that is not --

28 MR. EVANS: -- my objection --

29 THE COURT: -- appropriate. I expect both

1 sides to treat the other side with respect. And that --

2 MR. CARTER: Yes, sir. Yes, sir.

3 THE COURT: And I understand in the heat of the
4 moment, but we all have to be civil to each other in
5 here. And that applies to Mr. Evans --

6 MR. CARTER: Yes, sir, I accept that.

7 THE COURT: -- and you as well.

8 MR. CARTER: Yes, sir.

9 THE COURT: But I will sustain the objection.
10 You can rephrase the question.

11 MR. CARTER: You are being asked can you
12 consider both options, and you are being asked can you
13 think about? Can you weigh? However, if you served on
14 the jury, the manner in which you vote, as far as guilty
15 or not guilty, life or death, that's a personal decision
16 that you have to make, that nobody can make for you.
17 Nobody is telling you that you have to vote for the death
18 penalty. Nobody is telling you that you have to vote for
19 life without possibility of parole.

20 What we don't know is can you listen to the evidence
21 and weigh the evidence that comes in and then weigh,
22 think about, make a comparison as to whether you think
23 these facts, the facts that you hear from the witness
24 stand, from where you are sitting now, merit a verdict of
25 life without possibility of parole or merit a verdict of
26 death? You decide that. Nobody but you.

27 So what we want to know is can you listen to the
28 evidence? Can you think when you go back, deliberate on
29 both options, have an open mind about both? Then vote

1 your personal conscience. That is your conscience. That
2 is your personal decision. Nobody can make you choose
3 either way. Can you do that?

4 JUROR DON CAMPBELL: It's possibility that I
5 could do that, but I wouldn't -- I wouldn't --

6 MR. CARTER: You wouldn't want to do it.

7 JUROR DON CAMPBELL: I wouldn't like it if --

8 MR. CARTER: You wouldn't like it.

9 MR. EVANS: Your Honor, he --

10 MR. HILL: He is interrupting.

11 THE COURT: Let him finish.

12 MR. CARTER: You said it's possible that you
13 could do it, but you wouldn't want to do it. Is that
14 what you are saying?

15 JUROR DON CAMPBELL: Yes.

16 MR. EVANS: Your Honor, may the witness answer
17 instead of him answering for him? The witness was trying
18 to answer the question, the juror.

19 MR. CARTER: Your Honor, this is not a valid
20 objection. I listen to what --

21 MR. EVANS: It's very valid.

22 MR. CARTER: -- he is trying to say, and I try
23 to rephrase it. I try to follow-up to make sure I
24 understood what he is saying. And he answered the
25 question. That is not a valid objection.

26 THE COURT: Was there, Mr. Campbell, anything
27 else you wanted to say in response to that question?

28 JUROR DON CAMPBELL: No. I wouldn't be able to
29 do it.

1 THE COURT: What? You wouldn't be able to
2 do...

3 JUROR DON CAMPBELL: About the death penalty.
4 The death penalty.

5 MR. CARTER: Are you saying, Mr. Campbell --

6 MR. EVANS: Your Honor, may he finish telling
7 the Court his answer before he is interrupted?

8 THE COURT: Now, he was responding, you know,
9 because apparently he wasn't finished. And I know you
10 didn't mean to interrupt him.

11 MR. CARTER: Yes, sir.

12 THE COURT: But you can now finish the response
13 you were now giving to Mr. Carter's question.

14 JUROR DON CAMPBELL: No. I wouldn't consider
15 the death penalty.

16 MR. CARTER: And you are saying - so we can be
17 clear - you wouldn't even weigh and think about both
18 options. Is that what you are saying? Or are you saying
19 you wouldn't vote for the death penalty?

20 JUROR DON CAMPBELL: I wouldn't -- I wouldn't
21 vote for the death penalty.

22 MR. CARTER: And you couldn't even -- okay.
23 Let me be clear about this. You are saying you, you, you
24 could think about both options, and you would choose life
25 without possibility of parole or you wouldn't even think
26 about both options.

27 JUROR DON CAMPBELL: About parole. I'm talking
28 about --

29 MR. CARTER: I'm sorry. Let me ask you again.

1 Let me slow down a little. I want to be 100 percent
2 clear what you are saying. Are you saying that if you
3 listened to the evidence, and you went back and
4 deliberated that you couldn't even think about both
5 penalties that the State of Mississippi allows for
6 capital murder and then choose whatever penalty you think
7 is appropriate? Or are you just saying that you could
8 think about both but you would vote life without
9 possibility of parole and not death? Maybe that's even
10 more confusing. I don't know. Do you understand what
11 I'm saying?

12 JUROR DON CAMPBELL: (No response.)

13 MR. CARTER: Let me start again.

14 JUROR DON CAMPBELL: Yeah. Do that again.

15 MR. EVANS: Your Honor, I think he has made it
16 abundantly clear that he could never vote or consider the
17 death penalty.

18 JUROR DON CAMPBELL: Yeah. That, that is my
19 that is my...

20 MR. CARTER: You are saying you wouldn't think
21 about either. Is that what you are saying? You wouldn't
22 think about death and -- you wouldn't think about the
23 death penalty and you wouldn't vote for it.

24 MR. HILL: Your Honor, one objection I would
25 like to make because --

26 MR. CARTER: Judge --

27 MR. HILL: -- defense counsel is --

28 MR. CARTER: They are the one that --

29 COURT REPORTER: Judge.

1 MR. CARTER: Your Honor, you told me yesterday
2 when Miss Steiner was up here, and I tried to object as
3 Mr. Steiner was the questioner that Miss Steiner had to
4 object. Mr. Evans needs to object. We are going to have
5 the same rules. Mr. Hill is not going to object.

6 THE COURT: Mr. Evans can make an objection if
7 he has one.

8 MR. EVANS: I don't even have one.

9 THE COURT: Now, if you will, it is getting
10 close. You have already used your time.

11 MR. CARTER: I really want to quit. Final
12 question one more time. I believe you are saying you
13 don't like it, you wouldn't vote for it. But what I want
14 to know is could you even consider the death penalty?
15 Yes or no?

16 JUROR DON CAMPBELL: No.

17 MR. CARTER: Okay. Thank you.

18 THE COURT: Mr. Campbell, you may step down.
19 When you walk back out, don't talk with your fellow
20 jurors what has been discussed in here, please.

21 JUROR DON CAMPBELL: Okay. Yes, sir.

22 THE COURT: We will take about a 10-minute
23 recess. I imagine everybody is ready to stretch a little
24 bit.

25 (A RECESS WAS TAKEN.)

26 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
27 AND THE DEFENDANT WERE PRESENT. PROCEEDINGS RESUMED AS
28 FOLLOWS:)

29 THE COURT: There were three people who were

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1 challenges for cause for different reasons yesterday.
2 And I had said I wanted to look at the rough draft of the
3 court reporter's notes before I made a determination,
4 because I wanted to make sure that I had fully understood
5 the statements that were made. And I have gone back and
6 looked, and I am satisfied that Miss Bates is a proper
7 strike for cause.

8 MR. CARTER: What number is she, Your Honor?

9 THE COURT: Number 48. She did state in her
10 response to question that she did already believe the
11 better punishment would be the death penalty if it got to
12 that phase.

13 Then Number 51, Huggins. I went back because there
14 was some question about whether he -- and I mean he did
15 make a statement about eye for eye, but Miss Steiner
16 followed that up with a question from him. And he stated
17 that the question was some -- something to the effect of
18 would that be how he would view the case in the
19 sentencing phase, and he said not necessarily an eye for
20 a eye in that phase. And then he said he could consider
21 the evidence. So I do not think that Number 51 is
22 appropriate for, for cause and will deny that -- yeah,
23 deny that one for cause.

24 And then Miss Copper, Number 62. The State had made
25 a challenge for cause. I went back. When the prosecutor
26 was questioning her, she did indicate there were some
27 people that she felt like she couldn't be fair. But when
28 she was questioned by the defense she then stated that
29 because of those -- knowing all of these people, and she

1 knows just about everybody based on what I can see from
2 her responses, but that she would be uncomfortable doing
3 it. Then I followed up at the end and asked her. I said
4 will you follow the evidence and go wherever the evidence
5 leads and she said that she would. So I am satisfied
6 that, that she is not a proper one to strike for cause
7 either.

8 And do we have any strikes or challenges for cause
9 now as to any jurors that we have heard so far this
10 morning?

11 MR. EVANS: Yes, sir. The last one that we had
12 we would definitely move to strike for cause. He has
13 unequivocally said that he could never consider the death
14 penalty.

15 MR. CARTER: No objection, Your Honor.

16 THE COURT: We will allow Mr. Campbell for
17 cause.

18 MR. EVANS: Hold on just a minute, Your Honor.
19 I have the wrong list here. Give me just one second.

20 MRS. STEINER: Is that 127 we are discussing
21 here?

22 MR. HOWIE: No. We've already struck him.

23 MR. EVANS: 125 we would also move for cause.
24 He said he could never vote for the death penalty. Only
25 could listen to both sides and vote for whichever he
26 wanted at that point. But that was after saying he could
27 never consider it and vote for it. The only thing he
28 ever said to the defense was he could listen to both
29 sides. He never said he could consider it and go from

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1 there.

2 MR. CARTER: We object to that one, Your Honor.

3 THE COURT: I believe he was sufficiently
4 rehabilitated when he was asked questions by the defense
5 that he should not be stricken for cause.

6 MR. EVANS: That's all we have, Your Honor.

7 MRS. STEINER: Thank you, Your Honor. We would
8 move to strike for cause Juror Michael Austin, 122.

9 THE COURT: I think he is 121.

10 MRS. STEINER: 121. Thank you, Your Honor.

11 Again, this is under the *Reynolds, Murphy*. And
12 merely by virtue of having an opinion, we believe that
13 the Court's Sixth Amendment obligation to provide a fair
14 and impartial juror requires that it not necessarily
15 credit the aspirational statement of a juror regarding
16 his ability to be fair. And in particular, in this
17 because of his close friendships, particularly with Frank
18 and Roxanne Ballard. Miss Ballard is going to be a
19 witness.

20 He has said -- especially with respect, should there
21 be a penalty phase, to any victim impact, his wife and
22 she have a personal relationship related specifically to
23 Miss Ballard's loss of her mother. I think under those
24 circumstances it's not merely not crediting a -- the
25 opinion but also, Your Honor, an implied bias, as well.

26 And, Your Honor, I would also invite the Court's
27 attention to *Manning versus State*, in which a capital
28 murder case, a capital murder verdict was affirmed. But
29 in that case, 735 So.2d 323, and they were talking about

1 this at 326, that that was -- they, they did say a juror
2 who said they were able to set aside what they knew about
3 a case and be fair and impartial were credited. But it
4 was -- one of the reasons it was affirmed was because the
5 trial court had excused for cause two jurors who had
6 already formed an opinion.

7 I -- the case I, I didn't -- so I think that there
8 is a distinction between being able to credit a juror who
9 can set matters aside, particularly one without personal
10 relationships with the witnesses, and when he says he or
11 she has an opinion. And I believe Mr. Austin is both.
12 He both has a personal relationship with at least one of
13 the witnesses and with one of the victim families and has
14 formed an opinion. And I think that's a two-fer, and I
15 think that puts him in the same kind of category as the
16 young gentleman you struck who had been an honorary pall
17 bearer at the funeral.

18 I think whenever it happened his wife's relationship
19 to Miss, Miss Ballard about the mutual -- each of the
20 losses of their mother under sudden notice is just
21 simply -- no matter how he aspires to be fair, not going
22 to do it. And it's the Court's obligation to step in
23 under the Sixth Amendment and remove him for cause.

24 And I will sit down while you rule.

25 MR. EVANS: Your Honor, this clearly is not a
26 cause strike. He has stated that he had an opinion. It
27 was not a fixed opinion. He could be fair and impartial.
28 And the opinion would have nothing to do with his
29 decision. The only connection that she is trying to

1 raise is the fact that his wife and Roxanne Ballard both
2 lost their mothers. And they talked about a loss, not
3 about the facts of the case, just a loss. And that is
4 not him. That is his wife. If his wife were here as a
5 juror, it might be a different question. But it is
6 certainly not a question as far as him. And he clearly
7 said that would not affect him.

8 THE COURT: Well, I see his circumstances
9 vastly different from Juror 108 who had indicated one of
10 the victims of the incident was his best friend. Here
11 Mr. Austin has stated affirmatively that he would lay any
12 opinion he had that was gathered outside of the court and
13 base the decision strictly on the evidence presented. He
14 was asked about -- from what he testified -- I mean what
15 his responses were that his wife, I take it, was somewhat
16 counseled by Roxanne Ballard after his wife's mother died
17 suddenly. He said that, that would not bring up any
18 issues in his mind concerning his mother-in-law's death,
19 that it would not affect him in any way.

20 I do not believe that what his statements were mere
21 aspirational. That is his oath. And I had the
22 opportunity to look straight at him when he was
23 testifying. I found his statements to be believable, and
24 I do not find any reason that would justify him being
25 stricken for cause.

26 MRS. STEINER: Your Honor, our next cause
27 strike would be of Juror 124, Miss Martha Britt. It's on
28 several grounds. First, she has an opinion on this
29 matter. And you know, to her credit, whenever asked,

1 without being lead by me or Mr. Evans and the Court was
2 not asking leading questions of her, her response was she
3 believed she could be fair.

4 In addition, she has a sufficiently close
5 relationship with, with the Rigby family. Yes. Oh, she
6 is the one who sings duets with Bennie Rigby. And I
7 believe she stated in general voir dire they have dined.
8 They have broken bread together. This appears to be a
9 close, artistic relationship.

10 And she -- I, I don't know whether she actually
11 teared up. But I asked her if she was feeling strong
12 emotions, especially when, when Mr. Evans began asking
13 about considering Mr. -- facing Mr. Rigby. And again,
14 when she -- you know, when I asked her, and she just --
15 her response was well, this is all difficult. And I
16 think that given her close, personal relationship, her
17 apparent emotion and the fact that she has an opinion and
18 Mr. Rigby is likely to be a victim impact witness, even
19 if this would not be sufficient, which we do not concede,
20 for her to deliberate with respect to guilt, I think it
21 substantially impairs her with respect under *Branch* and
22 *Morgan* to be able to deliberate in the penalty phase when
23 we have victim impact testimony comes in from Mr. Rigby.

24 And we would therefore move under the Sixth
25 Amendment that she be stricken. To leave her on would
26 render the jury not sufficiently fair and impartial to
27 satisfy the demands of the Sixth Amendment, which protect
28 the defendant's rights.

29 MR. EVANS: Your Honor, all she said is she had

1 an opinion. It was not a fixed opinion. She could set
2 that opinion aside, base her evidence strictly on the
3 evidence. She sings with Bennie Rigby. That was the
4 only thing that was brought out. She said that they had
5 never talked about the case. And there is nothing in
6 there to indicate that she could not be fair and
7 impartial.

8 She has flat said that she could set everything
9 aside and base her opinion on the evidence. She had no
10 fixed opinion on what the penalty should be. She would
11 fairly and honestly consider both sides before she made
12 any decision.

13 THE COURT: I, I remember her statements,
14 basically the very same as the State. She said that --
15 well, first of all, she didn't know Mr. Rigby when this
16 murder occurred. She didn't know Mr. Rigby until seven
17 years after he had lost his wife. So it's not like they
18 were even friends back during that time period. But she
19 said that she would lay any thoughts she had aside, that
20 she would listen only to the evidence that was presented
21 here in court and will make her decision based on that.
22 I think the thing that struck the Court the most
23 concerning her honesty and sincerity is when she said I
24 have to look in the mirror at myself. I, I have got to
25 live with, with what I rule.

26 So I am convinced beyond any doubt that if she had
27 any hesitation she would have spoken up. She did say she
28 could consider the evidence and would not be influenced
29 by any friendships or associations with anyone. And

1 again, I don't think her statement was merely
2 aspirational. I think it was an affirmative, sincere
3 from the heart statement. And so I do not see grounds
4 for striking Miss Britt for cause.

5 MRS. STEINER: Thank you, Your Honor.

6 The next one we would challenge for cause is Juror
7 Number 12, Reuben -- excuse me, Curtis Britt.

8 Is that 126?

9 MR. CARTER: Yes.

10 MRS. STEINER: I have never heard a more
11 thorough or response provoking voir dire from a Court as
12 the one you conducted in this courtroom. I, I lost track
13 of the number of people who had not put down relatives
14 who were crime victims and other very distant relatives
15 on the -- on their questionnaires, who, as Your Honor
16 began your very thorough voir dire, hands were popping up
17 all over. Up. I just remembered. I have this. I have
18 that. And it was second and third cousins.

19 And this prospective juror has a relative who died
20 in a robbery, armed robbery, capital murder in the
21 adjacent county. And I find that the fact that it took
22 until we had to ask about kinship to this man. We did
23 not ask anything other than was he kin, and he had
24 already responded to that. And I was prepared to leave
25 it alone. And that prompted a memory.

26 And I believe that when you have a relative in the
27 place where you grew up your whole life, who has died in
28 a crime in which certainly the aggravation and the
29 circumstances, armed robbery in the course -- death in

1 the course of an armed robbery by shooting, that, that is
2 just -- that person should not be permitted. Just having
3 that by itself is enough implied bias that this person
4 under the Sixth Amendment should be excused as being
5 unable to fairly deliberate on either guilt or sentence
6 for this defendant.

7 And it's an, an -- the fact that it was not
8 forthcoming, although, not necessarily in and of itself a
9 basis for striking under these circumstances, I think
10 supports the fact that there is likely to be some implied
11 bias because of the complete similarity, nature of the
12 crimes. And, of course, Mr. Carter and I represented the
13 defendant in that case.

14 MR. EVANS: Your Honor, he didn't even know
15 him. He clearly stated that he might -- he thought he
16 might be his fourth or fifth cousin, but he didn't know
17 him, had never met him, didn't know anything about him,
18 did not attend the trial, didn't know anything about the
19 trial. And he wouldn't have known they were the
20 defendant's attorneys if she hadn't volunteered that to
21 him. Now he knows it, but he wouldn't have unless she
22 had told him. There was absolutely nothing about that
23 that was improper. He didn't think about a relative he
24 had never met and didn't know.

25 MRS. STEINER: Your Honor, and I also had a
26 note here that under the general *Murphy, Reynolds* he did
27 say he already had an opinion in this case. I think that
28 compounds it. And would even, standing on its own, do
29 it. But certainly when you have both these factors, a

1 family member, however distant, plus an opinion. And I
2 did not mean to preclude Mr. Evans from responding to
3 that. I just had overlooked that, as well.

4 THE COURT: Well, if you believe the story of
5 Genesis, we are all ultimately related to some -- all of
6 us are related to each other in some fashion. But he
7 stated that at most they might be fourth cousins, and he
8 did not have any idea who Reuben Britt was. He didn't
9 put it on his questionnaire, because he didn't think
10 about it, because he didn't know him.

11 And he said the fact that he didn't know -- you
12 know, the fact that he was murdered would not be a factor
13 or influence him in this case. And they didn't grow up
14 -- well, there is no proof. You are saying they grew up
15 in the same community, but there is nothing that is
16 presented before this Court that they grew up in the same
17 community.

18 Mr. Britt, I know, owned a store over on the Calhoun
19 Grenada County line, which is, you know, probably 60 or
20 70 miles from here. So -- and I can take judicial notice
21 of that, having tried the case where Mr. Britt was the
22 victim of murder. But they certainly didn't grow up in
23 the same community. There is not any indication that,
24 that Mr. Britt even knew him.

25 And he stated the fact that y'all represented him
26 would not be a factor in his deliberations. And he said
27 that he would set any opinion aside that he had about the
28 case and base his decision strictly on the evidence
29 presented here in court. He stated that affirmatively,

1 and I have every confidence that he meant what he said.

2 I'll just say on a personal note. I, I don't know
3 any fourth cousins. I am sure I have got some, but I
4 don't know them. I don't consider fourth cousins to be a
5 relative, because I don't know them. I mean some
6 families know their family tree from, you know, tenth
7 generation but I don't. And apparently neither does Mr.
8 Britt. You know, there are some families where a third
9 cousin is a real close, you know, ties there and there
10 are others that it's not.

11 And in his case it is clear that, that it was not.
12 It is like in my family. As I say, if -- I'd have to sit
13 here half the day trying to think of who might be a
14 fourth cousin. And if I sat too long I might think of
15 somebody I didn't want to be related to at all. I will
16 put it like that.

17 MRS. STEINER: Your Honor, if the Court please,
18 and I know you have access to the court reporter's notes,
19 although not instantly. It, it was genuinely -- I heard
20 him to say his juror questionnaire states he was born in
21 Grenada and grew up there his whole life. Grew up there.
22 He moved here, I think, as an adult. But he said his
23 family was from there. Now, I don't know Grenada, how
24 large it is. I, I spent 26 years in Hattiesburg, and
25 it's a town of about 40,000. And at least, I think it's
26 about comparable to Grenada. When I was there being from
27 anywhere in Hattiesburg is being from the same community.
28 If that is not the case, then the Court can take judicial
29 notice of that in Grenada.

1 THE COURT: We don't know where Reuben Britt
2 grew up. I mean we know where he was at when he died,
3 but we don't have any idea where Reuben Britt grew up.
4 So even if Mr. -- even if Juror 126 grew up in Grenada,
5 there is no, no proof that they grew up in the same town
6 or same community.

7 MRS. STEINER: Your Honor, I believe you could
8 take judicial notice of the record that's on file in the
9 Mississippi Supreme Court. There was victim impact
10 testimony in that case which did talk about the long
11 lasting connections of -- at least the victim impact
12 witnesses who testified there to, to the community and
13 their father to that community. I, I don't want to
14 debate this with the Court. I just wanted to say I did
15 not want the Court to inadvertently err with respect to
16 its fact finding.

17 THE COURT: Let me just back up and say there
18 is no evidence in the record we have today without me
19 taking judicial notice of anything or anything else.
20 There is nothing that shows that these two gentlemen grew
21 up in the same community. And again, Curtis Wayne Britt
22 said I don't know Reuben Britt. I never knew him, never
23 had any knowledge of him. And his, his statement is what
24 it is.

25 You did indicate you wanted to bring Number 51. I
26 believe it was Number 51.

27 MR. EVANS: Your Honor.

28 THE COURT: I'm sorry.

29 MR. EVANS: Excuse me for interrupting. But we

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1 have been looking at it. We have finally gotten the
2 report in on Juror Number 87.

3 I, I don't know if we can agree but we would offer
4 to strike her for cause or just to agree to a cause
5 strike on her because of some of the mental evaluations
6 and things like that.

7 MRS. STEINER: We haven't seen --

8 MR. EVANS: Would you like to see?

9 MRS. STEINER: Certainly. May we have...

10 (MR. EVANS CONFERRED WITH MRS. STEINER AND MR. CARTER.)

11 MR. CARTER: I think we will agree. We don't
12 need to see more of this.

13 THE COURT: If both agree, I am not going to
14 make any further inquiry on, on that.

15 I want to count and see because it's the Court's
16 intention to have three alternates because of the length
17 of time that it might go on, because we would have three
18 alternates. Each side gets to strike 15 jurors. So
19 before we begin looking at the panel, need 45 jurors.
20 And I don't know how many we have got. But once we reach
21 the 45 that can be potential jurors, I do not see any
22 reason to continue voir diring people individually who
23 have absolutely no chance of being on the jury. And so I
24 am going to count and y'all count too. And also, we do
25 have Number 51 that --

26 MRS. STEINER: And Number 94 both require.

27 THE COURT: What was 94? I remember 51.

28 MR. HOWIE: I think she just had something to
29 say, Judge.

1 MRS. STEINER: She requested to come in.

2 THE COURT: Oh, that's right. Why don't we let
3 them both come in before we even bother counting now?
4 Because, you know, there might be something that is said
5 that might disqualify one of them or something. So
6 bring -- and I am limiting Number 51 to your question
7 about whether he sat through voir dire before.

8 MRS. STEINER: That is the only thing I didn't
9 cover before. That is the only thing I didn't cover
10 before.

11 THE COURT: If you will, bring Number 51 back
12 in here for a minute.

13 BAILIFF BROWNING: Mr. Huggins.

14 THE COURT: Mr. Huggins.

15 (JUROR NUMBER 51, BURRELL HUGGINS, ENTERED THE
16 COURTROOM.)

17 THE COURT: If you will, come down, Mr.
18 Huggins, and have a seat. There were a couple more
19 follow-up questions.

20 If you will have a seat there, please.

21 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

22 MRS. STEINER: Thank you, Your Honor.

23 Good morning, again, Mr. Huggins.

24 JUROR BURRELL HUGGINS: Good morning.

25 MRS. STEINER: When you were talking to His
26 Honor in the -- when everybody was in the room and then
27 later when you were talking privately here with all of
28 us, you indicated that you -- because you work away,
29 you'd no real significant prior exposure to the facts of

1 this case until you were called to come here today; is
2 that correct?

3 JUROR BURRELL HUGGINS: That's true.

4 MRS. STEINER: On Friday, this past Friday. Do
5 you recall being summonsed as a Juror in 2008 to be in
6 this case?

7 JUROR BURRELL HUGGINS: Be in this one?

8 MRS. STEINER: Yes.

9 JUROR BURRELL HUGGINS: Yes, ma'am. I remember
10 it.

11 MRS. STEINER: All right. And you were
12 questioned at that time. You sat through a similar
13 process until you finally -- I think you were so far down
14 in the list, nobody -- you were excused because you
15 weren't needed; is that correct?

16 JUROR BURRELL HUGGINS: Yes.

17 MRS. STEINER: And in that you testified that
18 you knew Miss Tardy to see her, but that your wife knew
19 Miss Rigby a little bit better than that.

20 JUROR BURRELL HUGGINS: Yes, ma'am. My wife is
21 from here. She knows a lot of folks.

22 MRS. STEINER: All right.

23 JUROR BURRELL HUGGINS: I'm not from here.

24 MRS. STEINER: I understand. But so you were
25 mistaken when you said the first time you heard anything
26 about this case was when you walked in here this past
27 Friday.

28 JUROR BURRELL HUGGINS: Well, it happened in
29 '96. I mean what I meant was since then I have heard a

1 little off and on when I would come in, you know, into
2 home.

3 MRS. STEINER: Thank you.

4 JUROR BURRELL HUGGINS: I didn't know that much
5 about it.

6 MRS. STEINER: I'm sorry. I appreciate it.

7 I have nothing further, Your Honor.

8 THE COURT: Has any of those things that you
9 have heard or anything that you might have just picked up
10 on by previous voir dire in this case, any of that
11 influence you or affect you --

12 JUROR BURRELL HUGGINS: Nope, it would not.

13 THE COURT: -- in being a fair and impartial
14 juror?

15 Okay. Thank you.

16 JUROR BURRELL HUGGINS: I tried to be as honest
17 as I could. I was brought up honest.

18 THE COURT: Certainly, honesty is a great
19 quality to have.

20 JUROR BURRELL HUGGINS: It's a lot of it not
21 around, isn't it?

22 THE COURT: I --

23 JUROR BURRELL HUGGINS: I did not mean to say
24 that.

25 THE COURT: We are all entitled --

26 JUROR BURRELL HUGGINS: I'm just a plain
27 person. I'm just a plain person.

28 THE COURT: I appreciate your frankness and
29 your honesty. And you may step down.

1 JUROR BURRELL HUGGINS: I come up the hard way.

2 THE COURT: Okay. You can -- you can go on
3 back out now.

4 JUROR BURRELL HUGGINS: Thank you, sir.

5 THE COURT: And then what was that number
6 again?

7 MRS. STEINER: 94. Miss Acy.

8 THE COURT: Miss Acy.

9 If you will bring Miss Acy in.

10 (JUROR NUMBER 94, MELISSA ACY, ENTERED THE COURTROOM.)

11 If you will come down, ma'am, and have a seat.

12 (THE JUROR WAS SEATED ON THE WITNESS STAND.)

13 Our bailiff indicated that there was something that
14 you felt you didn't mention or either something -- I, I
15 don't know. Well, I don't know what it is.

16 JUROR MELISSA ACY: Right. I was asked the
17 question yesterday about residents that had been at the
18 nursing home and any family members. And it -- I didn't
19 do it intentionally, but there is a family member of one
20 of the victim's families. She wasn't a family member
21 years ago when she came to the nursing home, but she has
22 become one in the last year and a half or two.

23 THE COURT: And who was that?

24 JUROR MELISSA ACY: Miss Naomi White, who is
25 Bennie Rigby's mother-in-law currently.

26 THE COURT: So Mr. Rigby married at some time.
27 I mean I don't know when.

28 JUROR MELISSA ACY: Right.

29 THE COURT: He remarried after his first wife.

1 JUROR MELISSA ACY: Yeah.

2 THE COURT: So --

3 JUROR MELISSA ACY: She had been a resident for
4 years, and then they married. And it just didn't come to
5 me until I left, and I was upset that I --

6 THE COURT: And I appreciate that.

7 JUROR MELISSA ACY: I didn't want to
8 intentionally...

9 THE COURT: Is there anything -- do you -- does
10 Mr. Rigby come in the nursing home to visit her?

11 JUROR MELISSA ACY: I mean I have seen him
12 there, and he has sung there but...

13 THE COURT: Would the fact that you have seen
14 him there or might see him in the future there influence
15 or affect you as --

16 JUROR MELISSA ACY: No.

17 THE COURT: -- far as your ability to be fair
18 and impartial?

19 JUROR MELISSA ACY: No.

20 THE COURT: And if you were to find Mr. Flowers
21 not guilty in this case and were to see Mr. Rigby later,
22 would you feel ill at ease or feel uncomfortable because
23 you had ruled that way?

24 JUROR MELISSA ACY: No, sir.

25 THE COURT: So will this in any way have any
26 influence at all on you being fair and impartial?

27 JUROR MELISSA ACY: No. It just made me
28 sleepless.

29 THE COURT: Well, I appreciate you after

1 thinking about it coming forward and giving us that
2 information. You may step back out.

3 JUROR MELISSA ACY: Thank you.

4 THE COURT: Y'all may have been counting while
5 I was talking to the people. I don't know. Let me --
6 let's all do a count now and see how many jurors we have
7 got.

8 MRS. STEINER: Your Honor, we would renew our
9 objection, our motion to strike Mr. Huggins for cause and
10 add the extreme lateness of his being forthcoming not
11 only about having heard about this case before but also
12 with respect to his wife's connection and acquaintance
13 with Miss Rigby during her lifetime.

14 THE COURT: Mr. Huggins has said that he has
15 worked away from here for 47 years, comes in and spends a
16 couple of nights, a month here. His wife raised the
17 children here. And he said his wife knew her but he
18 didn't know. And he might have known who Miss Tardy was,
19 and that's the only statements that he has made.

20 And again, I look back on his statements, and he did
21 not say that he would necessarily have a view of a eye
22 for an eye, that he would consider the evidence. And I
23 take him -- in fact, I believe him being truthful. I'm a
24 truthful person, that's the way, honest or truthful. I
25 don't remember.

26 MR. EVANS: Your Honor, you did not strike
27 Number 125 for cause, did you?

28 THE COURT: No.

29 MR. EVANS: I count 46. I was missing one. I

1 was one too high.

2 THE COURT: I'm showing right exactly 45.

3 MR. EVANS: That is what I have got now.

4 MR. HOWIE: That's what we have got now.

5 THE COURT: Well, I will let everybody count.

6 Mr. Carter, have you had an opportunity to count?

7 MR. CARTER: I got 44 though, Your Honor.

8 THE COURT: Let's just all --

9 MR. CARTER: Call out the numbers, I guess.

10 THE COURT: I was going to say let's all count
11 together. After calculators, I don't think anybody is
12 good at math anymore.

13 Okay. I am showing Number 1, Hamilton; and Number
14 3, O'Quinn; Number 25, Robinson.

15 MRS. STEINER: Number 8.

16 MR. EVANS: Eight, Robinson.

17 THE COURT: I'm sorry. What I've got is I've
18 got eight. And then I've got the original number out
19 where they were -- you know, before we struck different
20 ones or excused. I'm sorry. I was looking at the
21 original number before the number -- jury list was
22 renumbered last Friday.

23 Okay. Number 1, 3, 8, 12, 14, 17, 18, 22, 25, 26,
24 29, 30, 38, 40, 42, 44, 45, 47, 48.

25 MR. EVANS: 48 is for cause.

26 THE COURT: That's right. I'm sorry. Okay.
27 Then that -- okay. That is probably where my
28 discrepancy, because I forgot to mark her off. So let me
29 see.

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1 Okay. So that puts 50, 51, 53, 54, 58, 59, 62, 63,
2 67, 68, 69, 72, 75, 78, 91, 94, 103, 107, 110, 111, 119,
3 120, 121, 123, 124, 125, 126.

4 MR. HILL: That's it.

5 MR. EVANS: That's it.

6 THE COURT: Okay. Now count them all. But we,
7 we probably do need one more because I had counted that
8 one wrong, or I forgot to mark it off.

9 Well, I'm still counting 45.

10 MR. EVANS: It's 45.

11 THE COURT: What are y'all counting now?

12 MR. CARTER: Forty-five this time.

13 MRS. STEINER: Forty-five, Your Honor.

14 THE COURT: I do think what I'm going to do, I,
15 I, I want to call them in and -- because I know both of
16 you want to look over your notes for some period of time.

17 MRS. STEINER: I would like to renew an
18 objection at this point --

19 THE COURT: You may.

20 MRS. STEINER: -- to the -- to the process.

21 Your Honor, this is our objection under *Lockhart* and
22 in general under the equal protection clause of the
23 United States Constitution to the fact that by virtue of
24 the elimination process to this date, even if you take
25 the entire venire as of this morning, it had gone from a
26 venire that was 42 percent African-American and 55
27 percent white. And there were two or three percent that
28 who had not self-identified at the point at which all the
29 juror questionnaires were here on Friday and all the

1 jurors had shown up.

2 As of this morning, that ratio had been halved on
3 points, and the venire was 72 percent Anglo-American,
4 white, and 28 percent African-American. With the course
5 of today's challenges, I think that that ratio has not
6 changed. That is still a statistically significant
7 reduction in this venire.

8 And in fact, if the Court takes this, this situation
9 and excuses all the remaining outstanding jurors - one,
10 two, three, four, five, six - six of the
11 African-Americans, we are going to be reduced. We were
12 already reduced one by the challenges to 15
13 African-Americans. We will be down to fewer than 9
14 African-Americans.

15 And I, I can take a recess and get out my
16 calculator. We are even statistically, significantly
17 more reduced from the original venire that was summonsed,
18 turned in jury instructions -- jury questionnaires and is
19 now before this Court. And I would renew the *Lockhart*,
20 the *Witherspooning* had that significant discriminatory
21 effect again.

22 And I would renew the motion with respect to -- and
23 I, I would now re-urge this, when I've not previously
24 urged. We had in the last trial urged that should this
25 jury -- that the prosecutor be, be precluded from making
26 peremptory strikes because so much of this -- because
27 there is the history that has been found by the
28 Mississippi Supreme Court of racial discrimination in
29 jury selection with respect to this case by this

1 prosecution. It's happened actually -- the predecessor
2 in Flowers II, in Harrison County, found a Batson
3 violation and ruled a strike by the State. So that in
4 two proceedings and on the basis of what has been a
5 persistent pattern of simply, you know, asking things
6 that are clearly, if not flatly race or at least
7 race-based --

8 THE COURT: Okay. Name one.

9 MRS. STEINER: Say what?

10 THE COURT: Name one.

11 MRS. STEINER: Yes. There were no questions
12 asked of any juror who lived in the neighborhood of a
13 white State's witness about what neighborhoods they lived
14 in.

15 MR. EVANS: Your Honor, that --

16 MRS. STEINER: His main question --

17 MR. EVANS: I object.

18 THE COURT: Let her finish.

19 MRS. STEINER: One of his main objections --
20 one of his lines of questioning was the neighborhood in
21 which they lived. Acquaintanceship is fine. If
22 neighborhood really matters for things to do with the
23 acquaintanceship, there are anglo -- white state's
24 witnesses on our jury list and no questions were asked
25 about people who lived in the neighborhood. We, frankly,
26 don't think living in a neighborhood without some sort of
27 acquaintance being known is, is particularly relevant.
28 There has been -- I mean --

29 THE COURT: As I recall it, there was a

1 question about who lived in the neighborhood over there
2 where Mr. Flowers' mom and daddy lived.

3 MR. EVANS: It is where he has lived, Your
4 Honor. He lived at both locations.

5 THE COURT: And there, there is nothing race --
6 there is no race issue there. And --

7 MRS. STEINER: Your Honor.

8 THE COURT: You know, I don't see why the State
9 would be expected to ask the neighborhoods of where their
10 own witnesses live, because I assume they know where
11 their witnesses live. So I reject totally your statement
12 that that is a race-based question.

13 MRS. STEINER: Your Honor, we are dealing with
14 a venire that especially if we just excuse all these
15 people of the first 45 that is so blaringly
16 disproportionate to the population of this county.

17 THE COURT: You have got to look into the
18 purpose, the reason. And the reason why is because Mr.
19 Flowers has a number of brothers and sisters. His
20 parents are well-known. Mr. Archie Flowers is apparently
21 one of the most well-thought of people in this community.
22 You have had countless numbers of African-American
23 individuals that have come in and said they could not sit
24 in judgment because of their knowledge of Mr. Flowers,
25 and they could not be fair and impartial.

26 Counsel should have known that was going to happen
27 from the first two or three trials -- first three trials
28 that had occurred over here. Counsel had an opportunity
29 -- because the first two trials, as you know, were tried

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1 somewhere else. But Mr. Flowers, as he had every right
2 to do, and has an opportunity to be tried in his home
3 county. The law allows that. But he cannot then come
4 around and complain because people are excused because
5 they know him.

6 And that is what -- you know, if there is a
7 statistical abnormality now, it is because almost every
8 African-American that has been excused for cause, other
9 than those on the death question, were because they knew
10 him. And I mean, you know, he could have -- if he would
11 have wanted to elect to be tried somewhere else, there
12 would have been a situation where he could have had a
13 change of venue some location where there would be
14 statistically more people of his race on there than is.

15 And I'll note that, you know, I think there was
16 probably about and I'm not -- because I haven't counted,
17 but there is probably about seven or eight people that
18 were on the death question alone, there was some that
19 said because of death and other reasons -- well, eight
20 out of 600 that were originally called is, is
21 statistically not material. Even eight out of 154 that
22 finally started voir dire on Monday is statistically
23 insignificant.

24 So you know, there is -- nothing the State has done
25 has caused this statistical abnormality. It is almost
26 chiefly because Mr. Flowers' family are such prominent
27 people, and he has got so many relatives and so many
28 friends and so many of his family members that have
29 friends. But it is not anything that, you know, has

1 shaken out that way. And as I say, this should not be a
2 surprise to defense counsel, because that has been the
3 way that has happened the past three trials. And so to
4 claim surprise now about what you knew was going to occur
5 is somewhat disingenuous.

6 MRS. STEINER: If the Court please, we are not
7 necessarily claiming surprise. Although, this has been a
8 much more radical reduction both in total numbers and in
9 proportion than either of the prior two trials at which
10 our office has been involved.

11 But Your Honor's suggestion that Mr. Flowers' right
12 to a jury that comports with Fourteenth Amendment equal
13 protection composition under *Castaneda* and *Swain* and all
14 of those and a panel from which *Batson* -- a reasonable
15 equal protection challenge. His right to that, as well
16 as his right to a fair and impartial jury, under the
17 Sixth Amendment, those two things he has a right to that.
18 And he has a right to be tried in his same county. And
19 that he should not be required to choose between those
20 two rights. Those are not necessarily --

21 THE COURT: And I did not say he had to choose
22 between those two rights. But you know full well from
23 past experiences in this county because of the number of
24 people that know Mr. Flowers, they know his parents, they
25 know his brother, they know his sisters, and he -- I mean
26 he has got a large number of siblings. And all of those
27 people -- you know, I mean he is so well-known here that,
28 you know, you've got a number of African-Americans that
29 say I know him. I can't be fair. I know these people.

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1 I can't sit in judgment of their son. And there is --
2 there is no way to avoid that if this case is tried in
3 this county. Because this is the same type things that,
4 that occurred in the previous trials where he had so many
5 people that knew him.

6 You know, I don't -- I hadn't kept a running count
7 of anything in here but, you know, there is nothing that
8 has -- that has -- no discrimination that's occurred that
9 has caused this, what you call, statistical abnormality
10 now. It is strictly because of the prominence of his
11 family. And --

12 MRS. STEINER: Thank you, Your Honor.

13 THE COURT: -- that is another reason.

14 And as far as the motion to prohibit the State from
15 using peremptory challenges, there is no basis for that.
16 Absolutely none. If the State looks at potential jurors
17 and feels that they have right reasons for using
18 peremptory challenges, that is their right. That is --
19 each sides gets to make peremptory challenges.

20 But because Flowers III was reversed on Batson is
21 certainly no grounds for saying that they should now be
22 denied the right to use peremptory. The Supreme Court of
23 this State has certainly never said that on a retrial you
24 could not use peremptory challenges, nor has the United
25 States Supreme Court ever said that. And so you're
26 pulling that motion totally out of thin air and without
27 any basis in law or in fact for making it. So it's
28 denied.

29 MRS. STEINER: If the Court please, I -- two

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1 things. One, I would also renew all motions on the these
2 same grounds that they should at least be precluded from
3 seeking the death penalty both because of these
4 statistics and then because of the substantial impairment
5 of so many members that -- however, the point I do need
6 to make is I don't think either the State or the
7 defendant has had the opportunity to exercise peremptory
8 challenges on people who were talked to the first day.
9 And Your Honor, frankly, I overlooked that and I do have
10 three that --

11 THE COURT: Peremptory challenges?

12 MRS. STEINER: Cause challenges.

13 THE COURT: I asked yesterday and I asked not
14 more than 20 minutes ago. I said do either of you have
15 any more for cause and so --

16 MRS. STEINER: Your Honor, I overlooked that.

17 THE COURT: I don't know. You know, if you
18 have got some that you think should be considered.

19 MRS. STEINER: Thank you, Your Honor.

20 MR. EVANS: Your Honor, may I address some of
21 these issues that I've been so blatantly accused of?

22 THE COURT: You may.

23 MR. EVANS: I don't know if the defense is
24 trying to imply that I pick the jury pool that comes in
25 here. You know, I want to make sure that the record is
26 clear. All attorneys, the judge were present when this
27 jury panel was pulled, as they always are, by computer,
28 by the clerk of this court. I had nothing to do with
29 that. Don't have anything to do with that.

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1 Now, as far as the ones that have been excused so
2 far, I think my count was something like 40 different
3 jurors that were related to the defendant and said that
4 they could not under any circumstance be fair and
5 impartial. It's not my fault that jurors have been
6 honest and said how they feel. Apparently, the defense
7 does not like that, but that is just the way it fell.

8 THE COURT: Now, on the others from day one
9 that you believe might be considered, should be
10 considered for cause.

11 MRS. STEINER: All right. Thank you, Your
12 Honor.

13 We would make a peremptory challenge to Juror Number
14 3, Susan O'Quinn. Her testimony --

15 THE COURT: Challenge for cause. You said
16 peremptory.

17 MRS. STEINER: I'm sorry. Thank you, Your
18 Honor.

19 Cause challenge Number 3. Her voir dire indicated
20 that has not only apparently followed this case closely
21 in the past, we -- she did acknowledge having
22 conversations. She might even have said perhaps in jest,
23 that -- to another juror, that they shouldn't say that.

24 MR. EVANS: I object to that comment entirely,
25 because that is not what she said.

26 THE COURT: She certainly didn't. She said --

27 MRS. STEINER: She said she didn't recall
28 whether or not she said it. And I think -- but in
29 addition, Your Honor, she, after receiving this summons

1 in this case, Googled this case on the internet,
2 specifically did research, which is totally inconsistent
3 with every, every rule that the Supreme Court of this
4 state has handed down about a juror who deliberately or
5 prospective juror -- a juror who would -- to do research
6 on this case, and that that is enough that she, she
7 cannot set aside.

8 Her interest in this is demonstrable that the
9 defendant's Sixth Amendment right to a fair and impartial
10 jury, this Court's protection, despite what this juror
11 has said, should be protected by excusing this juror
12 under *Murphy* and *Reynolds* and the other Mississippi and
13 federal progeny that, that prohibit jurors who have done
14 separate and independent research on the case while they
15 knew they were a juror.

16 MR. EVANS: There is nothing that says that
17 this juror did any research on the case. She said that
18 she Googled the name and that there is nothing on there
19 that would affect her in any way. As a matter of fact,
20 there are liberal websites and there are legitimate
21 websites on there that tell what happened in court. She
22 could have gotten any information for either side by
23 Googling the name.

24 But there is absolutely nothing about that that says
25 that there is anything that would affect her decision in
26 this case. Everybody on the panel knows about the case.
27 There is absolutely no person that could tell the truth
28 that has lived in this county that doesn't know about
29 this case.

1 THE COURT: Everybody that we questioned has
2 knowledge about the case. I mean every single one we
3 have individually voir dired knows about the case. She
4 has stated that she did look at something on the
5 internet. It did not have any effect on her. She said
6 I'll disregard anything that is brought up that I have
7 seen and base my decision strictly on the evidence here
8 in court. The cases you are referring to are after
9 somebody has been selected as a juror when they are
10 sitting on a panel, and they start trying to do their
11 investigating once they become a juror. Right now she is
12 a venire person. She is not on the jury. And she did
13 not -- she has not violated any admonition of the Court.

14 So I have -- I, I don't pay attention to that. I
15 mean I read the newspaper once in awhile. I have a stack
16 of them right now that I haven't read, because I have
17 been so busy over here. But I don't know what is out
18 there. But whatever, you know -- but she has -- she has
19 stated affirmatively that nothing she has read, seen or
20 heard would affect her in any way. So I will deny that
21 one for cause.

22 MRS. STEINER: Thank you, Your Honor.

23 And then Juror 17, Pamela Sue Chesteen. She also
24 stated during voir dire that she had formed an opinion
25 and could set it aside. Under the precedent of *Murphy*,
26 *Reynolds* and *Manning* case which seems to say that once an
27 opinion is formed, you need to treat that differently
28 from people who merely had prior exposure.

29 And I realize that she did say she could set it

1 aside, but for the reasons we've cited in connection with
2 the other jurors we believe that *Murphy, Reynolds* and
3 this Court, the Mississippi Supreme Court's precedent on
4 seating a fair jury, including its comments in *Manning*
5 about what was properly done with that jury, mandate
6 excusal for cause of Miss Chesteen to protect the
7 defendant's Sixth Amendment right to a fair jury.

8 MR. EVANS: And as we have done with other
9 jurors, we will argue that she had no fixed opinion. She
10 had an opinion that would not affect her in any way. It
11 would not enter into the courtroom with her. She could
12 be fair and impartial.

13 THE COURT: I, I recall her statement to be
14 exactly the same as the prosecutor. She did say that
15 nothing she has heard outside the court would come into
16 the courtroom and influence her or affect her. She said
17 any ideas, views or opinions she had on the case would be
18 set aside and she would base the decision strictly on the
19 evidence that is presented here in court. And so I deny
20 that one for cause.

21 MRS. STEINER: Thank you.

22 Your Honor, and I had misspoken earlier when I said
23 none of the Davises had a basis for a cause challenge. I
24 actually thought I had already made it, and it was on the
25 person above him. But it's Juror Number 40, the sons to
26 Charles Lloyd Davis has stated that he has formed an
27 opinion. And similarly notwithstanding -- and we do not
28 disagree that Miss Chesteen also said she could set it
29 aside. We are saying that notwithstanding that

1 statement, under all the circumstances, it should -- this
2 should be a challenge that the Court makes despite the
3 juror's statements. The juror's assurances are not
4 always where the inquiry ends. And in this instance,
5 with Number 17 and again with Number 40, it is under
6 *Murphy, Reynolds and Manning*, this Court's obligation to
7 protect the Sixth Amendment right of this defendant to a
8 fair and impartial jury by removing this individual
9 juror, Number 40, also for cause on that basis.

10 MR. EVANS: He also stated he had an opinion,
11 but it would not affect him. It was not a fixed opinion.
12 He could lay any opinion he had aside, base his decision
13 strictly on the evidence.

14 In addition to his answers him, 17, these others
15 that they have objected to about having opinions and
16 saying they could set them side, the Court also had the
17 opportunity to view these jurors as they were talking and
18 explaining this. And I think it was clearly obvious, not
19 only from their answers but from their reactions and how
20 they were answering these questions, that they were being
21 honest. They could set any opinion aside. They could
22 base their, their decision strictly on the evidence in
23 court.

24 THE COURT: Mr. Davis said the -- said he would
25 set any opinion aside, and he didn't state what opinion.
26 He didn't say what opinion he might have. But I have on
27 all of these that stated they had an opinion, I have sat
28 less than three feet away from them. I have had an
29 opportunity to look in their eyes and, and understand

1 what they are saying. And, and believe me, if I had any
2 belief at all that any of them were being untruthful to
3 the Court or had any hesitation, I, I would strike them
4 for cause. But they have all unequivocally stated that
5 it would not in any way influence them. It would not
6 have any affect on them and that they will lay aside any
7 views, any opinions they may have.

8 They -- I believe all of them acknowledged they
9 don't know all the facts of the case, and different
10 jurors have stated they read or saw something about it.
11 But every one of them said that they would listen to the
12 evidence, they would decide the case based on the
13 evidence presented and not let any factors outside of the
14 courtroom affect them in their deliberations. And I
15 don't think you can ask for more than that. I think that
16 is all that is required of any juror.

17 And again, on every one of these that have been
18 individually questioned. I have had the opportunity,
19 because of my perspective where I am sitting above them
20 but right next to them and leaning forward, so I could
21 look and find out and understand and hear as well. And I
22 just do not see any grounds for, for these you just
23 raised or for the other ones.

24 MRS. STEINER: Thank you, Your Honor.

25 I have two more motions I would like to make here.
26 With respect to our objection on the equal protection
27 clause, without waiving our prior motions that at least
28 peremptory challenging by the State and/or the seeking of
29 the death penalty should be dismissed because of this

1 egregious imbalance that has resulted, we would move
2 that -- and we, we would sustain those and do not think
3 they can necessarily be cured by what I am moving here.

4 But in an effort to ameliorate that we would move
5 that all additional jurors be voir dired, challenged for
6 cause and a full panel then which will at least be
7 marginally -- I think such a high proportion of the -- as
8 yet, the disproportion. Half of the unvoir dired jurors
9 are African-American, where as they may go. Only 28
10 percent of the total venire.

11 We would move that they all be voir dired and too,
12 the process be followed on everybody, be followed and
13 that then the Court be asked to perform a complete and
14 random reshuffle of the remaining names, however they be.
15 And that when the jury is struck, it be done on the basis
16 of that reshuffle.

17 That has never, so far as I know, been done in the
18 state of Mississippi. I don't think it's unlawful as
19 long as the process of the arraying jurors is random.
20 That is a requirement of both the Mississippi and federal
21 -- that is requirement of Mississippi law and
22 constitution. And we would ask that as a partial
23 ameliorative without waiving any of our other equal
24 protection objections.

25 MR. EVANS: Your Honor, this a randomly drawn
26 jury. Just because they don't like the way it has fallen
27 out does not affect it in any form or fashion. It was
28 drawn randomly. They were randomly brought into court.
29 They were randomly numbered. And we went through them in

1 the order that they were drawn. Neither side gets to
2 pick which jurors they want to bring up here. We go by
3 the random drawn order and follow that.

4 THE COURT: You have got nothing to support
5 that. And that is, I must say, one of the most absurd
6 motions I believe I have ever heard. They were -- when
7 they were pulled out of the jury box, it was random at
8 that time. I suppose if we randomly reshuffled them
9 again and you didn't like the shuffle, then you would ask
10 for it again. Well, you don't get that.

11 I mean they were pulled out according to law. They
12 were drawn by the way the law requires them to be drawn
13 and there is no basis in reshuffling a list. Those that
14 fall outside the 45 that are potential jurors, you know,
15 they fell where they fell on the jury list. But it is
16 not by anything other than the random drawing of the
17 computer when the jury list was originally -- was pulled.
18 And, you know, I'm not going to reshuffle the list again.
19 There is no authority for that, and there is no basis for
20 it.

21 MRS. STEINER: Thank you, Your Honor.

22 And then my final motion is in light of the entire
23 voir dire, the fact that the Court has allowed
24 individuals, looked at independently with opinions they
25 said they can set aside, that there are so many of those
26 individuals and individuals with multiple personal
27 connections, particularly to victim impact witnesses, and
28 other knowledge that has lead to that opinion on this
29 jury, we would move this venire -- we would move under

1 the authorities of the Mississippi Supreme Court and the
2 United States court -- Supreme Court requiring that the
3 defendant, under the Sixth Amendment, be -- and as well
4 as his Fourteenth Amendment rights to a jury as a whole
5 that may be fair and impartial, we would move that this
6 entire venire be quashed, and this case set over for
7 another jury selection.

8 Mr. Flowers should not have to choose between his
9 right under the Mississippi Constitution, as recognized
10 most recently in *May versus State* by the Mississippi
11 Supreme Court, to a trial, a local trial, that should not
12 be traded off against his Sixth Amendment right to a fair
13 and impartial jury. And this venire should be quashed
14 and that we should start over again at some future time
15 when it seems likely that we could get a more fair and
16 impartial jury, or at least one that comports with the
17 requirements of the Sixth and Fourteenth Amendment and
18 the Mississippi requirements for a fair and impartial
19 jury.

20 MR. EVANS: Your Honor, at this point we have
21 gone -- I think the Court ordered, I don't know if it is
22 5- or 600 jurors drawn.

23 MRS. STEINER: 600.

24 MR. EVANS: We at this point have voir dired
25 openly and individually a group of jurors. We have 45
26 jurors that are available right now that have stated that
27 they can be fair and impartial. I am sure both sides
28 have strikes, because they don't agree with some of the
29 things these people that are on here have said. But we

1 have a panel of enough jurors to try this case that have
2 all said that they can be fair and impartial.

3 And it is just a complete stalling tactic at this
4 point to now ask for this case to be set aside and
5 another trial be set.

6 THE COURT: You don't get do-overs in court. I
7 mean you get the list. You get the jurors that are
8 called. And you can't just continually draw people until
9 you get the jury you want. I mean we have drawn 600
10 people out of this county. If we drew 600 more, that
11 might not be something -- a jury that Mr. Flowers wants.
12 It's a jury of his peers, because it was randomly
13 selected from the jury wheel in this county.

14 And you know, you say well, the next one might be
15 more favorable or representative or whatever; it may not
16 be. The last one, again, because I tried it, and I mean
17 there were numerous people that were -- came in last time
18 and said they knew Mr. Flowers or his family and could
19 not be fair and impartial.

20 If there is any racial abnormalities here, it is
21 strictly because Mr. Flowers knows so many people and
22 his, his family are very, very prominent, well-thought of
23 people. Mr. Archie sings, apparently, from what I have
24 gathered, at numerous places, at numerous events. And
25 there is not any rational basis for believing that if we
26 got rid of this panel there would be a future panel that
27 would not end up being the very same way as this one is.
28 So I am going to deny the motion to quash.

29 MRS. STEINER: Your Honor, if -- I just want to

1 clarify that in addition to what you have identified with
2 respect to the equal protection issues, this is looking
3 at the individuals now sitting out there from which the
4 Court is going to allow the parties to strike that the
5 implied bias and -- is so pervasive in so many of these
6 jurors, for so many reasons that this particular panel
7 fails to conform to the standards of the Supreme Court of
8 Mississippi and the Supreme Court of the United States
9 and of the literal language of the Sixth Amendment to the
10 United States Constitution, which is being very strictly
11 construed in the United States Supreme Court now as, as
12 the recent decisions, as recent as this term of court,
13 have, have urged that this panel is specifically so
14 infected with bias that no fair trial in accordance with
15 either the Sixth or Fourteenth Amendment could occur.

16 I would also, in light of the Court's apparently
17 revised notions on not being allowed do-overs, renew our
18 motion to completely dismiss this case on the grounds of
19 double jeopardy and certainly the death penalty on
20 grounds of both double jeopardy and due process.

21 And, and finally, Your Honor, we would say that this
22 defendant should not have to choose between his right to
23 an impartial jury -- and very frankly, if Your Honor
24 finds that no impartial jury can be granted in the county
25 where this defendant is entitled under the Mississippi
26 Constitution to stand trial, then the remedy is
27 discharging this defendant until such time as he can be
28 recharged at a time when such a jury could be obtained.
29 And that the tie of stalemate goes to the defendant under

1 the Sixth Amendment of the United States Constitution,
2 and that has come to pass here, and that is what must
3 happen here.

4 THE COURT: Well, I have made no finding that
5 he could not get a fair jury in this county. I, I don't
6 know where that comes from, but I certainly made no
7 finding that he could not get a fair jury. We've got 45
8 people that have said they could be fair and impartial,
9 and they would consider the evidence and base their
10 decision on the evidence as presented here in court.

11 So, you know, I thought the other motion earlier was
12 from left field. But this one is trumps it. There,
13 there is just nothing that indicates that this jury
14 cannot be fair and impartial. There is no basis for
15 dismissing.

16 Again, it seems like the entire purpose of your
17 motion is you are saying well, I don't like the potential
18 jurors so I want -- I want to dismiss the case, because I
19 don't like who might be on the jury. Well, you know,
20 that is not a basis for dismissing the charge. It is not
21 a basis for dismissing the death penalty portion of the
22 case.

23 And it's -- I've ruled previously double jeopardy
24 has not attached. Jeopardy never attaches until there is
25 a verdict. If Mr. Flowers at a previous trial had been
26 found not guilty, we wouldn't be here. But I have never
27 seen anything that says after a reversal from the Supreme
28 Court you can't retry a case. If, if that's the law,
29 it's been handed down sometime since I started court this

1 morning, because that is not the law in this state. It
2 is not the law in the United States. As far as I know,
3 it never has been. So I will deny those motions.

4 MRS. STEINER: Your Honor, may we have an hour
5 and a half for lunch? Because not only do we have to
6 strike this jury, but I am assuming that the Court is
7 going to want to begin with witnesses and opening
8 statements as soon as the striking process is open and
9 there are boxes that have to be shifted and that sort of
10 thing.

11 THE COURT: Well, I will give you even more
12 than that. Just be ready in two hours to look over the
13 jury list.

14 MRS. STEINER: Thank you.

15 THE COURT: And I am going to call the jury in
16 and ask them to be back at 2:30. You know, if we are not
17 through at 2:30, they have been sitting here for days, so
18 they -- a little more time is not going to, you know, be
19 of a great inconvenience to them.

20 If you will bring them in.

21 Counsel, if you will approach.

22 (AS PROSPECTIVE JURORS WERE RETURNING TO THE COURTROOM,
23 MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER AND MR. CARTER
24 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
25 OUTSIDE THE HEARING OF THE COURTROOM AUDIENCE.)

26 THE COURT: I've actually been marking my list
27 so much that I -- is it Don Earl Campbell, and 87,
28 Beverly...

29 MR. HILL: Locke.

1 THE COURT: Are those the two that have been
2 excused for cause since we last excused?

3 MR. HILL: Yes, sir.

4 MRS. STEINER: Yes, sir. And then Miss Cates
5 or Bates.

6 THE COURT: Okay. Don -- okay. Has Miss
7 Locke -- has she been excused already?

8 MR. EVANS: Yes, sir.

9 THE COURT: So what is Miss Bates' name?

10 MR. EVANS: Bates. She is 48.

11 THE COURT: Okay. So it's Number 48 and 127.
12 48 and 127; is that right?

13 MR. CARTER: Yes.

14 MR. HOWIE: 87, too.

15 MR. CARTER: Yeah. 87, too.

16 THE COURT: Has she not already been --

17 MR. HOWIE: I don't think she has already been.

18 MR. EVANS: She hasn't. She is still here.

19 MRS. STEINER: It is 48. Bates.

20 THE COURT: 87. 127. Is that correct?

21 MRS. STEINER: And 127.

22 THE COURT: 87, isn't it?

23 MR. HOWIE: 87, yes, sir.

24 THE COURT: 48. 87. And 127.

25 MR. HOWIE: Yes, sir. That's correct, Your
26 Honor.

27 (THE BENCH CONFERENCE WAS CONCLUDED.)

28 THE COURT: Okay. Ladies and gentlemen, we are
29 going to recess now. I am going to ask that you be back

1 at 2:30. There are some issues, some items we are going
2 to be doing. There are some more people that I can
3 excuse, and you won't have to come back.

4 That would be Number 48, Miss Bates; Number 87, Miss
5 Locke; and then Number 127, Mr. Campbell.

6 And if the remainder of you will be back at 2:30.
7 And like I've cautioned you always, don't talk with
8 anybody. Don't talk among yourselves about the case. If
9 you talk among yourselves, let it be about the weather or
10 something else, but you can't talk about the case. And
11 you can't talk to any parties, witnesses or anybody
12 involved.

13 With that, ladies and gentlemen, if you will be back
14 here at 2:30.

15 (COURT RECESSED.)
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JURY SELECTION - JURY OUT

(THE FOLLOWING PROCEEDINGS WERE HAD IN
OPEN COURT WITH THE COURT, THE COURT
REPORTER, ALL COUNSEL, THE DEFENDANT AND
THE CIRCUIT CLERK PRESENT, OUTSIDE THE
HEARING AND PRESENCE OF THE PROSPECTIVE
JURORS, TO-WIT:)

BY THE COURT: The Court will come back to
order. The State may proceed in tendering.

BY MR. EVANS: Your Honor, the State will
tender Juror No. 1, Ms. Sandra Hamilton. The
State will tender No. 2, Ms. Susan O'Quinn.

BY THE COURT: Actually, No. 3.

BY MR. EVANS: I mean, we have -- right.
Juror No. 2, but No. 3 on the list. State
will tender Juror No. 8, Mr. Alexander
Robinson. State will tender Juror No. 12,
Ms. Janelle Marie Johnson. Juror No. 14 will
be S-1. State will tender Juror No. 17,
Ms. Pamela Sue Chesteen. State will tender
No. 18, Ms. Lillie Mae Laney. State will
tender No. 22, Mr. Larry Wayne Blaylock.
State will tender No. 25, Ms. Suzanne
Winstead. State will tender No. 26,
Ms. Jennifer Chatham. State will tender No.
29, Mr. Harold Waller. State will tender No.
30, Mr. Jeffrey Whitfield. State will tender
No. 38, Mr. Barron Davis.

BY MS. STEINER: I believe that's No. 39.
Is that 38 or --

JURY SELECTION - JURY OUT

1 **BY MR. HOWIE:** 38.

2 **BY MR. EVANS:** I think that's 12.

3 **BY THE COURT:** Yes. That's 12.

4 **BY MS. STEINER:** Your Honor, before
5 proceeding, I am not, at this point, making a
6 challenge under *Batson*. No pattern has yet
7 been established. However, State's Strike 1
8 was of African-American -- Juror 14.

9 Under the Mississippi Rules, I
10 believe any objections on the preemptory
11 strike, the juror has to be at least brought
12 to the Court's attention during the panel.
13 As we have not yet made a *prima fascia* case,
14 I am not -- nor do I know that one will
15 happen. I just want to reserve the right
16 should a *prima fascia* case develop hereafter
17 for any reason to include S-1 as part of the
18 totality of the circumstances of that case.

19 **BY THE COURT:** That's certainly
20 appropriate, I mean.

21 **BY MS. STEINER:** Thank you.

22 Your Honor, S-1 -- D-1 would be Juror
23 1. We will accept Juror 3. We will accept
24 Juror 8. We will accept Juror 12. We will
25 strike Juror 17 as D-2. We will accept -- my
26 print is small -- Juror 18, Lillie Mae Laney.
27 We will accept Juror 22, Larry Wayne
28 Blaylock. We will accept Juror 25, Suzanne
29 Winstead. We will accept Juror 28,

JURY SELECTION - JURY OUT

1 Jennifer --

2 **BY THE COURT:** Wait, we got --

3 **BY MR. EVANS:** 26.

4 **BY THE COURT:** You probably renumbered
5 your list -- but is it No. 26, Ms. Chatham?

6 **BY MS. STEINER:** 26, Ms. Chatham. Thank
7 you, Your Honor. We'll strike Juror 29,
8 Harold Waller, as Defense Strike 3. And
9 accept Juror 30, Jeffrey Whitfield, and
10 accept Juror 39, Barron Davis --

11 **BY THE COURT:** It's 38, but I --

12 **BY MS. STEINER:** 38.

13 **BY THE COURT:** -- knew who you were
14 talking about.

15 **BY MS. STEINER:** I made the mistake of
16 trying to put my list on short paper.

17 **BY THE COURT:** We -- it's been obvious
18 that I had original numbers and new numbers,
19 and I've gotten mine confused at times so
20 that's understandable.

21 **BY MR. EVANS:** State will tender Juror No.
22 40, Charles Davis. State will tender 42,
23 Marcus Lamar Fielder. 44 will be S-2. 45
24 will be S-3. State will tender No. 47, Bobbi
25 Leigh Davis.

26 **BY MS. STEINER:** Your Honor, before the
27 Defendant exercises any further preemptories,
28 we would like to move that a prima fascia
29 case of discrimination against

JURY SELECTION - JURY OUT

1 African-American jurors has now been shown.
2 The State has been tendered four -- I'm
3 sorry -- three African-American jurors --

4 **BY MR. HILL:** Four.

5 **BY MS. STEINER:** Four, and has stricken
6 three of them. And that is a 75 percent
7 strike rate of African-American jurors. The
8 mere fact that one has been accepted does not
9 preclude the finding of either a prima facie
10 case or ultimately of discrimination on the
11 basis of race.

12 **BY MR. EVANS:** Your Honor, I think the
13 proper procedure is going through the entire
14 panel and then, if the Court rules, producing
15 the reasons. But I'll honor whichever way
16 the Court says do it.

17 **BY MS. STEINER:** We have no objection
18 since ultimately, the Court's going to have
19 to consider the totality of the circumstances
20 in any event so if we can just reserve that.

21 **BY THE COURT:** Well, I mean, it can be
22 reserved. The State's going to have to come
23 forward with race-neutral reasons at some
24 point.

25 **BY MR. EVANS:** And we will ask the Defense
26 to do the same.

27 **BY MS. STEINER:** Your Honor, I only think
28 that if there's a prima facie case --

29 **BY THE COURT:** We've got to see a prima

JURY SELECTION - JURY OUT

1 fascia case before we take that issue up.

2 **BY MS. STEINER:** I have no objection to
3 waiting till the end to doing it and just
4 reserving all argument with respect to that
5 when the entire panel has been tentatively
6 struck.

7 **BY MR. HILL:** Okay. We got three
8 tendered.

9 **BY MS. STEINER:** All right. I believe
10 we -- D-4 would be on Juror 40. We --

11 **BY THE COURT:** Wait, wait, wait. I'm on
12 the right page now. Give me a second to
13 get --

14 **BY MS. STEINER:** Charles Davis.

15 **BY THE COURT:** I see it now.

16 **BY MS. STEINER:** D-4 would be Charles
17 Davis. No. 42, Marcus Fielder, we accept.
18 And we would exercise D-5 on Ms. Bobbi Leigh
19 Davis. Allow me to state, Your Honor, that
20 although we challenged her on the basis of
21 serving for cause on -- as a relative, and we
22 are in a position where there are remaining
23 preemptory challenges, the fact of so many
24 jurors coming after this one who have
25 expressed actual opinion -- who have advised
26 they have actual opinions with respect either
27 to guilt -- with respect to guilt or
28 innocence and close connections with Defense
29 witnesses, it would simply be irresponsible

JURY SELECTION - JURY OUT

1 not to reserve sufficient preemptory strikes
2 to strike those people should they come up in
3 the Court's tender. And that we would like
4 to reserve the issue of whether or not this
5 family member -- these two family members
6 could stay together on that issue alone
7 despite the fact that we are not exercising a
8 preemptory strike here on this --

9 **BY MR. EVANS:** I thought she did exercise
10 D-5.

11 **BY MS. STEINER:** We would not have -- the
12 fact that we did -- oh, I'm sorry, Your
13 Honor. We would not have exercised this
14 preemptory strike, but for the Court's
15 ruling.

16 **BY MR. EVANS:** So it's the complete
17 opposite of what you just argued, I guess.

18 **BY MS. STEINER:** I'm sorry. But as there
19 may be jurors down the road, where we will
20 run out of preemptorys and cannot strike, and
21 I would invite the Court's attention to that
22 when it happens. Forgive me.

23 **BY MR. EVANS:** State will tender Juror No.
24 50, Mr. Bobby Lester. The State will tender
25 No. 51, Mr. Burrell Huggins.

26 **BY MS. STEINER:** D-6 will be exercised
27 against Mr. Bobby Lester. D-7 will be
28 exercised against Mr. Burrell Huggins.

29 **BY MR. EVANS:** No. 53 will be S-4. State

JURY SELECTION - JURY OUT

1 will tender No. 54, Ms. Patricia Box. The
2 State will tender No. 58, Ms. Emily Branch.

3 **BY MS. STEINER:** D-8 will be exercised on
4 Juror 54, Patricia Box. We will accept Juror
5 58, Emily Branch.

6 **BY MR. EVANS:** Juror 59 will be S-5.
7 Juror 62 will be S-6. Tender Juror No. 63,
8 Mr. James Hargrove.

9 **BY MS. STEINER:** Your Honor, may I have a
10 moment?

11 **BY THE COURT:** You may.

12 (PAUSE)

13 **BY MS. STEINER:** Thank you, Your Honor.
14 We, the Defense, will accept Juror 63, James
15 Hargrove.

16 **BY THE COURT:** And I believe that gives us
17 twelve, if I'm counting right --

18 **BY MR. HILL:** Yes, sir.

19 **BY THE COURT:** -- but my counting hasn't
20 been right. At this point, I made a initial
21 determination, based on the first three
22 strikes, the State is going to be required to
23 put on race-neutral reasons as to the jury
24 strikes, because I have noted now that five
25 out of six strikes were African-American.

26 **BY MR. EVANS:** All right, Your Honor. Are
27 you ready?

28 **BY THE COURT:** I am.

29 **BY MR. EVANS:** On Juror No. 14,

JURY SELECTION - JURY OUT

1 Ms. Carolyn Denise Richardson Wright. She
2 was sued by Tardy Furniture, after these
3 murders, by the family members that will be
4 testifying here today. They had to garnish
5 her wages because of that fact.

6 She knows almost every Defense
7 witness in this case. She has worked with
8 the father of the defendant, Archie, Sr. She
9 has worked with the sister of the defendant,
10 Cora. She knows Connie Moore. She knows
11 Jimmy Forrest. She knows Stacy Wright. She
12 knows his sister, Sherita. She knows his
13 sister, Cora. She knows Archie. She knows
14 Larry Smith. She knows Danny Joe Lott. She
15 knows Elaine Goldstein and is married to her
16 cousin. She knows Charles Weems, and she is
17 his cousin.

18 **BY THE COURT:** Does the Defense offer
19 anything to rebut the --

20 **BY MS. STEINER:** Yes, Your Honor. Allow
21 me to say that this is subject to -- and I'd
22 like to reserve the right to take a break
23 after we've gone through this process to
24 review the voir dire, because this is -- a
25 lot of data has come in, and we have tried to
26 anticipate to the extent possible, but -- but
27 yes. We have rebuttal with respect to
28 Ms. Wright. Like No. 17, accepted by the
29 State, she has extensive acquaintance with

JURY SELECTION - JURY OUT

1 many witnesses involved -- on -- in the
2 family. She had an account at Tardy's, like
3 75. There were -- there were examinations
4 about feelings pertaining to the account.
5 The State conducted them only on Ms. Wright
6 and another African-American juror who had --
7 who apparently also had been in a dispute.
8 And if the Court -- one moment, I have a note
9 taker here.

10 (PAUSE)

11 **BY MS. STEINER:** And in terms of in
12 general acquaintance with witnesses and
13 parties in this matter, the State has
14 accepted Juror 29, 50, and 69, who have close
15 personal acquaintances with many prospective
16 witnesses in this case of an even more
17 intimate nature -- oh, I'm sorry. 29 and 50.
18 And with even more intimate, personal
19 interrelationships with individuals who are
20 witnesses in this case and apparently made
21 little or no inquiry of them other than to
22 seek fairness. No probing inquiry was made
23 by the State with respect to any of these.

24 And we think it is, therefore,
25 pretextual specific and particularly in light
26 under -- of the history of race
27 discrimination in jury selection in this
28 district and in this particular case found by
29 the Mississippi Supreme Court in *State v.*

JURY SELECTION - JURY OUT

1 Flowers after the third trial, the first one
2 in this district.

3 **BY THE COURT:** Have you found any white
4 jurors who were not struck who had been sued
5 by Tardy Furniture? And have you found any
6 who have worked with Mr. Archie Flowers?

7 **BY MS. STEINER:** I believe, Your Honor,
8 that -- that juror -- that white Juror 17 has
9 a business acquaintanceship with Mr. Archie
10 Flowers -- and possibly with Mr. Archie
11 Flowers, Jr. I think she's the one who is
12 the bank teller and has expressed
13 acquaintances -- I'm sorry. Archie -- no.
14 She has -- with several other people in the
15 family, however.

16 **BY THE COURT:** Well, I'll say for the
17 record she did indicate she knows Archie and
18 Lola Flowers.

19 **BY MS. STEINER:** I believe so.

20 **BY THE COURT:** I mean, she did say that,
21 because I've got that in my notes.

22 **BY MS. STEINER:** And I think these are
23 both basically in the work place
24 interactions, and that they are comparable.
25 Each has informed this Court and the State of
26 an ability to be fair and unbiased, not
27 withstanding that.

28 Your Honor, there is no evidence of
29 an actual lawsuit, but Ms. Wright's testimony

JURY SELECTION - JURY OUT

1 concerning it was that it was not one that
2 created hostility or ill will. It was one of
3 simply a financial exigency that -- that came
4 up. I think she acknowledged there was a
5 legitimate debt there and simply that she
6 could not pay it. And that as a result, this
7 happened.

8 And I think that that is -- in
9 *Flowers III*, what the Supreme Court of
10 Mississippi said was that when you are
11 looking at *Batson*, you look at the totality
12 of the circumstances and you go beyond little
13 excuses. And that the danger, certainly, in
14 *Flowers III* is to devolve -- for the *Batson*
15 challenging process, to devolve into an
16 effort of uncovering and coming up with
17 facially neutral reasons that are merely a
18 mask for actually racially discriminatory
19 reasons, the desire to bleach or -- I
20 suppose, if it were the other way around --
21 darken or make male or make female, the jury
22 and that the Court, considering the totality
23 of the circumstances, cannot simply express
24 this distinction.

25 This is based on the 14th Amendment
26 Equal Protection Clause. And there is a huge
27 body of equal protection civil litigation.
28 It is referred to by the United States
29 Supreme Court in *Snyder*, the most recent case

JURY SELECTION - JURY OUT

1 in which a verdict was reversed on *Batson* in
2 the United States Supreme Court.

3 And basically, the situation is that
4 you may go behind the facial neutrality if
5 anything in the record suggests that one or
6 more of the reasons may be either unconnected
7 and related to what is really a material
8 issue in this case and/or appears to have
9 been pursued with more vigor in an attempt to
10 uncover some excuse that is of less than
11 universal relevance.

12 I do not believe a general question
13 was asked of this jury by the State, Has
14 anybody else been sued by Tardy's or by any
15 of the other people? It's possible the
16 Golden family. It's possible the Rigby
17 family. It's possible the Ballard family
18 have been in litigation with other people in
19 this jury that was not inquired into, very
20 frankly.

21 The Defense didn't see it as relevant
22 if they had put up their hands and say, "I
23 have ill will against somebody on the base of
24 litigation." You did ask if you had feelings
25 about acquaintances. And I think this was
26 fishing for pretextual facially
27 nondiscriminatory reasons, and I would
28 reserve the right at some point -- I'm not
29 saying this is the only one, but I -- you

JURY SELECTION - JURY OUT

1 know, I've had -- I haven't even had a chance
2 to -- I'm tempted to do this in advance but
3 the --

4 **BY THE COURT:** Well, the time is now if
5 you've got any to bring out -- I mean, you
6 know, we can't, you know, stay on one juror
7 and then move on and come back later and
8 argue something else on that juror. So if
9 you've got anything --

10 **BY MS. STEINER:** No, Your -- I understand
11 Your Honor. I would request that we complete
12 this process here and that we be given an
13 overnight recess -- I understand the court
14 reporter --

15 **BY THE COURT:** No, ma'am. You're not -- I
16 mean, that's absolutely an absurd request. I
17 mean, you -- right now, in *Batson*, you have
18 an opportunity to come forward and show that
19 somehow the State's excuse is pretextual.
20 But we don't recess for, you know, days to
21 thumb through everything that's been said.
22 You've got -- you have taken great pride in
23 introducing the number of interns that -- I
24 don't know how many, four or five -- and
25 you've got other people here assisting you
26 besides your interns. And so if you've got
27 any other arguments to make on this issue,
28 this is the time to do it.

29 **BY MS. STEINER:** Your Honor, as I say --

JURY SELECTION - JURY OUT

1 may I complete the inquiry. I understand the
2 court reporter is working on and has gotten
3 for the Court preliminary draft notes of the
4 entire voir dire, at least and certainly as
5 to any witness --

6 **BY THE COURT:** We're not going to wait for
7 the voir dire to be transcribed. It would
8 take the court reporter days to get -- I
9 don't know how many days but, I mean, they
10 rough draft. But that's all we've got
11 available is a rough draft. And I guarantee
12 you if I handed a rough draft to you or to
13 Mr. Evans and the court reporter had
14 something wrong in that rough draft and then
15 when it -- if it got to the point where it
16 was appealed and there was something
17 different, you would be raising that as an
18 issue, saying that the court reporter had
19 changed something in a transcript. So that's
20 why rough drafts of the transcripts from
21 court reporters are not done.

22 And again, you've had -- you've had
23 an awful lot of people here assisting you.
24 And you know, if you can't offer any other
25 reason, then we're going to move on.

26 **BY MS. STEINER:** All right. Your Honor,
27 they have also -- one of my many interns has
28 handed me a note. They have accepted Juror
29 No. 12, who's related by marriage to -- to at

JURY SELECTION - JURY OUT

1 least one Defense witness, John Johnson --

2 **BY MR. EVANS:** A Defense witness?

3 **BY MS. STEINER:** We have subpoenaed him as
4 a witness -- although he will be --

5 **BY MR. EVANS:** Oh, my gosh. She's calling
6 my investigator as her witness? That's
7 ridiculous, Your Honor.

8 **BY MS. STEINER:** You're right, Your Honor.
9 He will be examined adversely.

10 Juror No. 42, which -- who was
11 accepted by the State, has been employed by
12 witness Thornburg and Juror No. 22. Again,
13 friends with John Johnson. Again, other
14 witnesses --

15 **BY THE COURT:** But I don't think
16 there's -- the sheriff at the time. Does the
17 State have anything to respond?

18 **BY MR. EVANS:** Yes, sir, we do, Your
19 Honor. Since I have been accused, even
20 though this juror admitted that she was sued,
21 I would like to offer into evidence a copy of
22 the judgment where she was sued by Tardy
23 Furniture.

24 **BY MS. STEINER:** Is there also a
25 garnishment order on that?

26 **BY THE COURT:** It's an abstract of justice
27 court where she was sued. And for the
28 purpose of this -- I mean, obviously, this
29 isn't going to go into the jury room or

JURY SELECTION - JURY OUT

1 anything like that.

2 **BY MS. STEINER:** I understand.

3 **BY THE COURT:** But for the purpose of this
4 proceeding, I'll allow it.

5 **BY MR. EVANS:** I think the record speaks
6 for itself on everything else that I offered.

7 (STATE'S EXHIBIT NO. 1, JUDGMENT, WAS
8 MARKED AND RECEIVED INTO EVIDENCE FOR
9 PURPOSES OF THIS MOTION HEARING ONLY)

10 **BY THE COURT:** Anything else?

11 **BY MS. STEINER:** Yes, Your Honor. The
12 State has accepted No. 63, who has two prior
13 convictions of misdemeanors reduced from
14 felonies. He's a white juror --

15 **BY MR. EVANS:** I haven't used any criminal
16 convictions --

17 **BY MS. STEINER:** Your Honor, may I finish
18 my --

19 **BY THE COURT:** Well, they didn't offer
20 that as race neutral reason as to striking
21 Ms. Wright so I don't believe --

22 **BY MS. STEINER:** Your Honor, I'm not
23 suggesting that they are using that as a
24 reason for striking Ms. Wright. It's the
25 differential level of investigation. They
26 obviously felt it important enough to go get
27 abstracts of judgment on this
28 African-American juror who, as freely as
29 Mr. Hargrove, the white juror, discussed the

JURY SELECTION - JURY OUT

1 prior legal problems they have had. They
2 did -- they went off for what is now Defense
3 (sic) exhibit to the *Batson* hearing 1. For
4 him, I had not seen any indication or
5 discussion that they had gone off and made
6 abstracts of the judgments on Mr. Hargrove
7 respecting his admitted legal troubles --

8 **BY THE COURT:** Well, reckon it might be
9 that they don't have to prove a race neutral
10 reason for striking him since they didn't
11 strike him?

12 **BY MS. STEINER:** No, Your Honor. I'm
13 saying the kind of investigation was
14 different with respect to a white juror with
15 prior litigation history discussed in court
16 than it was with this African-American juror
17 with a prior litigation history discussed in
18 court.

19 **BY MR. EVANS:** Your Honor, for the record,
20 I would like to put in the record that we
21 checked every prospective juror on the list
22 to see if they had ever had any run-ins or
23 were sued by Tardy Furniture after these
24 murders. I think that is very relevant. If
25 the Defense can't see the relevance of that,
26 something is wrong with them. It is very
27 important where they have had run-ins with
28 these folks that are going to be the key
29 victims in this case.

JURY SELECTION - JURY OUT

1 **BY THE COURT:** Well, I want to correct
2 something. Defense counsel maybe does not
3 recall it. But the entire panel was asked
4 first if they had ever had a charge account
5 with Tardy Furniture. And then they were
6 asked if they had ever been sued by Tardy
7 Furniture. So that was asked of the entire
8 group. It was not just asked of
9 African-American jurors, as you claimed.

10 And I also will note that you have
11 not -- I mean, Ms. Wright worked with
12 Mr. Flowers' father, worked side -- I don't
13 know side by side -- but Wal-Mart here in
14 Winona is not like some of these giant mega
15 stores. It's a relatively small -- smallest
16 Wal-Mart, actually, that I know in existence.

17 So she has worked with Mr. Flowers'
18 father. She has been sued by Tardy
19 Furniture. I find those to be race-neutral
20 reasons. You are correct in pointing out
21 that some of the other State -- the other
22 jurors that have been tendered by the
23 State -- some of these, you know, white
24 jurors know some of these people.

25 But I have not found, looking through
26 my notes, any white jurors that worked with
27 Mr. Archie at Wal-Mart. I have not seen any
28 indication that Tardy sued any of those. And
29 so I think the State has offered race-neutral

JURY SELECTION - JURY OUT

1 reasons, and I find that the Defense has
2 failed to rebut the reasons offered by the
3 State.

4 **BY MR. EVANS:** Your Honor, and also, she
5 worked with his sister, Cora.

6 **BY MS. STEINER:** I believe that's a
7 different juror.

8 **BY MR. EVANS:** No, sir.

9 **BY MS. STEINER:** I -- this was Wal-Mart --

10 **BY MR. EVANS:** She also worked with Cora
11 at the shoe store.

12 **BY MR. HILL:** She said Shoe World.

13 **BY MR. EVANS:** Shoe World.

14 **BY MS. STEINER:** I'm --

15 (PAUSE)

16 **BY MS. STEINER:** No, Your Honor. That
17 was --

18 **BY THE COURT:** I don't think this one
19 worked with Cora at Shoe World.

20 **BY MS. STEINER:** Yeah, this is not the --

21 **BY THE COURT:** I think you're thinking of
22 someone else.

23 **BY MS. STEINER:** That was a different
24 juror. I believe that -- if she -- that was
25 Juror 62, Dianne Copper. She worked with --
26 at Wal-Mart shoe and jewelry and formerly at
27 H&M Beauty Supply. And I think at one of
28 those, she worked with Ms. -- one of his
29 sisters. But this juror worked only at -- at

JURY SELECTION - JURY OUT

1 Wal-Mart where Mr. Archie Flowers was a
2 greeter at the door and probably saw more
3 customers more often during the day than his
4 fellow co-workers.

5 **BY THE COURT:** Well, again, she did work
6 at the same place. If he was a greeter, then
7 he was bound to have seen her every time she
8 walked in the door. And, also, she was sued
9 by the store. If -- if the only reason the
10 State offered was that she knows some of
11 these Defense witnesses, then there might be
12 something there. But the fact is knowing
13 these Defenses witnesses that you're
14 intending to call, plus the fact that Tardy
15 had to sue her, plus the fact that she worked
16 with Archie, in my mind, creates race-neutral
17 reasons for striking her. And that is the
18 finding of this Court.

19 **BY MR. EVANS:** All right, sir. Juror No.
20 44, Ms. Tashia Renee Cunningham. On her
21 questionnaire, she put she would not consider
22 death or life. She was back and forth in
23 questioning on what her opinion was on the
24 death penalty. She knows the Defendant's
25 sister, Sherita Baskin. Under questioning,
26 she asked how close she worked with Sherita
27 Baskin. I asked if she worked next to her,
28 and she said she did not. That she worked on
29 the complete opposite end of the line. After

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1 checking with ADP, I found out that the
2 information I'd already received was true,
3 that she works right next to her on the line,
4 practically every day. So not only did she
5 lie under voir dire, but she is a close
6 friend of hers. She knows her. And her
7 opinions of the death penalty are so
8 fluctuating back and forth that we could not
9 keep her.

10 **BY MS. STEINER:** If the Court please -- is
11 that your only reason? I've --

12 **BY MR. HILL:** Give us just one minute
13 here.

14 **BY MR. EVANS:** In *Brown v. State*, 890
15 So.2d 901 clearly states, and the Court has
16 upheld, The dismissal of jurors who have
17 given inconsistent answers in regard to their
18 ability to return a death sentence, citing
19 *Pinky v. State*, 538 So.2d 329. And hers was
20 just all over the board. It depended on who
21 asked the questions as to what her answer
22 was.

23 (PAUSE)

24 **BY MS. STEINER:** Thank you. Forgive me.
25 Your Honor, the primary -- first of all, I
26 believe the witness who testified, testified
27 she worked in human relations department.
28 She looked at time cards, that there were
29 about 25 people on this same line. She said

JURY SELECTION - JURY OUT

1 that -- she did not -- she was not on the
2 floor every day. Did not see it. We
3 specifically asked if there was documentation
4 that would establish, in fact, being assigned
5 consistently to immediately adjacent
6 positions on that 25-person line. She said
7 she could bring it. The State does not
8 appear to have brought in that evidence that
9 could resolve the ambiguity.

10 Ms. Cunningham said that yes, they
11 worked on the same line, but they -- but they
12 usually worked quite distant from each other.
13 She freely acknowledged her acquaintance and
14 friendship and workplace friendship but said
15 she could set that aside and be fair and
16 neutral.

17 The State has accepted those sorts of
18 assurances from virtually every white juror
19 it has tendered without more than a passing
20 conversation including, of course, Juror No.
21 17, who I believe was acquainted with several
22 people in the Flowers' family in the course
23 of the business relationship. And as Your
24 Honor pointed out, I think while Mr. Archie
25 was working as a greeter at Wal-Mart, that
26 there's probably not a person in Winona who
27 wouldn't have said, "Mr. Archie's my friend."

28 **BY THE COURT:** Does the State have any
29 response?

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1 **BY MS. STEINER:** Um --

2 **BY MR. EVANS:** Your Honor, there has
3 not --

4 **BY THE COURT:** I'm sorry. Are you
5 finished? I mean, I -- you may have been
6 pausing, and I thought that you were stopped.
7 If I've interrupted you, I -- you kind of --
8 I thought after I asked Mr. Evans, that you
9 were about to say something else --

10 **BY MS. STEINER:** My ancestors would take
11 breathers during their sermons.

12 Your Honor, I would also suggest that
13 juror -- actually, Your Honor, I remember
14 this. Juror 38, Barron Davis, who the State
15 tendered -- it was quite interesting because
16 I was watching his demeanor. In particular,
17 he had put himself as B, which means he was
18 not absolutely strongly in favor of the death
19 penalty but had answered his questionnaire,
20 yes. Yes. And he was asked by Your Honor on
21 considering both. He actually hesitated a
22 little bit and did -- and gave, I thought, an
23 answer that made him, at least in this
24 universe of people who we've been talking to,
25 at least more thoughtful and less certain on
26 the death penalty than --

27 **BY THE COURT:** Wait a minute. Are --
28 okay.

29 **BY MS. STEINER:** -- that's who -- is

JURY SELECTION - JURY OUT

1 that --

2 **BY THE COURT:** Apparently, there were some
3 people who were wanting to come in out
4 there --

5 **BY MS. STEINER:** I'm sorry --

6 **BY THE COURT:** If you'll wait a second,
7 because there were some people trying to come
8 in, and I think the door, mistakenly, was not
9 unlocked back there after lunch or I don't
10 know what the deal is.

11 **BY MS. STEINER:** I'm sorry. I'm thinking
12 of the young man, 30, Mr. Whitfield. He
13 said, "I have mixed feelings about the death
14 penalty." And he did, when Your Honor
15 questioned him, then said, "But yes, I can
16 set those aside," much as this witness --
17 what much as this juror did. Thank you -- I
18 apologize. 50 is Mr. Davis, who had the
19 relatives on the jury.

20 And the -- and we would say the -- I
21 think if you were -- view the trans -- the
22 rough notes, that he expressed at least mixed
23 feelings with respect to the death penalty,
24 just as Ms. -- Ms. Wright did. The -- as
25 many thought -- yeah, that --

26 I apologize. I am thinking of the
27 young man, and that is Juror No. 30. And I
28 think the record will reflect that he had
29 expressed mixed feelings. And very frankly,

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1 the Mississippi Supreme Court observed, in
2 particular in this case, that using death
3 penalty attitudes has been -- they would
4 find -- they did not find it as the exact
5 *Batson* grounds for reversal but found they
6 were indicative of pretext and suspect, were
7 the words they used. And this is a jury
8 where there has been soul searching with
9 respect to the death penalty and some dislike
10 of it on several of the jurors, but on most
11 particular No. 30, Mr. Whitfield.

12 **BY THE COURT:** Any response from the
13 State?

14 **BY MR. EVANS:** Yes, sir. Mr. Whitfield
15 was clear. He said that he believed in the
16 death penalty. He was mixed about his
17 feelings on the death penalty. He could give
18 the death penalty. That he could definitely
19 give the death penalty if there was a rule in
20 the case. He never, at any point, even
21 hesitated on whether or not he could even
22 consider the death penalty. And the juror
23 that I have struck said that she could not
24 consider giving the death penalty. It's a
25 drastic difference. It's daylight-and-dark
26 difference.

27 **BY MS. STEINER:** If the Court, please,
28 under *Batson*, I believe the Supreme Court has
29 said that the State standard falls on what it

JURY SELECTION - JURY OUT

1 articulates in the first place and to come up
2 with death penalty hesitation plus after we
3 have --

4 **BY THE COURT:** Well, my record -- my notes
5 show that Ms. Cunningham was asked about the
6 death penalty. She said she might consider
7 it. She don't -- then she said, Don't think
8 so. Doesn't know. And then finally, after
9 Mr. Carter was trying to rehabilitate her,
10 she said, Possibly, she could. She put on
11 her questionnaire that she could not consider
12 the death penalty. That's greatly different
13 from Mr. Whitfield, who said from the
14 beginning on his questionnaire that he
15 generally favored the death penalty and could
16 consider it.

17 Also, Ms. Cunningham apparently from
18 what the other -- this outside witness that
19 was brought in, said she works nine or 10
20 inches from Mr. Carter -- I mean,
21 Mr. Flowers' sister. You made some statement
22 about clearing up any ambiguity. You know,
23 there -- as far as this witness that came in
24 and testified yesterday, her testimony was
25 fairly -- it was totally unambiguous.

26 **BY MS. STEINER:** Not that it was
27 ambiguous. That it was not verified. There
28 were records that could verify --

29 **BY THE COURT:** Well --

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1 **BY MS. STEINER:** -- and she said she could
2 provide those. The State has elected not to
3 come forward with that verification.

4 **BY THE COURT:** I'm not aware of any
5 requirement the State has to do that. They
6 brought a witness in, and she swore under
7 oath to these facts. And Ms. Cunningham's
8 all-over-the-map response to the death
9 penalty, plus her situation about working so
10 closely with Mr. Flowers' sister, in my mind,
11 the State has shown race-neutral reasons for
12 that strike --

13 **BY MS. STEINER:** Your Honor --

14 **BY THE COURT:** -- and the Defense has
15 failed to rebut that race-neutral reason that
16 was given.

17 **BY MS. STEINER:** Once again, we would urge
18 a continuance and provision of the rough
19 transcript so that it could be put in the
20 court record and if --

21 **BY THE COURT:** If there's an appeal in
22 this case, there will be a transcript on this
23 if this case is appealed. But at this point,
24 I don't need a transcript. I wrote notes all
25 over this -- these -- there was a couple of
26 these prior jurors when y'all were moving to
27 strike for cause that I wanted to look back
28 on. But I'm -- the State has definitely
29 provided race-neutral reasons as to

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1 Ms. Cunningham.

2 **BY MS. STEINER:** Your Honor, I believe --
3 I understand this would be an aid of memory,
4 and Your Honor has been using it. And
5 there's no reason why it cannot be fully
6 protected --

7 **BY THE COURT:** If I was having a memory
8 problem, I would do that. But I'm not. I've
9 got notes here. I have made my ruling on
10 this, and we're going to move to the next one
11 now.

12 **BY MR. EVANS:** May I proceed, Your Honor?

13 **BY THE COURT:** You may.

14 **BY MR. EVANS:** The next juror is Juror No.
15 45, Ms. Edith Burnside. She stated that she
16 knows the Defendant. She knows Hazel Jones.
17 The Defendant was very good friends with both
18 of her sons. He has visited in her home many
19 times. She also was sued by Tardy Furniture,
20 and a garnishment was issued against her.
21 She tried to deny that and said that she just
22 settled with them when she came back but she
23 was, in fact, sued by them.

24 She also, at one point, said she
25 could not judge. She stood up when I asked
26 about the ones that could not judge. She
27 said that the fact that she knew the
28 Defendant so well, he had visited in her
29 home, and was such close friends with her

JURY SELECTION - JURY OUT

1 sons might affect her decision in this case.

2 **BY THE COURT:** Response?

3 **BY MS. STEINER:** If the Court, please.

4 Again, the differential investigation of
5 inquiry of these -- of this individual with
6 respect to possible litigation with the Tardy
7 family. No similar questions were pursued
8 with possible litigation with any of the
9 other victim families or any of the -- the
10 Defendant's families and certainly nothing to
11 indicate that anything other than what they
12 expected to find. And I believe
13 Ms. Burnside's testimony was that she
14 actually had a very fairly intimate
15 relationship with Ms. Bertha Tardy's
16 husband's first wife. She was the caregiver.

17 And that this was -- she thought,
18 before she left for Nevada, that this was a
19 gift, basically, from the business; that when
20 she returned, again, she discovered that this
21 was not, in fact, such a gift and was
22 financially unable to pay it. And there was
23 no animosity in her towards them for having
24 done this. She acknowledged that if they
25 wanted -- if they wanted the money, they
26 could -- they were owed it. It was not an
27 illegitimate thing.

28 And the differential investigation,
29 again, is indicative that for the State of

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1 Mississippi in this case, the process of
2 preemptory striking has become a search for
3 facially non-discriminatory excuses for an
4 effort to remove African-Americans from this
5 jury as it did in *Flowers III*.

6 **BY THE COURT:** Well, at this point, her
7 statement -- I mean, the offer -- the reason
8 the State's made -- I have notes as to all
9 that. She first stood up when the district
10 attorney asked her if she could judge, and
11 she said she could not. I have seen no white
12 person that was left on this panel that
13 responded in a similar fashion. And I've got
14 a note here that said she stated that she'd
15 preferred not to judge. Again, I don't have
16 any notes that would indicate that there was
17 any white person that said that.

18 She was sued by Tardy Furniture. I
19 do not recall her indicating that she thought
20 it was a gift. She did say she moved to
21 Nevada and then came back and was sued,
22 but -- and there's no evidence that any
23 murders occurred on any business property
24 that was owned by any other individual than
25 Tardy Furniture or that anybody else owns a
26 business. So I don't think that the fact
27 that the State didn't ask about other
28 businesses that were not related to this case
29 have any merit.

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1 But I think the State has offered
2 numerous race-neutral reasons for this
3 strike, and there are not white jurors that
4 were left on the panel that have the
5 race-neutral reasons the State has offered
6 for striking Ms. Burnside.

7 **BY MS. STEINER:** Your Honor, we would
8 incorporate all of the other -- including No.
9 17, who was widely --

10 **BY THE COURT:** I offered you the
11 opportunity, and I've made my ruling and so
12 we'll move to the next one now. I don't like
13 to be continually challenged after I've made
14 a ruling. And so we will move now to -- I
15 believe it was S-4?

16 **BY MR. EVANS:** Yes, sir. S-4 is No. 53,
17 Ms. Flancie Young Jones. She is related to
18 the Defendant. She admitted that she was
19 related -- she was cousin -- or the
20 Defendant's sister, Angela Jones, is her
21 niece. So she said she guessed she must be
22 related to him. Well, I guess so. He would
23 be her nephew.

24 She was late two different times,
25 appearing in court approximately 30 minutes
26 late both times. She -- hold on a minute.
27 Let me read my writing. She was back and
28 forth all over the place on her opinion about
29 the death penalty. She admitted -- and I

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1 thought it was very strange when I asked her
2 if she had lied on her questionnaire about
3 her opinion of the death penalty, she said
4 that she had. She -- on her questionnaire,
5 it states that she is strongly against the
6 death penalty. And she comes in now trying
7 to say that she is for the death penalty.
8 And her -- like I say, her only explanation
9 for that change was that she said she had
10 lied on her questionnaire.

11 **BY THE COURT:** But I think between being
12 related to the Defendant, her views on the
13 death penalty, she is also related to Hazel
14 Jones -- which, of course, she's going to be
15 related to all of the Defendant's family. I
16 think those reasons are definitely clear
17 race-neutral reasons for why we could not
18 leave her on the jury.

19 **BY MS. STEINER:** Your Honor, I think it
20 seems -- her -- her relationship is to Ms.
21 Hazel Jones by marriage. And it is Ms. Hazel
22 Jones' son who is married to a lady named
23 Angela or Andrea.

24 Now, I find that is not the same
25 person as the Angela Jones married to a
26 Mr. Jones in Prairie View, Texas. So yes --
27 so he is not the nephew. There is a in-law
28 relationship to the entire family through --
29 she's married to -- her husband and Hazel

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1 Jones are brother-in-law and sister-in-law,
2 as I understand it. And -- but she says that
3 she is not connected with that wing of her
4 husband's family, that she has no actual
5 knowledge, that she had to come to court to
6 learn of such connections. They accepted
7 juror --

8 (PAUSE)

9 **BY MS. STEINER:** Your Honor, maybe we
10 didn't get to this juror. They seemed to
11 have no problem certainly during voir dire
12 with the marital -- marriage relationships
13 when they were defending juror -- I'm sorry.
14 There were several jurors who had
15 relationships by marriage. In fact, we made
16 challenges on -- on Juror 111, whose
17 relationship by marriage for 25 years to
18 Ms. Margie in the D.A.'s office, and the
19 Court found that in-law relationships are of
20 minimal significance and denied our cause
21 challenge --

22 **BY THE COURT:** Well, now, if the State was
23 moving to strike this person for cause, my
24 ruling would be the same. But this is not a
25 situation where the State is moving to strike
26 this person for cause.

27 **BY MS. STEINER:** Again, we would cite the
28 totality of the circumstances and the
29 apparent cherry picking of the

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1 African-American jurors for scrutiny and
2 attention. And in light of the history of
3 racial discrimination by this district
4 attorney's office in this district, we would
5 say the totality of the circumstances makes
6 this a pretext for discrimination and attempt
7 to look for race-neutral reasons for racially
8 motivated peremptory striking.

9 **BY THE COURT:** Well, in the Court's
10 view -- in fact, the Court was somewhat
11 dumbfounded -- and this is the only juror of
12 any race that made this statement. But she
13 got up here from this witness stand and said,
14 "I lied on my questionnaire." And I think
15 that, in and of itself, is a race-neutral
16 reason. She said, "I lied. You know, I
17 don't want to be here. And so I lied." And
18 so, you know -- I don't -- she's totally been
19 dishonest in something that she filed with
20 this Court, and that is race neutral.
21 There's not another person that has said, "I
22 lied on my questionnaire." And she said --

23 **BY MS. STEINER:** If the Court --

24 **BY THE COURT:** I'm making my ruling now,
25 ma'am. And she said that Angela Ward Jones
26 was married to Mark Jones, and she said that
27 was her nephew. So I -- you know, she's not
28 directly related to Mr. Flowers. She's
29 related by marriage to Mr. Flowers' sister.

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1 And then Hazel Jones is her husband's
2 brother's wife and, you know, that's another
3 family connection there.

4 But, you know, her lying on the
5 questionnaire and then admitting that and
6 then changing what she was saying in court is
7 grounds alone for -- or race-neutral grounds.
8 But that, plus these relationships where
9 Mr. Flowers is married -- Mr. Flowers' sister
10 is married to her nephew and Hazel is married
11 to her brother-in-law are race-neutral
12 grounds. So I'm -- I make a finding that the
13 Defense has failed to overcome and failed to
14 rebut the proof that's been offered by the
15 State of Mississippi.

16 **BY MS. STEINER:** Your Honor, for fear of
17 waiving something, my shortcomings as a
18 defense attorney to Mr. Flowers would be
19 evident if I did not at this point, point
20 out, Your Honor, that they have accepted
21 Juror 51, who lied on his questionnaire
22 about -- and to this Court -- until finally
23 called in for further voir dire with respect
24 to his actually having been through the voir
25 dire process in this Court before. And I
26 believe that that is a distinction without a
27 difference. They accepted Mr. Huggins, 51.

28 They apparently don't care if white
29 people lie. They do care if -- or clarify

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT # : 2003-0071-CR

JURY SELECTION - JURY OUT

1 themselves or say things on their
2 questionnaires that it turns out were not
3 completely consistent. They do care if black
4 people do. It is part of the totality of the
5 circumstances that make this an additia
6 pretext in this court, and I do have to
7 preserve that record. I spent several hours
8 talking to the -- several minutes talking to
9 the Mississippi Supreme Court about just that
10 question.

11 **BY MR. EVANS:** I must have missed that
12 question because I never saw a question that
13 he was asked on the questionnaire about
14 whether he had been on another panel or not.

15 I think referring to him as a liar is
16 completely wrong. There was no indication
17 that he lied on anything. That was not
18 brought up. When it was brought up, he said,
19 Yep, I was on another panel. There were a
20 lot of people that were on this panel that
21 were on another panels. Some never were
22 asked about it. He did not comment to any of
23 that. And strictly, he definitely, as the
24 Court stated and I stated earlier, didn't sit
25 in that chair right up there and admit to the
26 Court and everybody else that he had
27 purposely lied on his questionnaire.

28 **BY MS. STEINER:** Your Honor, he said to
29 the Court the first thing he had heard about

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1 this case was when he walked in and sat down
2 and began to be qualified this past Friday.
3 Those were the first words out of his mouth.
4 When he came back in and had this discussed
5 with him and then, Oh, oops. Yeah, you're
6 right. I did this two years ago.

7 Your Honor, this is a degree of
8 questionable seriousness or voracity of
9 wanting -- wanting to be on or off that is
10 equally of the same nature as what they are
11 objecting to here in --

12 **BY THE COURT:** Well, I have made my
13 ruling, but I'll reiterate that she said up
14 here from this stand, "I lied on that
15 questionnaire." I never did hear Mr. Huggins
16 say he lied, and you didn't ask him. You
17 know, you didn't ask him when he was called
18 back in, Did you lie when you said that? So
19 I can't know his frame of mind of why he
20 didn't originally point out he was in the
21 original voir dire. But he clearly did not
22 say that he lied.

23 And again, the statement on the
24 questionnaire said she could not under any
25 circumstances consider the death penalty.
26 And now she, in court, is saying that she
27 can. That is vastly different. And also,
28 again, these relationships she's got.

29 I do not have any white juror that

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1 has been allowed to remain on that had those
2 issues. And so I will again restate that I
3 find that there has been a failure to
4 overcome the race-neutral reasons that was
5 offered by the State of Mississippi. And I
6 that's all as far as the race -- I think that
7 would --

8 **BY MR. EVANS:** No, sir. No, sir. It's
9 two more strikes that we'd made, S-5 and S-6.

10 **BY THE COURT:** Okay. I'm sorry. Yeah,
11 that's right.

12 **BY MR. EVANS:** Juror No. S-5, Ms. Julia
13 Ann Nail is a white female, but I would --
14 since we're going through this, I might as
15 well just state my reasons for striking her,
16 too. She said that she could consider both,
17 but she said that she preferred life without
18 parole. So because of that reason, we have
19 struck her, which is similar to some of the
20 others that we have been striking. Juror
21 No. -- well, I don't guess the Court needs to
22 rule on that one, does it?

23 **BY THE COURT:** They're only attacking the
24 strikes as to African-Americans, so --

25 **BY MR. EVANS:** Okay.

26 **BY THE COURT:** -- but she did say she was
27 strongly in favor of life without parole.

28 **BY MR. EVANS:** Juror No. S-6, Ms. Dianne
29 Owens Cooper or Copper -- I'm not sure how

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1 she pronounces it. And I was wrong on the
2 other one. This is the one that worked with
3 two of the Defendant's family members. She
4 has worked with his father, and she has
5 worked with his sister, Cora, at the shoe
6 place. She stated that she knows Curtis'
7 family. She's stated that she leaned toward
8 favoring his side of the case. She knows
9 many Defense witnesses.

10 And the reason I point that out, it's
11 not just that she knows those witnesses, but
12 that because of knowing the family and
13 working with those two family members, she
14 stated that that relationship would influence
15 her. She later said that -- well, she could
16 not have an open mind. And then she was
17 equivocal back and forth. But because of all
18 of those relationships, she clearly stated,
19 when I asked her, that they would influence
20 her. She could not have an open mind, and
21 she was leaning toward the Defendant's
22 family.

23 **BY THE COURT:** I think that's --

24 **BY MS. STEINER:** Thank you. Your Honor,
25 again, they have accepted -- virtually every
26 white juror they have accepted has had some
27 connection, personal or professional as
28 Ms. Copper has a professional workplace
29 relationship with someone who is a likely

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1 witness in this case, including Juror No. 17.

2 This is the juror, Your Honor, who
3 apparently was being fished with living in
4 the neighborhood. And they asked, In the
5 neighborhood? She said it was a couple of
6 blocks away. And Harper Street and Cade
7 Street intersect, she said, a couple of
8 blocks from her home. She specifically said
9 that she did not know the Flowers family well
10 enough to be able even to say how many houses
11 from the corner it was. She knew it was down
12 where Cade Street began. This is a witness
13 who the State -- and not just with respect to
14 the people already struck -- but the State
15 has repeatedly stood up and said it really
16 doesn't matter if they're acquainted, if
17 they're not close. Visitors in the household
18 take the people's word for it. This is not
19 an important relationship. These are
20 business relationships.

21 And again, under the totality of the
22 circumstances and most particularly the
23 differential questioning of this witness
24 insisting that -- that's the case. Moreover,
25 they have accepted Jurors 40 and 50, each of
26 whom testified in this court as they were
27 being voir dired that they have formed an
28 opinion. There was great -- the State
29 properly, as it should, went after them and

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1 said, But you can lay that aside. And I
2 don't believe they attempted to ask her if
3 she could lay hers aside. I believe the
4 Court elicited that from her. I believe we
5 elicited that from her. But when this black
6 juror expressed an opinion that she had
7 formed or had a leaning, they didn't bother
8 to try and rehabilitate her as they did with
9 Jurors 40 and 50, who they have tendered here
10 this afternoon.

11 **BY THE COURT:** Well, the Court -- neither
12 No. 40 or No. 50 stated that they were
13 leaning toward the Flowers' family in this
14 case. And she did. There -- there wasn't
15 anything for them to rehabilitate because
16 they didn't say they were leaning towards the
17 Flowers family. And --

18 **BY MS. STEINER:** They didn't say --

19 **BY THE COURT:** I'm making my ruling now,
20 ma'am. I'm tired of you interrupting me
21 constantly.

22 Also, she had stated that she worked
23 with Archie at Wal-Mart, and she worked with
24 Cora at Shoe World. She's had close working
25 relationship with those two individuals in
26 Mr. Flowers' family. I see that greatly
27 different than No. 17, Ms. Chesteen, who was
28 the bank teller and has people that's come
29 into the bank. There's no indication that

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1 Ms. Chesteen has ever worked with Archie
2 Flowers, ever worked with Cora or anybody
3 else. And so there is a huge difference
4 between the -- S-6 with Ms. Copper and any
5 white juror that was left on the panel.

6 **BY MS. STEINER:** Again, Your --

7 **BY THE COURT:** And now, if the State will
8 proceed to --

9 **BY MS. STEINER:** Your Honor, may I be
10 heard?

11 **BY MR. EVANS:** The State will tender No.
12 67.

13 **BY MS. STEINER:** May I be heard before --

14 **BY THE COURT:** Ma'am, I'm tired of you
15 inter -- I mean, I've made a ruling. And I
16 don't know -- you know, when you have
17 something to say, you need to say it before I
18 have made the ruling. But after I make a
19 ruling, you're constantly arguing with the
20 Court and constantly coming forward with
21 other things. And I'm kind of getting tired
22 of that.

23 **BY MS. STEINER:** Your Honor raised in your
24 ruling the fact that the opinions
25 expressed -- the opinions of 40 and 50 were
26 not opinions in favor of the Flowers family.
27 Your Honor, neither of these jurors advised
28 as to what that opinion was. It is equally
29 likely if you have an opinion it could be for

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1 either side. These jurors did not express an
2 opinion and --

3 **BY THE COURT:** You're absolutely correct.
4 They did not, and she did. That makes it
5 different. That is the difference. She
6 said, "I would tend to lean toward favoring
7 that family." And that -- that is different
8 than somebody that expresses no statement to
9 that. And again, none of these others worked
10 side by side or in the same Shoe World with
11 Mr. Flowers' sister. Nobody -- that is,
12 nobody that's on the panel that worked with
13 Mr. Archie.

14 And now again, if the State will
15 tender --

16 **BY MR. EVANS:** Tender 67.

17 **BY THE COURT:** Let me get back to my --
18 I'm trying to -- I don't know if you need to
19 just go ahead and tender three alternates
20 or --

21 **BY MR. EVANS:** I thought we were just
22 going to do one at a time with one strike per
23 alternate?

24 **BY THE COURT:** Well, yeah. That is how
25 the rules say.

26 **BY MS. STEINER:** We would -- we would
27 strike No. 67.

28 **BY THE COURT:** So D --

29 **BY MR. EVANS:** All right. We'll take 68

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1 as the first alternate. And we will tender
2 69 as the second alternate.

3 **BY MS. STEINER:** We will -- DS-2 will be
4 Juror No. 69, and we are now out of
5 challenges with respect to --

6 **BY THE COURT:** No. I said I was going to
7 have three alternates, but --

8 **BY MS. STEINER:** Oh.

9 **BY MR. EVANS:** Okay, your Honor --

10 **BY MS. STEINER:** Do we have a third strike
11 for --

12 **BY THE COURT:** Excuse me?

13 **BY MR. EVANS:** We will accept No. 72 as
14 the second alternate.

15 **BY THE COURT:** Well, let me -- on Julia
16 Ray, I assume there was not any -- I assume
17 that you did not -- that you did not --

18 **BY MS. STEINER:** No, we did not exercise a
19 preemptory.

20 **BY THE COURT:** Then she will be Alternate
21 1. And I mean, the order in which these
22 alternates are put on would be the order in
23 which if somebody got sick or had somebody
24 die, like we had a juror earlier in the week,
25 family member or something -- so anyway, we
26 got --

27 **BY MR. EVANS:** We will accept No. 72 as
28 the second alternate.

29 **BY MS. STEINER:** Your Honor, we would

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1 strike -- DS-3.

2 **BY MR. EVANS:** They've already used one
3 strike --

4 **BY THE COURT:** Well, they've used DA-1 --
5 let me finish -- Defense Alternate 1. When I
6 say DA-1, it sounds like I'm -- that I'm --
7 this is Defense Alternate Strike 1 on Amason.
8 Defense Alternate Strike 2 on Carpenter. And
9 I'm taking Defense Alternate Strike 3 on
10 Colbert; is that correct?

11 **BY MS. STEINER:** That is correct.

12 **BY MR. EVANS:** All right. We will accept
13 75 as the second alternate then.

14 **BY MS. STEINER:** Your Honor, for the
15 record, this is a juror who we had challenged
16 under *Murphy* and *Reynolds* for impartiality.
17 We are out of strikes here. We are not -- it
18 is not possible for us to exercise a
19 preemptory strike against this prospective
20 juror because we have had to expend all three
21 of our preemptories.

22 We would like to reserve our right
23 to -- should there be an appeal -- to
24 challenge the -- to raise the challenge for
25 cause that would -- given to this juror
26 earlier which was overruled by the Court as
27 we are without further preemptories with
28 which to challenge this juror.

29 **BY MR. EVANS:** Your Honor, for the record,

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1 the only reason we're to that juror is the
2 Defense allowed them to change the rules.
3 It's my understanding that there was going to
4 be three alternates, one strike per side per
5 alternate. They had already used a strike
6 for the second alternate. They asked to use
7 another strike for that alternate, and the
8 Court let them. So it's because they asked
9 for an extra strike to use on that alternate
10 that we even get to Linda Martin.

11 **BY MS. STEINER:** All three of these jurors
12 were cause challenges by the Defendant.

13 **BY THE COURT:** And I'll have you now
14 tender one more alternate.

15 **BY MR. EVANS:** Tender 78 as the third
16 alternate.

17 **BY MS. STEINER:** We have no more
18 preemptions, but we will accept her.

19 **BY THE COURT:** I'm going to call the jury
20 in and have them seated, and --

21 **BY MS. STEINER:** Your Honor, could we
22 recite who the jurors are?

23 **BY THE COURT:** I'm showing No. 3, O'Quinn;
24 8, Robinson; 12, Johnson; 18, Laney; 22,
25 Blaylock; 25, Winstead; 26, Chatham; 30,
26 Whitfield; 38, Davis; 42, Fielder; 58,
27 Branch; 63, Hargrove; 68, Alternate 1, Ray;
28 Alternate 2, 75, Martin; Alternate 3,
29 Williams, 78.

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1 Ms. Steiner, I think you had told me
2 earlier you had something you needed to grab
3 out of your car or something --

4 **BY MS. STEINER:** Yes, Your Honor.

5 **BY THE COURT:** So let me have the jury
6 come in, seated, sworn in. And then I will
7 recess, and then I'll give them a preliminary
8 instruction, and then we'll proceed into
9 opening statements.

10 I'll ask the State at this point,
11 there is a motion in limine that has not been
12 heard yet, so I'll ask in opening if the
13 State will refrain from mentioning any
14 gunshot residue that -- on the Defendant's
15 hand, because that is the subject of the
16 motion. And I don't know if the witnesses
17 are -- I -- I mean, at some point -- I don't
18 know if it will be before the witness is
19 called to testify, but I'll have to
20 conduct -- have to hear arguments on that at
21 that time, so if you'll refrain from doing
22 that.

23 And if you'll call everybody in now.

24 **BY THE BAILIFF:** Can they sit in any
25 order?

26 **BY THE COURT:** Yeah, at this time, they
27 can sit anywhere they want.

28 (THE FOLLOWING PROCEEDINGS WERE HAD IN
29 OPEN COURT WITH ALL PARTIES AND THE

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PROSPECTIVE JURORS PRESENT, TO-WIT:)

BY THE COURT: Okay. Court will come back to order. Ladies and gentlemen, as your names are called, if you would please, come forward here in the jury box. You been selected as jurors to try this case.

Susan Virginia O'Quinn. Alexander Robinson, Jr. Janelle Marie Johnson. Lillie Mae Laney. Larry Wayne Blaylock.

Y'all can go ahead and have a seat wherever you want.

Susan Winstead. You don't have to sit in order of your call. You can sit anywhere you want.

Jennifer Chatham. Jeffrey Whitfield. Barron Davis. Marcus Fielder. Emily Branch. James Hargrove.

And the next three names are going to be alternate jurors. What an alternate is, is they sit up here and they listen to the evidence but would only end up deliberating if for what -- for some reason one of the original twelve jurors got sick or for some reason was not able to complete their service. So the order in which your name is called would be the order in which you would serve as alternate if we had someone that had to be moved up into one of the original jurors. And the alternates are Julia Ray,

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Linda Martin, and Beverly Williams.

Ladies and gentlemen, if your name was not called, I do appreciate your attendance here. It's been a long several days. You've been very patient, and I really appreciate the civic duty that you've performed here. Certainly, you're invited to remain and watch the proceedings, but I suspect most of you are ready to go. But you are finally excused now by this Court.

(PROSPECTIVE JURORS LEAVE THE COURTROOM)

BY THE COURT: And ladies and gentlemen, if you'll will please stand at this time, and the Court is going to swear your in.

BY THE CLERK: Would you raise your right hand, please? Do you and each of you solemnly swear or affirm that you will well -- that you will well and truly try the issue between the State of Mississippi and Curtis Giovanni Flowers and a true verdict give, according to the evidence and the law, so help you God?

BY JURORS: I do.

BY THE COURT: And ladies and gentlemen, for a few minutes, if you'll all step in the jury room, we're going to take up a couple of matters before we actually get started. And so if you'll step in the jury room for a

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1 couple of minutes.

2 **BY MS. STEINER:** If the Court please, do
3 you want to instruct the jury with respect to
4 conversations?

5 **BY THE COURT:** Well, I'm going to give
6 them an instruction -- but I mean, don't be
7 back there talking among yourselves about the
8 case. You just cannot discuss the case until
9 the -- everything has concluded and you're
10 instructed to begin talking about it. Until
11 then, you're not to discuss the case among
12 yourselves.

13 (JURY LEAVES THE COURTROOM)

14 **BY THE COURT:** I'll have the bailiffs now
15 sworn in to attend to this particular jury.

16 (BAILIFFS SWORN BY CLERK)

17 **BY THE COURT:** Y'all have been bailiffs
18 for many years, but I just want to again
19 reiterate that as bailiffs you are to attend
20 to this jury's needs and wait on them. It's
21 different than most juries because this jury
22 will be sequestered where most of them that
23 attend to are not. But as a sequestered
24 jury, they've got to be kept away from any
25 influences -- outside influences. They
26 cannot read newspapers, Internet, talk to
27 anybody on the phone. Any needs the jury
28 has, they will have to come through you for
29 that. And I don't --

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1 **BY THE BAILIFF:** Your Honor --

2 **BY THE COURT:** -- want to make it sound
3 bad -- but, I mean, they're almost going to
4 be like children in and of the respect that
5 y'all are going to have to be taking care of
6 them because they can't call --

7 **BY THE BAILIFF:** Can I say something?

8 **BY THE COURT:** Yes, ma'am.

9 **BY THE BAILIFF:** Richard and I are not
10 going to be nighttime bailiffs --

11 **BY THE COURT:** Oh, I know you're not going
12 to be the night bailiff.

13 **BY THE BAILIFF:** Okay.

14 **BY THE COURT:** I'm just talking about
15 while you are serving.

16 **BY THE BAILIFF:** Okay.

17 **BY THE COURT:** I'm going to swear the
18 night bailiffs in later in the evening.

19 **BY THE BAILIFF:** I wanted you to be aware.

20 **BY THE COURT:** I am aware of that. But I
21 want you to make sure when you are attending
22 to them to keep any -- everybody away from
23 them. They cannot have anybody talking to
24 them or have any discussion or contact with
25 them, and they're to be kept away from
26 newspapers, radios or any news broadcasts
27 about the case.

28 And if any juror needs something, you
29 can be their intermediary and call their

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1 family and -- you know, like if someone needs
2 clothes or medication or any personal items.
3 But they cannot see their family members.
4 They would have to work and go through one of
5 you or one of the night bailiffs.

6 And again, I just wanted to instruct
7 on the record what I know you already know
8 your job to be.

9 **BY THE BAILIFF:** Will you give these same
10 instructions to the jury?

11 **BY THE COURT:** I will. I've got a jury
12 instruction that I'm going to present to them
13 as soon as we come back out that will tell
14 them what I just told you.

15 **BY THE BAILIFF:** Your Honor, could you
16 give us our -- of when we can go in and out
17 of the jury room? I mean, we have had some
18 controversy before --

19 **BY THE COURT:** Well, you can go in, you
20 know, when they need coffee and snack items
21 and stuff. Any time a bailiff is in the jury
22 room, I want that door open. I don't want
23 anybody --

24 **BY THE BAILIFF:** Yes, sir.

25 **BY THE COURT:** -- in the jury room with
26 the door closed. But you know, I know -- I
27 don't drink coffee, but most people do. And
28 I know in the mornings and even in the
29 afternoon as hot as it is, I can't imagine

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1 anybody wanting to drink something hot. But
2 if they want coffee or need snacks or need
3 drinks or anything, you can go in there and
4 take those items to them. Other than that,
5 you know, you're to stay out of the jury
6 room.

7 **BY THE BAILIFF:** Yes, sir.

8 **BY THE COURT:** And as I say, on those
9 times when you happen to have to go in there,
10 I want that door open.

11 **BY THE BAILIFF:** Yes, sir.

12 (OFF RECORD)

13 **BY THE COURT:** They say the night bailiffs
14 are here so I may as well go ahead and have
15 them sworn in.

16 **BY MR. EVANS:** Your Honor, do you plan to
17 do the opening statements and then have all
18 the exhibits marked? Because it's going to
19 take a while to do that.

20 **BY THE COURT:** I think probably by the
21 time opening statements are made, it's -- and
22 I mean, we've all stayed long, but we've kept
23 the jury long every day, too. So at the hour
24 it is now, probably by the time we get
25 opening statements done, it's going to be
26 4:30. And so after we hear opening
27 statements, I think I can just send the jury
28 on and I can have y'all offer whatever
29 exhibits to the court reporter that can be

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1 premarked. And then we'll just start
2 testimony first thing in the morning.

3 **BY MS. STEINER:** Your Honor, we might want
4 to just -- at this point, I'd like renew and
5 reiterate all of our pretrial motions with
6 respect to evidentiary matters and the
7 actual -- the mere conduct of this trial, you
8 know, under double jeopardy, I'd like to
9 renew those. And with respect to any
10 evidentiary matters disposed of in pretrial
11 hearings, make those continuing --

12 **BY THE COURT:** I think the record's
13 preserved. I mean, I think you've made a
14 preserved record already on those issues.

15 **BY MS. STEINER:** I just wanted to announce
16 those, take advantage of that continuing
17 objection so we won't have to be popping up
18 on that.

19 **BY THE COURT:** The Court will readopt and
20 reaffirm the rulings that I made
21 preliminarily on evidentiary matters.

22 (To the night bailiffs) If y'all will
23 raise your right hands now.

24 (NIGHT BAILIFFS WERE SWORN IN BY THE
25 CLERK)

26 **BY THE COURT:** And I want to just kind of
27 go over some items with you. This jury is
28 going to be sequestered. Y'all are going to
29 be staying with them at night. I hate to use

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1 the phrase, but you're almost serving as
2 parents for them, because they can't do
3 anything without you being around.

4 They cannot have contact or visits
5 with anyone, including their family members.
6 So they're to be totally kept away from
7 anybody except each other. And you -- they
8 cannot have cell phones or any electronic
9 devices where they could communicate with
10 anyone. They're also to be kept away from
11 newspapers and radio or television broadcasts
12 about this case.

13 And if the jurors have any needs,
14 they're going to have to come through you to
15 attend to their needs. If they have some
16 arise where they need to contact a family
17 member, they're going to have to go through
18 you to do that. They cannot talk directly.
19 They can give you a message or write a note
20 and then you can call a family member and
21 pass that information along.

22 But you cannot, at any point, have
23 anybody that comes in and sees the jury,
24 speaks to them or has any contact with them.
25 And I just want y'all to be mindful of what
26 an important duty this is because these
27 people that are going to be serving on this
28 jury -- I don't like to use the word they're
29 at your mercy, but they are certainly going

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1 to have to lean on you heavily to take care
2 of their needs and take care of them.

3 And I know that I have every
4 confidence because of my familiarity with
5 both of you that you will do that. And
6 that's all I wanted to say to you about your
7 service as bailiffs.

8 **BY THE BAILIFF:** Yes, sir.

9 **BY THE COURT:** And we'll take a ten-minute
10 recess.

11 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
12 CONTINUED IN OPEN COURT WITH ALL PARTIES
13 PRESENT OUTSIDE THE HEARING AND PRESENCE
14 OF THE JURY, TO-WIT:)

15 **BY THE COURT:** Court will come back to
16 order. I want to just -- I want to say this
17 for media purposes. The media has zealously
18 followed all the Court rules about
19 photography and things like that. And I just
20 want to remind that you can't take pictures
21 of the jury, and I think everybody realizes
22 that. But even if you were taking a picture
23 outside on the courthouse lawn, please make
24 sure that no juror's ever shown in any
25 photograph. And as I say, I know you all
26 know the rules and abide by them, but I just
27 wanted to make sure that that was reiterated.

28 If you'll bring the jury in.

29 (THE FOLLOWING PROCEEDINGS WERE HAD IN

PRELIMINARY INSTRUCTIONS GIVEN BY THE COURT

OPEN COURT WITH THE JURY PRESENT, TO-WIT:)

BY THE COURT: Members of the jury, it's appropriate that I give you some preliminary instructions. You've now been selected as the jury to try this case. As jurors, you will hear the evidence, decide the disputed issues of fact, apply the law to the facts and reach a verdict.

It is my duty as judge to insure that the trial is conducted in a fair and orderly manner. I rule on any objections or motions and instruct you on the law applicable to this case. You're required to follow the law as given to you by the Court.

You should give careful attention to the testimony and evidence presented during the trial, but you should not form or express any opinion about the case one way or the other until you've heard all the evidence and had the benefit of the instructions of law and the closing arguments of the attorneys.

To avoid any appearance of impropriety, I've instructed the attorneys, the parties and the witnesses not to have any contact or discussion with you in any way. When they appear to ignore you during recesses, they're doing this because they've been instructed to do so by the Court.

You're prohibited from having any

PRELIMINARY INSTRUCTIONS GIVEN BY THE COURT

1 conversation with the attorneys or with
2 anyone else connected with the case.

3 You will be sequestered until all
4 proceedings of this case have concluded.
5 During your jury service, you cannot have any
6 communications or contact with anyone other
7 than your fellow jurors and the bailiffs. If
8 any one of you have packed with your other
9 belongings a cellular telephone or any other
10 electronic communications device, please
11 immediately surrender that to one of the
12 bailiffs.

13 If, while you are sequestered, you
14 need to contact family members or other
15 individuals, that contact will have to be
16 made through one of the bailiffs.

17 You must not talk about, listen to,
18 discuss or communicate in any manner with
19 anyone about this case during the trial, not
20 even among yourselves. If anyone should
21 attempt to discuss the case with you, you
22 should immediately report the matter to me or
23 to one of the bailiffs.

24 You must not read any newspaper
25 articles, Internet articles or any other
26 written forms of communications about this
27 case, and you must not listen to any radio or
28 television news broadcast about this case.

29 You're not permitted to visit or view

PRELIMINARY INSTRUCTIONS GIVEN BY THE COURT

1 any scene or location involved in this case
2 or make any independent investigation. Your
3 duty is to decide this case solely on the
4 basis of the testimony and evidence presented
5 here in open court and not on any information
6 gathered outside the courtroom.

7 During the trial, I may be required
8 to rule on motions or objections made by the
9 attorneys. You should not infer from my
10 rulings or from anything that I may say that
11 I have any opinion on the merits of the case
12 favoring one side or the other.

13 It may be necessary that I conduct
14 some of the hearings on objections or motions
15 outside your presence. I will try to
16 estimate the time needed for the hearings and
17 for recesses, but they may be extended by new
18 issues. Your patience and understanding will
19 contribute to a fair and orderly trial, even
20 though at times it may seem to go slowly.

21 I realize that sitting and listening
22 for long periods of time may be tiring for
23 some of you. We will, from time to time
24 during the course of the trial, take recesses
25 in order to allow you to have a rest break.
26 However, if any one of you should need a rest
27 break before one is called by the Court, do
28 not hesitate to ask for a recess either by
29 bringing it to the attention -- to my

PRELIMINARY INSTRUCTIONS GIVEN BY THE COURT

1 attention or to the attention of one of the
2 bailiffs.

3 During the course of the trial,
4 witnesses will be called to testify under
5 oath and they will be examined by the
6 attorneys calling them and cross examined by
7 the attorneys for the other side.

8 Documents and other exhibits may also
9 be introduced as evidence for your
10 consideration when you are deliberating on
11 your verdict.

12 After both sides finally rest, I will
13 review the instructions of law with the
14 attorneys. The instructions will then be
15 read to you, and you will be permitted to
16 take the instructions with you to the jury
17 room.

18 Following the instructions, the State
19 is permitted to argue their case. Then the
20 Defense argues their case, and that's
21 followed by any rebuttal argument offered by
22 the State.

23 At that time, you will retire to the
24 jury room to consider your verdict and that
25 should be the first time that you discuss
26 this case with anyone or among yourselves.

27 If you would like to do so, you may
28 take notes during the course of the trial.
29 And very shortly, we will have note pads

PRELIMINARY INSTRUCTIONS GIVEN BY THE COURT

1 handed to you for your benefit if you choose
2 to do so. On the other hand, you're not
3 required to take notes if you prefer not to
4 do so. Each of you must -- should make your
5 own decisions about this.

6 If you decide to take notes, be
7 careful not to get so involved in note taking
8 that you become distracted from the ongoing
9 proceeding.

10 Notes are only a memory aid and a
11 juror's notes may be used only as a aid to
12 refresh that particular juror's memory and
13 assist that juror in recalling the actual
14 testimony. Each of you must rely on your own
15 independent recollection of the proceedings.

16 Whether you take notes or not, each
17 of you must form and express your own opinion
18 as to the facts of this case.

19 An individual juror's notes may be
20 used by that juror only and may not be shown
21 to or shared with other jurors.

22 You will note that we do have an
23 official court reporter making a record of
24 the trial. However, we will not have
25 typewritten transcripts of this record
26 available for your use in reaching a decision
27 in this case.

28 And we will now hear closing -- I
29 mean, opening statements from both sides,

OPENING STATEMENTS - STATE

1 first starting with the State of Mississippi.

2 **BY MR. EVANS:** Thank you, Your Honor.

3 Good evening, ladies and gentlemen. In this
4 phase of the trial, what we intend to do is
5 give you sort of a road map. Something to
6 watch as we go forward with the trial to see
7 what the proof is as we go step by step
8 through it.

9 You can take what we give you, what I
10 tell you on this opening statement and
11 compare it to the testimony of the witnesses
12 as each of them testify and say, yeah, this
13 part he showed. This part he showed. And it
14 will help you, I think, to know what to
15 expect and what to be looking for.

16 What we're going to show you is that
17 on July the 16th, 1996, here in Montgomery
18 County, Tardy Furniture Company was open for
19 business. It was a regular day of business.
20 Ms. Bertha Tardy was running it. Carmen
21 Rigby was the bookkeeper working there, and
22 there were two other employees, Robert Golden
23 and Derrick "Bobo" Stewart. I think the
24 testimony will show that one of them had only
25 been working there two days, and the other
26 one had been working there one day.

27 We will show you that in the early
28 morning hours of that morning, a person came
29 to Tardy Furniture and shot all four of them

OPENING STATEMENTS - STATE

1 in the head. We will show that the motive
2 for that was robbery. We will show that
3 through Ms. Roxanne Ballard. She will
4 testify about the amount of money that was
5 missing from the store. So that will be the
6 proof of what money was taken.

7 But it will go from there into the
8 evidence about what happened and how this
9 defendant was charged. We will show you that
10 he had been an employee at the store. We
11 will show you that he had been fired from the
12 store and that money had been withheld from
13 his check.

14 We'll show you that he was
15 interviewed about this crime. He give
16 inconsistent statements about where he was,
17 what times he did things, and he completely
18 denied ever being on the east side of Highway
19 51 that day.

20 We will show you that while the
21 officers were investigating the crime scene,
22 they were able to determine that a .380
23 caliber pistol was used to murder these four
24 individuals.

25 We'll show you that that morning
26 around 10:30 or so -- 10:00 or 10:30, a gun
27 was reported stolen. It was stolen out of a
28 car in Angelica. The car belonged to a man
29 by the name of Doyle Simpson.

OPENING STATEMENTS - STATE

1 We will show you that it was a .380
2 automatic, and that he is related to the
3 Defendant, Curtis Flowers. Curtis Flowers
4 knew that that gun was there.

5 We'll show you that the witness,
6 Doyle Simpson, who had his .380 stolen,
7 carried law enforcement officers to where he
8 had target fired that gun. We'll show you
9 that projectiles were dug out of the post,
10 and it was determined that that was
11 definitely the murder weapon.

12 We'll show you that on that morning
13 not only was the Defendant on the east side
14 of Highway 51, but we can spot him all over
15 that side of the highway. We will show you
16 through a person by the name of Edward Lee
17 McChristian that he was in front of his house
18 walking down toward Angelica where the gun
19 was stolen.

20 We'll show you through Katherine Snow
21 that he was leaning up against the car about
22 the time the gun was stolen out of it. We
23 will show you through other witnesses that
24 how he left that scene from Angelica and went
25 back around to his house.

26 We will show you he came back to his
27 house and then left again.

28 We'll show you that he was wearing
29 Fila Grant Hill tennis shoes that day. The

OPENING STATEMENTS - STATE

1 first officers at the scene found bloody shoe
2 tracks in the store. They didn't know what
3 those shoe tracks were at that time but just
4 knew they were bloody shoe tracks. But they
5 did a thorough investigation and were able to
6 determine that those shoe tracks were made by
7 a Fila Grant Hill ten and a half.

8 We will show you through witnesses
9 that he wore a size ten and a half. We will
10 show you that he wore Fila Grant Hill tennis
11 shoes, and we will show you a Fila Grant Hill
12 tennis shoe box, size ten and a half, that
13 came out of his house.

14 We will show you through other
15 witnesses how he left his house the second
16 time and went back down to the store. We'll
17 have people like Ms. Boniva Henry. Folks
18 that -- and most of these witnesses, just
19 about all of them, have known him all their
20 life. It's not like somebody didn't know
21 him. We'll show you through her how he
22 walked by her house headed down toward town.

23 We will put on Mary Jeanette Fleming,
24 who was about a block from there, saw him
25 further going down toward Tardy's.

26 We will read testimony from Porky
27 Collins, who is now deceased, when --
28 testimony that he gave earlier that he saw
29 this Defendant. He identified this Defendant

OPENING STATEMENTS - STATE

1 as the person he saw walking toward the front
2 door of Tardy Furniture.

3 And we will present evidence from
4 Clemmie Fleming, a person who had known him
5 basically all of her life, that she saw him
6 running like somebody was after him, running
7 away from the back of Tardy Furniture, right
8 after the time of the murders.

9 We'll have experts to present
10 evidence to you, experts to tell you about
11 the tennis shoe tracks. We'll have experts
12 to tell you about the weapon and what
13 projectiles were fired out of -- what weapon.

14 We will have Melissa Schoene, an
15 expert from the state crime lab, that will
16 testify and show you in detail how all of
17 these exhibits were found at the scene, and
18 you will see how these exhibits are matched
19 back to him.

20 Ladies and gentlemen, I'm not going
21 to go through everything that we intend to
22 show. But that is a general overview of the
23 things that we intend to show you, and I ask
24 that you watch for those things as we go
25 through our proceedings and put our proof on
26 for you.

27 Thank you, Your Honor.

28 **BY THE COURT:** You can make opening,
29 Mr. Carter. You may proceed.

OPENING STATEMENT - DEFENSE

1 **BY MR. CARTER:** Ladies and gentlemen, you
2 may imagine that Mr. Evans and I don't agree
3 on very much. And if we did, we probably
4 wouldn't be having this trial. July the
5 16th, 1996, a terrible thing happened in this
6 town. And you'd never see me deny it. You'd
7 never see me discount it. It's a terrible
8 thing. We all can agree on that. And that's
9 about the only thing I do agree with
10 Mr. Evans on.

11 Finally, you get to hear the facts
12 and you wonder -- hear rumors anymore about
13 what happened. You finally get to hear the
14 facts from the witness stand. And I'm going
15 to try to do you a great favor and not be up
16 here as long as I planned to be up here.
17 That's not to say I'm not going to be up here
18 a long time, but I certainly intend to
19 condense it. I realize that what we say is
20 not evidence.

21 Ladies and gentlemen, we will show
22 you that this investigation was terribly
23 flawed. That it was incomplete. And remains
24 incomplete. That rewards as much as \$30,000,
25 at some point, lured people to say they saw
26 things that they never said they saw before,
27 and money was offered -- or the possibility
28 of getting money.

29 And ladies and gentlemen, we would

OPENING STATEMENT - DEFENSE

1 show you that the investigators engaged in
2 what I call tunnel vision and confirmation
3 bias. Once they decided that Mr. Flowers was
4 their assailant in this case, they spent all
5 their energy and efforts in trying to find
6 little snippets and pieces of evidence that
7 they thought was sure that Mr. Flowers
8 committed this crime.

9 And I do want to correct one thing,
10 and you'll see as the facts develop, that
11 Mr. Curtis Flowers did work for Tardy
12 Furniture store. He worked there up until
13 July 3rd. The next day was the 4th of July.
14 And the evidence will show that he quit, and
15 he never went back because he had family in
16 town, and he wanted to be off shooting
17 firecrackers and hanging with them and
18 barbequeing and all that kind of stuff. He
19 didn't want to go back to work.

20 The evidence will further show that
21 before Mr. Flowers left Tardy Furniture Store
22 on the third, Ms. Tardy loaned him \$30. And
23 that Mr. Flowers did, in fact, make an error
24 and break some batteries. And she told him
25 that if the company the batteries came from
26 didn't make good on it, he was going to have
27 to pay for it. He was perfectly fine with
28 that.

29 Ladies and gentlemen, there has to be

OPENING STATEMENT - DEFENSE

1 a motive for somebody to go in there and kill
2 four people, which we think was execution
3 style. That a crime narrative, a crime story
4 has to have a description of why the suspect
5 committed the crime. If that isn't there,
6 then the story is not plausible. It's not
7 persuasive, and it's not believable.

8 Ladies and gentlemen, you will hear
9 that this was a leaderless investigation.
10 That nobody was leading. Or I guess they
11 would say that they all did. And we know
12 what happens when the -- when Phil Jackson
13 and Doc Rivers are not coaching. They're not
14 leading, and all five players decide they're
15 going to be the star. You get chaos. You
16 get confusion. That's what we had in this
17 investigation.

18 The evidence will show that Porky
19 Collins and Katherine Snow, we believe, were
20 tricked and deceived into selecting Curtis
21 Flowers from a photo array. And deceived by
22 the investigator. And the evidence will show
23 that Katherine Snow, who supposedly saw
24 somebody at Doyle Simpson's car where the gun
25 was taken from, didn't know who she saw and
26 waited days and weeks and months before she
27 ever selected anybody. Before she ever said
28 who she saw.

29 By that time, we believe that it was

OPENING STATEMENT - DEFENSE

1 information in the paper, that there was
2 rumors going around here that Mr. Flowers was
3 involved. If she saw that -- or she saw
4 Mr. Flowers, we believe she should have told
5 the police that from the beginning. And the
6 evidence will show that she didn't do that.
7 There's no doubt about that.

8 We intend to show that Clemmie
9 Fleming and her aunt, Mary Jeanette Fleming,
10 the ones who claim they saw Mr. Flowers
11 somewhere near Tardy Furniture Store, didn't
12 come forward and didn't tell the police that
13 they saw him until seven to nine months
14 later, after the reward had gotten up to
15 \$30,000.

16 But don't believe it because I said
17 it. Wait till you hear the evidence. You'll
18 see I'm telling the truth.

19 We intend to show that Odell Hallmon,
20 who at some point -- well, still in prison.
21 We expect him to show up and lie, snitch,
22 claim Mr. Flowers lured him into doing
23 something. I'm not going to even tell you
24 what it is. But the evidence will show, and
25 you judge for yourself after hearing the
26 evidence, whether you believe it actually
27 occurred.

28 The evidence will also show, ladies
29 and gentlemen, that around the time this

OPENING STATEMENT - DEFENSE

1 crime happened, that Doyle Simpson, the
2 person who had the only gun and was in and
3 about and around town, and nonetheless
4 despite this being his gun, he wasn't charged
5 with the crime. He wasn't even processed as
6 if he could have been guilty of this crime.
7 The evidence -- we intend to show that he
8 should have been and that his brother, Emmett
9 Simpson, should have been a suspect.

10 And you heard Mr. Evans say that
11 you're going to have these people who say
12 they saw Curtis Flowers. And I want you
13 to listen to that. And I want you to pay
14 close attention to what they say he had on.
15 Every single one of them is saying that he
16 had different clothes. If they saw
17 Mr. Flowers, Mr. Flowers had changed five or
18 six times in the matter of a few minutes.

19 We intend to show that those Fila
20 tennis shoes, size ten and a half, that there
21 was several hundred thousand of those made
22 that were in circulation at the time that
23 this particular crime occurred. And that any
24 one of a number of thousands of people could
25 have left that bloody shoe print there in
26 Tardy Furniture Store.

27 And we intend to show that Connie
28 Moore -- she's going to come in and testify
29 and say that she bought some Fila tennis

OPENING STATEMENT - DEFENSE

1 shoes, size ten and a half, for her son
2 Marcus. And you'll get a chance to hear her
3 testify, and you decide after hearing that
4 what you think about it.

5 Ladies and gentlemen, we intend to
6 show that not only was a reward offered,
7 and -- in the black community, that there was
8 even a certain amount of threats made and
9 intimidation made to people in conjunction
10 with the reward.

11 And ladies and gentlemen, we intend
12 to show that although the State is going to
13 take the position and the investigators -- if
14 they testify like they testified before --
15 that they didn't have a leader, that they
16 were all leading at some point. But we
17 intend to show that they did, in fact, have a
18 leader and that the leader was John Johnson,
19 who worked in the district attorney's office.
20 And that the fact he lead the investigation
21 and worked in the district attorney's office
22 obscured any objectivity that should have
23 existed with Mr. Evans and his staff.

24 Ladies and gentlemen, we furthermore
25 intend to show and intend to ask you to use
26 your own judgment about memory and how memory
27 works.

28 Ladies and gentlemen, we pretty much
29 have a circumstantial case, and you're going

OPENING STATEMENT - DEFENSE

1 to be told what that is. But whether it's
2 circumstantial or not, we intend to show that
3 the evidence presented in this case -- it
4 isn't trustworthy. It isn't reliable. And
5 it's not sufficient to sustain a conviction.
6 We will honor that. We will show that. And
7 that all evidence against Mr. Flowers is
8 based on speculation, on surmise, on
9 conjecture and on guesswork.

10 You will hear that Doyle Simpson,
11 this guy they want to give so much credence,
12 this guy who is going to claim that Curtis
13 Flowers went in his vehicle and got his
14 gun -- but you will also hear that that gun
15 got put in Doyle Simpson's car the night
16 before this crime occurred. And you will
17 hear that Curtis Flowers was nowhere around
18 when they put this gun in his car. Didn't
19 even know it was in there.

20 Ladies and gentlemen, if you're
21 expecting to see any DNA that convicts
22 Mr. Flowers or fingerprints, the evidence is
23 going to show that you're not going to see
24 that.

25 And we intend to call someone who's
26 going to tell you that the investigation in
27 this case, lead by Mr. Evans and his top
28 assistant, failed to conform to even the
29 minimum standards in the profession for the

OPENING STATEMENT - DEFENSE

1 documentation required to support any
2 effective investigation of a homicide or
3 major felony, that there was no organized or
4 central depository for reports from multiple
5 agencies that was involved.

6 The Montgomery County Sheriff's
7 Department was involved. The Winona Police
8 Department was involved. The Department of
9 Public Safety -- I think they were called the
10 Mississippi Bureau of Investigations at the
11 time -- were involved. And probably a few
12 others. But we didn't have a leader.
13 Everybody doing their own thing.

14 You will see that reports weren't
15 made simultaneously like they should have
16 been, to document what occurred. I mean, I
17 don't get any pleasure out of talking about
18 police officers and talking about what didn't
19 happen. But you will see that and the
20 evidence will show that it wasn't done. That
21 whatever reports were prepared, it wasn't
22 prepared in close time to when events took
23 place.

24 And ladies and gentlemen, we will
25 show that when documentation isn't made like
26 it should be, that you're left to have to
27 depend on your recollection. And the problem
28 with recollection is that it's fallible.
29 Nobody expected this case to be going on for

OPENING STATEMENT - DEFENSE

1 14 years, but it is.

2 And I could go on, but I'm not. I'm
3 going to stop at this point. But all we ask
4 is that you be open minded and that you
5 listen to the evidence and that you believe
6 what you hear. Don't believe something
7 because I said it or Mr. Evans said it.
8 Believe what you hear. Thank you.

9 **BY THE COURT:** Ladies and gentlemen of the
10 jury, it's necessary that some items go ahead
11 and be premarked for identification. That's
12 going to take a good while.

13 Also, I know you've been sitting out
14 for days and I suspect, if you're like me,
15 you're probably a little bit tired. And
16 we're going to recess. We're going to allow
17 you to go ahead and be, you know, taken to
18 where you're going to be staying and allow
19 you to get settled in the for the evening and
20 settled in for the next few days. And we're
21 to going to, just in the morning, start with
22 testimony.

23 And also, I wanted to tell you -- we
24 do have -- you know, media is allowed in the
25 courtroom and they can take pictures. But
26 they're not taking your picture. And I
27 wanted you to make sure that you knew that.
28 Your pictures are not going to be in the
29 paper. And everybody understands that you're

COURT RELEASES JURY FOR THE DAY

1 here performing an important public service
2 by serving on the jury, and nobody's going to
3 be putting your picture in the paper or
4 anything like that. And I don't know if that
5 was even a possible concern for any of you.
6 But I wanted to alleviate any concern you
7 might have.

8 And if you'll step in the jury room,
9 and they're going to be providing
10 transportation for you. And I know, you
11 know, all of that -- well, I hope all of you
12 packed belongings, and the bailiffs will have
13 to, at some point, walk you out to your
14 automobiles and get your belongings with you.
15 So that's probably going to take a while to
16 do that, too.

17 So if you'll just step in the jury
18 room. And when the bailiffs are ready to do
19 all that, they'll notify you.

20 (THE JURY LEAVES THE COURTROOM AND
21 ENTERS THE JURY ROOM)

22 **BY THE COURT:** This Court will now stand
23 in recess, and we'll resume at 9:00 a.m. in
24 the morning.

25 **BY MR. CARTER:** I'm sorry, sir. You say
26 recess? I didn't hear what you said, Your
27 Honor.

28 **BY THE COURT:** I said, we are in recess
29 and will resume at 9:00 am.

COURT RELEASES JURY FOR THE DAY

1 **BY MR. CARTER:** Thank you, Your Honor. I
2 so wanted to hear that.

3 (THE COURT RECESSED FOR THE DAY)

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1 (COURT WAS DULY OPENED ON JUNE 11, 2010. PROCEEDINGS
2 WERE AS FOLLOWS:)

3 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
4 DEFENDANT WERE PRESENT IN OPEN COURT.)

5 (THE JURY ENTERED THE COURTROOM.)

6 THE COURT: Good morning, ladies and gentlemen.
7 We are ready to proceed.

8 And who is the State's first witness?

9 MR. EVANS: Chief Johnny Hargrove.

10 THE COURT: Chief, if you will come around,
11 face the bench, raise your right hand and take the oath.

12 Do you solemnly swear or affirm the testimony you
13 give in this case will be the truth, the whole truth and
14 nothing but the truth, so help you God?

15 THE WITNESS: Yes, sir.

16 THE COURT: If you will come around please and
17 have a seat.

18 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

19 THE COURT: For the record, would you state
20 your name, please?

21 THE WITNESS: Johnny Hargrove.

22 THE COURT: You may proceed.

23 MR. EVANS: Thank you, Your Honor.

24 JOHNNY HARGROVE, Called on behalf of the State, having
25 been duly sworn, was examined and testified as follows:

26 DIRECT EXAMINATION BY MR. EVANS:

27 Q. Good morning, Chief.

28 A. Good morning.

29 Q. How are you employed?

1 A. City of Winona.

2 Q. And in what capacity?

3 A. Police chief.

4 Q. Chief, how long have you been police chief here in
5 Winona?

6 A. About 15 years.

7 Q. And how long have you been in law enforcement?

8 A. Twenty-three years.

9 Q. Were you the police chief here in Winona back July
10 16 of 1996?

11 A. Yes, sir, I was.

12 Q. Were you working that day?

13 A. Yes, sir.

14 Q. Did you have an occasion that morning to receive a
15 call in relationship to this case?

16 A. I had received a -- people laying in the floor at
17 Tardy Furniture.

18 Q. Do you know what time you received that call?

19 A. About 10:20-something in the morning. Something
20 like that.

21 Q. Where were you when you received the call?

22 A. Off of Green -- coming off of Greenlee.

23 Q. And --

24 BAILIFF: Speak up. They can't hear you.

25 Q. You need to speak up, Chief.

26 Where were you when you received the call?

27 A. On Greenlee.

28 Q. And how long did it take you to arrive at Tardy
29 Furniture?

1 A. Less than a minute.

2 Q. What did you find when you arrived at Tardy
3 Furniture?

4 A. Found four people laying in the floor.

5 Q. All right. Need to speak a little louder. I know
6 it is hard to hear in this room.

7 A. Four people laying in the floor.

8 Q. How did you observe that? How did you go in the
9 store?

10 A. Through the front door.

11 Q. Did you see anybody else there at the store at that
12 time?

13 A. No, I did not.

14 Q. Do you know who made the call to the police
15 department?

16 A. Mr. -- I believe it was Mr. Sam.

17 Q. Is that Sam Jones?

18 A. Sam Jones.

19 Q. Who is he?

20 A. Sam used to work for Tardy Furniture.

21 Q. Is he alive now?

22 A. No, he is not.

23 Q. Okay. All right. Chief, I want you to tell the
24 ladies and gentlemen of the jury step-by-step when you walked
25 in the front of the door what you saw.

26 A. Walked through the front door. I proceeded inside
27 the store. By the time got middle-ways of the store, I
28 spotted Miss Bertha laying in the aisleway. Then I looked to
29 my right. Then I seen the other people laying in the floor.

1 Q. And who were they?

2 A. Mr. Robert Golden. And Miss Rigby. And Bobo
3 Stewart. Which Bobo Stewart was still breathing at the time.

4 Q. And how could you tell that?

5 A. I could hear. He was sort of face down in the
6 blood, and he was gurgling-like, sounding.

7 Q. Did you know all four of the people?

8 A. Yeah, I did. Robert, he used to -- he was best
9 friend of my brother. He used to be over at momma's house all
10 the time.

11 Q. How long had you known Miss Tardy?

12 A. I been knowing her a long time.

13 Q. And how about Miss Rigby?

14 A. All of them. I been knowing all of them.

15 Q. And how about Bobo Stewart?

16 A. I really didn't know him.

17 Q. Okay. When you saw him laying in the blood
18 gurgling, what did you do next, Chief?

19 A. I loaded my weapon and backed out of the store and
20 called for backup and called for Med Stat.

21 Q. Who is Med Stat?

22 A. That's the ambulance service.

23 Q. And who did you call for backup?

24 A. I called the D.A.'s office, the highway
25 investigation. I also told them to send me crime lab.

26 Q. Okay. Did you also call for any of your officers?

27 A. Yes, sir.

28 Q. So you were calling for other police officers, the
29 highway patrol investigators, the D.A.'s office and the

1 ambulance service; is that right?

2 A. Yes, sir.

3 Q. Where did -- where were you during the time that
4 everybody was arriving?

5 A. Out in front of the store.

6 Q. Were you to where you could watch the store?

7 A. Yes, sir.

8 Q. Did anyone else -- who, if anyone else, went in the
9 store before you went back in?

10 A. Didn't nobody else go in before, before I went back
11 in.

12 Q. Okay. Did you have an occasion to see Mr. Sam
13 Jones?

14 A. Yes, sir. He walked back down there where I was.

15 Q. Do you know where he was walking from?

16 A. Coast to Coast. Store up the street.

17 Q. You say he was an employee of the store.

18 A. He used to be. He was -- I think he retired.

19 Q. What did you do after Mr. Jones got there?

20 A. After Mr. Jones got there, by that time other
21 officers and stuff started drawing up -- driving up and stuff
22 like that. And when they came up, the E.M.T. and all that
23 went back in the store. And that's when they got Stewart.

24 Q. All right. Did you go in with them?

25 A. Yes, sir, I did.

26 Q. Did you notice anything when you went back in that
27 you hadn't noticed previously?

28 A. I seen a bloody shoe mark, tennis shoe mark.

29 Q. All right. And what do you mean by a bloody tennis

1 shoe mark?

2 A. It's where a person had stepped in the blood and
3 stepped off to the side and left a shoe print.

4 Q. What did you do in relationship to that bloody shoe
5 print?

6 A. I started checking the E.M.T. shoes and, and the
7 other officers and stuff that were in there.

8 Q. Did anybody in there have tennis shoes on?

9 A. No, sir, did not.

10 Q. Did anybody in there have shoes on that were
11 anywhere close to resembling those tennis shoe tracks?

12 A. No, sir.

13 Q. What effort was done to preserve those tracks?

14 A. Made sure that nobody stepped over there and secured
15 it until the crime lab stuff got there.

16 Q. How did you secure it?

17 A. Made sure everybody stayed out from over there and
18 went on the outside of the store roping everything off.

19 Q. Chief, I want to show you four photographs, Exhibit
20 S-1, S-3, S-4 and S-5 and ask you to look at them, if you
21 would.

22 MR. CARTER: Your Honor, can I move? I can't
23 even see him.

24 THE COURT: You may.

25 A. It's going to be in front of Tardy's.

26 Q. All right. Those pictures show the front of Tardy's
27 Furniture.

28 A. Yes, sir. One on the side.

29 Q. Where is Tardy's Furniture located?

1 A. On Front Street.

2 Q. And what town, city and state?

3 A. It's going to be in the city of Winona, state of
4 Mississippi.

5 Q. And what county?

6 A. Montgomery County.

7 Q. Do those pictures truly and accurately depict that
8 downtown area in front of Tardy Furniture?

9 A. Yes, sir, it do.

10 MR. EVANS: Your Honor, I offer these four
11 exhibits into evidence.

12 MR. CARTER: No objection, Your Honor.

13 THE COURT: I'll allow them to be admitted.

14 (THE PHOTOGRAPH PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
15 1 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

16 (THE PHOTOGRAPH PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
17 3 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

18 (THE PHOTOGRAPH PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
19 4 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

20 (THE PHOTOGRAPH PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
21 5 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

22 Q. All right. Chief, I want next to show you Exhibit
23 S-1-A and ask if you can identify this.

24 A. It's going to be in front of Tardy Furniture.

25 Q. And if you would, I want you to compare it to
26 Exhibit S-1 and see if this is the same picture that you have
27 already identified as S-1.

28 A. Same picture.

29 MR. EVANS: All right. Your Honor, I offer

1 S-1-A into evidence.

2 THE COURT: I'll allow it to be admitted.

3 MR. CARTER: No objection.

4 (THE BLOW-UP OF S-1 PREVIOUSLY MARKED STATE'S EXHIBIT
5 S-1-A FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

6 Q. I'll show you Exhibits S-5 and S-4. And I'll ask
7 you if they are true reproductions or enlargements of regular
8 S-4 and S-5.

9 A. Yes, sir.

10 MR. EVANS: I offer them into evidence, Your
11 Honor.

12 MR. CARTER: No objection.

13 THE COURT: I'll allow them to be admitted.

14 (THE BLOW-UP OF S-4 PREVIOUSLY MARKED STATE'S EXHIBIT 4-A
15 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

16 (THE BLOW-UP OF S-5 PREVIOUSLY MARKED STATE'S EXHIBIT 5-A
17 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

18 MR. EVANS: Your Honor, may I have the chief
19 step down for a minute?

20 THE COURT: Chief, you may step down.

21 (THE WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

22 Q. Chief, I want to try to hold this where everybody
23 can see. But this is Exhibit S-1-A. Would you explain to the
24 ladies and gentlemen of the jury what this exhibit shows?

25 A. It shows where -- the front of Tardy's and where we
26 taped off the crime scene.

27 Q. All right. And whose department taped off the crime
28 scene?

29 A. Winona Police Department.

1 Q. And why was it taped off?

2 A. To keep everybody out of that area in front of
3 Tardy.

4 Q. All right. Was anybody keeping people out of the
5 store?

6 A. Yes, sir.

7 Q. And who all -- who was allowed into the store?

8 A. Just investigators and police officers and crime
9 lab.

10 Q. And what street is in front of Tardy Furniture
11 there?

12 A. Front Street.

13 Q. There is another building located in this photograph
14 kind of in the center. What is that building?

15 A. That building over there is sort of like a -- that
16 is one of Vince Saia mall. He had different peoples in and
17 out of there.

18 Q. All right. Is there a street between those two
19 buildings?

20 A. Carrollton Street.

21 Q. Carrollton Street. All right. Let me get another
22 poster, if I can, Chief. S-4-A that I have now, Chief, would
23 you describe what this photograph shows?

24 A. That's going to be in front of Tardy's. It's going
25 to be up where Coast to Coast at, about three buildings up.

26 Q. All right. Coast to Coast is where who was coming
27 from?

28 A. Mr. Sam there.

29 Q. Okay. Now, I see an area out here in front of

1 Tardy's. Can you describe what that is?

2 A. That's the parking area. That's some of the
3 vehicles that people worked at the dry cleaners.

4 Q. All right. And the parking area, is traffic two-way
5 or one-way in there?

6 A. You go up -- you go up this side here, and you come
7 down this side here.

8 Q. All right. Thanks, Chief.

9 Let me get one more diagram.

10 Exhibit 5-A. What does this poster show?

11 A. That poster going to show Carrollton Street beside
12 Tardy's and the dry cleaners.

13 Q. All right. And Carrollton Street runs right beside
14 Tardy's.

15 A. Right beside Tardy.

16 Q. And where does it go if you go west on it?

17 A. If you go west on it, it will run you into Church
18 Street.

19 Q. Okay. You can have a seat again for a minute,
20 Chief.

21 A. (Complied.)

22 Q. Chief, I want to show you Exhibit 108 for
23 identification, S-108. And I'll ask you if you can identify
24 this.

25 A. It's going to be a city map.

26 Q. And does it truly and accurately depict the streets
27 and the areas that are on it?

28 A. Yes, sir.

29 MR. EVANS: Your Honor, I offer this exhibit

1 into evidence.

2 MR. CARTER: No objection.

3 THE COURT: I'll allow it to be admitted.

4 (THE LARGE CITY OF WINONA MAP PREVIOUSLY MARKED STATE'S
5 EXHIBIT NUMBER 108 FOR IDENTIFICATION WAS ADMITTED INTO
6 EVIDENCE.)

7 Q. All right. Chief, I want to ask you to step back
8 down again, if I may.

9 A. (Complied.)

10 Q. Can you point out for the jury --

11 A. It's upside down.

12 Q. Thank you.

13 Can you point out for the jury where Highway 51 is on
14 that map?

15 A. Highway 51. (Indicated.)

16 Q. All right. And where would -- some of the jury is
17 being blocked, I think, Chief. Back up just a little.

18 Where is Tardy Furniture located on this map?

19 A. It's going to be right in there. (Indicated.)

20 Q. All right. And where is McNutt Street located?

21 A. McNutt is going to be right here. (Indicated.)

22 Q. And is McNutt on the east or west side of 51?

23 A. McNutt is going to be on the west side of 51.

24 Q. Which side of 51 is Tardy Furniture on?

25 A. Tardy is going to be on the east side.

26 Q. Do you see Donniger Street on there?

27 A. Donniger is going to be right down here.

28 (Indicated.)

29 Q. And which side of 51 is it located on?

1 A. It's going to be on south side. Almost right there.
2 (Indicated.)

3 Q. Is that east?

4 A. Yes, sir.

5 Q. Do you see where Angelica is located on that map?

6 A. Angelica. It's going to be off of Church down
7 there. I need my glasses. I can't hardly see. (Indicated.)

8 COURT REPORTER: Judge, I am having a hard time
9 hearing.

10 THE COURT: Chief.

11 Q. Is it located off of --

12 THE COURT: Chief, you need to.

13 Q. Is --

14 THE COURT: Mr. Evans, the court reporter is
15 telling me she was having trouble hearing everything that
16 was being said.

17 So Chief, you need to speak up.

18 THE WITNESS: I am having problems seeing it.

19 MR. CARTER: Just for the record, Your Honor, I
20 don't want to object, but he was leading.

21 MR. EVANS: I don't think I have lead anything
22 at this point.

23 THE COURT: Well, ask the next question. I
24 will have to make that --

25 Q. (By Mr. Evans:) Which side of Highway 51 is
26 Angelica located on?

27 A. 51. It's going to be on the east side.

28 Q. All right. You can have a seat again, Chief.

29 A. (Complied.)

1 Q. Chief, why did you call the D.A.'s office and the
2 highway patrol investigators in on this case?

3 A. I didn't -- I didn't want to be criticized about the
4 case. And I felt that I was over my head on it.

5 Q. Okay. Had you ever investigated anything like this
6 before?

7 A. No, I have not.

8 Q. Had you ever seen anything like this before?

9 A. No, I have not.

10 Q. All right. You had preserved the scene. Where were
11 you while you were waiting on the investigators from the
12 highway patrol and my office to arrive?

13 A. I were -- I were on the corner of right there at
14 Carrollton and front of the store so I could see the side door
15 and front door.

16 Q. Which ones of your officers assisted in this
17 investigation?

18 A. Vanhorn.

19 Q. And what was her title?

20 A. Captain.

21 Q. Did any other officers assist in helping the
22 investigators?

23 A. Yes, sir.

24 Q. Do you know how many of them?

25 A. I think Townsend and -- mostly Townsend and Vanhorn.
26 Some of the other officers, you know, picked up folks for me.

27 Q. Where were most of the people that were being
28 interviewed, Chief?

29 A. Winona Police Department.

1 MR. CARTER: I'm sorry. I didn't hear. Winona
2 what?

3 THE WITNESS: Police department.

4 Q. Do you know about what time the state crime lab
5 arrived?

6 A. Right offhand I don't.

7 Q. And you say the ambulance service came and picked up
8 Bobo Stewart.

9 A. Yes, sir.

10 Q. Do you remember which ambulance folks it was?

11 A. It was three of them. I don't know them by name.

12 Q. Other than him, what, if anything, was removed from
13 the store before investigators arrived?

14 A. Just, just him.

15 Q. Can you briefly describe the inside of the store,
16 Chief? How is the store set up?

17 A. If, if you come through the front doors it's got
18 like a aisleway that goes from the front door all the way to
19 the back. And then they have furniture all on both sides.

20 Q. Okay. And in relationship to that aisleway, where
21 did you find Miss Bertha Tardy?

22 A. It was almost middle ways of the store in the
23 aisleway.

24 Q. Okay. What did you notice about her?

25 A. She was laying face down, pointing, you know, to the
26 back of the store.

27 Q. Okay. And as far as the other three, Miss Carmen
28 Rigby, Bobo Stewart and Robert Golden, where were they?

29 A. They were right there by the counter. Which Miss

1 Rigby, her body the only one that looked like it was moved.
2 Looked like she was pulled over to there.

3 Q. What made you think she had been pulled over?

4 A. The way her arm was looked like she had been, and
5 you could see where her shoes had -- where it slid.

6 Q. So it appeared she had been slid over.

7 A. Pulled over.

8 Q. Did you make any observations about what you thought
9 had caused their deaths?

10 A. Yes, sir. They all appeared to be shot in the head.

11 Q. Now, the bloody shoe prints that you found, where
12 were they located?

13 A. It was to the left of the -- there was a little ramp
14 that goes into the other part of the store. And it was to the
15 left of the little ramp.

16 Q. All right. Were those bloody shoe prints close to
17 any particular victim?

18 A. It was over there by where the bodies were.

19 Q. All right. Whose body was the closest to where the
20 bloody prints were?

21 A. Stewart.

22 Q. Chief, what effort was made to do a canvas of
23 downtown and Winona as far as --

24 MR. CARTER: Objection. Leading, Your Honor.
25 No foundation. It has not even been proven that he did
26 canvass. He asked a question in improper form.

27 MR. EVANS: May I proceed, Your Honor?

28 THE COURT: Rephrase and proceed.

29 Q. What effort was made to do a canvas of downtown by

1 your department?

2 MR. CARTER: Same objection.

3 THE COURT: I don't think it is suggestive of
4 an answer. So I will overrule the objection.

5 Q. You may answer.

6 A. We canvased the whole area.

7 Q. By canvassing the whole area, what do you mean?

8 A. They searched all around the whole store and the
9 whole neighborhood and everything.

10 Q. What effort was made to find any evidence other than
11 canvassing the area?

12 A. We had the street department to pull up the
13 manholes, the covers, so we can look in there. Stuff like
14 that.

15 Q. How were y'all -- how did y'all canvas the downtown
16 Winona area? I am not talking about just downtown. I am
17 talking about the area that you showed on the map.

18 A. Mostly walked it.

19 Q. Did your officers -- well, let me ask you this. I
20 am trying to -- did you give your officers any direction on
21 what to do if they found people that were possibly witnesses?

22 A. Contact investigator.

23 Q. Do you have any idea approximately how many people
24 your investigators -- your officers talked to?

25 A. How many people? No, sir, I don't.

26 Q. Would it be closer to ten or closer to hundreds?

27 A. Closer to ten.

28 Q. And they would take those to who?

29 A. Take them to the police department to the

1 investigator.

2 MR. EVANS: May I have the Court's indulgence
3 for just a minute, Your Honor?

4 THE COURT: You may.

5 Q. Chief, you know a person by the name of Barry
6 Eskridge?

7 A. Yes, sir.

8 Q. Who is he?

9 A. He is the owner of Med Stat.

10 Q. And Med Stat is the ambulance service that you
11 called.

12 A. Yes, sir.

13 Q. Did he come to the scene?

14 A. Yes, sir.

15 Q. And did you and he do anything together there?

16 A. Looked at -- looked at his people's shoe print, Mr.
17 Sam and checked the peoples' shoes that were there.

18 Q. All right. Was there -- what, if any, type attempt
19 was made to look through the store to make sure whether anyone
20 else was there or not?

21 A. Yes, sir, it was searched.

22 Q. Who did that?

23 A. All officers that were there.

24 Q. All right.

25 A. And investigator.

26 MR. EVANS: Tender the witness, Your Honor.

27 CROSS-EXAMINATION BY MR. CARTER:

28 Q. Good morning, Chief.

29 A. Good morning.

1 Q. Well, let me start a different kind of way.

2 Who all canvassed the neighborhood that worked for your
3 department, Chief? Those mysterious officers that canvassed
4 the neighborhood, who are they?

5 A. You had Captain Vanhorn. You had Townsend. And
6 some of -- the rest of my officers came in.

7 Q. Who are they?

8 A. Right offhand -- you know, my department turn over
9 so much, I can't call it right offhand.

10 Q. Did you make a report?

11 A. No, sir.

12 Q. A written report of the people who canvassed the
13 neighborhood?

14 A. No, sir, I did not.

15 Q. Should you have done so?

16 A. No. We had all the investigators and stuff there.
17 They were taking reports and stuff like that.

18 Q. Should you not have or should you have?

19 A. We didn't take a report.

20 Q. Now here we are 14 years later; right?

21 A. Um-hum.

22 Q. Still trying this case.

23 A. Um-hum.

24 Q. And would you agree with me that memory is fallible
25 and fleeting and it's hard to remember things after all them
26 years?

27 A. I know what I saw.

28 Q. But is your memory like a video recorder, and you
29 can remember exactly what you saw 14 years later?

1 A. It's pretty good.

2 Q. It is like a video recorder, you think.

3 A. No. I didn't say it was like a video recorder.

4 It's pretty good at it.

5 Q. Now, whose vehicles are these vehicle there?

6 (Indicated.)

7 A. Vehicle there?

8 Q. Yeah. Right here? (Indicated.)

9 A. I don't know whose vehicle that is.

10 Q. Do you know whose vehicle that is behind right
11 there?

12 THE COURT: Mr. Carter, I just -- I wanted you
13 to tell for the record what exhibit you --

14 MR. CARTER: Sorry about that, Your Honor.
15 This is Exhibit S-5-A.

16 THE COURT: You can proceed. I just wanted to
17 make sure for the record.

18 Q. Okay. Chief, I believe you said you don't know who
19 any of those vehicles belonged to; is that correct?

20 A. They work there at the cleaners but I don't know
21 whose vehicles they are.

22 Q. Did you go in and talk to the people at the cleaners
23 and find exactly which car belonged to whom?

24 A. I did not.

25 Q. Did you see anybody do that?

26 A. Some of the rest of them might have, I didn't.

27 Q. You said some of the rest of them might have.

28 A. Yes, sir. They might have, but I didn't.

29 Q. And, Chief, I believe you testified that this is

1 Front Street; is that correct?

2 A. Yes, sir.

3 Q. And on Front Street here I count one, two, three,
4 four, possibly, five, six cars.

5 A. Um-hum.

6 Q. Do you know who any of these cars belonged to?

7 A. That truck belonged to Tardy's.

8 Q. This truck here. (Indicated.)

9 A. Um-hum.

10 THE COURT: Mr. Carter, I don't want to
11 interrupt but --

12 MR. CARTER: Sorry. Sorry, Your Honor. This
13 is Exhibit S-4-A. So sorry, Your Honor.

14 MR. EVANS: I don't think there is S-40 entered
15 at this point, Your Honor.

16 MR. CARTER: I said S-4-A.

17 Q. Chief, do you know whose vehicle this is?

18 A. I believe that is Miss Seales' vehicle there. The
19 lady that work in that...

20 Q. Work where?

21 A. In the cleaners. And the other brown vehicle right
22 there is going to be Miss Armstead. She, she works for the
23 cleaners.

24 Q. Okay. And is that down by Coast to Coast there?

25 A. No, sir. That is from Coast to Coast. It is almost
26 to Summit Street.

27 Q. Okay. Where would Coast to Coast be located in
28 here?

29 A. Coast to Coast going to be right up there by that

1 truck. You see that second --

2 Q. Way back here? (Indicated.)

3 A. No. Come on down. In front of where the truck at.

4 THE COURT: Mr. Carter, I think the jury is
5 having trouble seeing the picture. So if you will...

6 MR. CARTER: Yes, sir.

7 (MR. CARTER MOVED TO THE SIDE OF THE EXHIBIT.)

8 A. This going to be Coast to Coast right here.

9 (Indicated.)

10 Q. Okay.

11 A. There is two stores in between there, Tardy's.

12 Q. Okay. And thank you, Chief. And did you go in
13 these buildings and check and see who were in those buildings?

14 A. They checked those. They checked those.

15 Q. Who checked it, Chief?

16 A. Some of the people in the investigator's office,
17 stuff like that.

18 Q. You saw them check it.

19 A. They, they walking all around there. All of us was.
20 But they went in that building.

21 Q. Just trying to be clear for the record. You saw
22 them go in the building.

23 A. I seen some of them go in there.

24 Q. Okay. Who you saw go in, Chief?

25 A. I don't know which one went in.

26 Q. Chief, I show you Exhibit S-1-A. And what did you
27 say the name of this building was? (Indicated.)

28 A. That building right there, that's -- it was sort of
29 like a Sta-Home or something, you know, sort of like --

1 Q. Home --

2 A. -- a home care place.

3 THE COURT: Mr. Carter, I'm afraid the way the
4 picture is being held the jury is probably not being able
5 to see it.

6 Q. Could you come down, Chief?

7 A. (Complied.)

8 Q. I was trying to avoid doing it. I'm sorry about
9 that. I'm showing you S-1-A, and you said the building --

10 A. That was some kind of, you know, like Sta-Home
11 agency or something.

12 Q. And I see some vehicles out in front of it. Did you
13 check to see and discern or learn who these vehicles belonged
14 to?

15 A. That is going to be a patrol car. (Indicated.)

16 Q. Okay. The --

17 A. That is going to be Tardy's truck there.
18 (Indicated.)

19 THE COURT: Speak up Chief, please.

20 A. This going to be Tardy Furniture vehicle. That is a
21 city vehicle. That is going to be my vehicle. That is going
22 to be Miss Tardy's vehicle over there.

23 Q. And those --

24 A. Those other vehicles there, that was people just
25 coming in. You know, that's why we have to put the tape up.
26 (Indicated.)

27 Q. Coming in and out.

28 A. We put the tape across here to keep them back.

29 Q. Okay. Did anyone go beyond this tape to see --

1 A. No, sir.

2 Q. -- to talk to those people?

3 A. No, sir. Once we put the tape, they -- once we put
4 the tape up, it kept everybody from coming in front of the
5 store.

6 Q. Okay. Who went over and talked to them, Chief?

7 You can have a seat now. I'm sorry.

8 A. (Complied.)

9 Q. Who went over and talked to the people?

10 A. I wasn't with everybody that was talking to people.
11 So I couldn't tell you who talked to them.

12 Q. Did you see anybody go over there and talk to them,
13 Chief?

14 A. Over that way. No, sir.

15 Q. Chief, would you agree with me that an investigation
16 is the -- is an objective search for the truth? Is that fair
17 to say?

18 A. Yes, sir.

19 Q. Now, as to the call, do you know if Mr. Sam Jones
20 made the call? Or did somebody from Coast to Coast make the
21 call?

22 A. No. I can't tell you which one made the call. But
23 Mr. Sam found the bodies.

24 Q. Right. Now, did you walk completely around the
25 building, Tardy, meaning Tardy Furniture, that morning?

26 A. Yes, sir.

27 Q. Is it fair to say that you were the initial
28 responding police officer --

29 A. Yes, sir.

1 Q. -- to the scene? Do you know if -- what is Miss
2 Vanhorn? Is that the first and last? Or is that the last
3 name?

4 A. Liz Vanhorn.

5 Q. Do you know if she made a report of her duties that
6 she performed on the day of the crime?

7 A. No, sir, I do not.

8 Q. And she worked for you; is that correct?

9 A. Yes, sir.

10 Q. And Officer Townsend, what is his first name?

11 A. Kenneth.

12 Q. Okay. What did he do exactly?

13 A. Kenneth. He, he, working that morning with me. And
14 he helped rope off the crime scene.

15 Q. And did he make a report?

16 A. No, sir, he didn't.

17 Q. Now, Chief, did you rope off the bloody shoe part,
18 the bloody shoe print area also?

19 A. What I did, I made sure didn't nobody step over that
20 way.

21 Q. Chief, did you rope off the --

22 A. No, I did not.

23 Q. Okay. But you are saying you made sure that
24 nobody --

25 A. Yes, sir.

26 Q. -- stepped over that way. Now, Chief, weren't there
27 some points in which you weren't in the building? You were
28 not inside of Tardy's at all times, were you?

29 A. No, sir, I wasn't.

1 Q. In fact, you went in. You came out. And you stayed
2 out until somebody got there from Med Stat, I believe; is that
3 correct?

4 A. Yes, sir.

5 Q. And I believe you stayed out as -- I don't want to
6 lead you. Who went inside the store while you were on the
7 outside?

8 A. While I was on the outside?

9 Q. Right.

10 A. Didn't anybody go in.

11 Q. Were you with Mr. Matthews when he went in?

12 A. Matthews.

13 Q. Jack Matthews.

14 A. We went back in. After, after they got there,
15 everybody else went back -- we went back in.

16 Q. So you went in with Mr. Jack Matthews on each
17 occasion he went in until he took over the crime scene.

18 A. Not each occasion. No.

19 Q. Not each occasion. So he did go in on some occasion
20 without you; is that right?

21 A. Yes, sir.

22 Q. Now, you didn't photograph that bloody shoe print,
23 did you?

24 A. No, sir, I didn't.

25 Q. And correct me, Chief. I, I couldn't hear when,
26 when I couldn't see. You said something about a best friend a
27 few minutes ago, I think.

28 A. Robert and my older brother were best friends.

29 Q. Oh, okay. Now, you also said that it appears Miss

1 Tardy was pulled over.

2 A. No, I said Miss Rigby.

3 Q. Rigby. I'm sorry. So sorry. Miss Rigby was pulled
4 over.

5 A. Um-hum.

6 Q. And what do you base that on? Miss Rigby.

7 A. The way her -- the way her body was laying.

8 Q. How, how was that? Describe it. Tell the jury.

9 A. It -- you know when you get somebody arm and you,
10 you pull them, the way she was stretched out and the way her
11 feet was.

12 Q. Okay. Now, have you had any professional training
13 on how to detect whether somebody fell or was pulled or --

14 A. No, sir.

15 Q. So that's just your opinion. That is not based in
16 any kind of science or anything; is that correct?

17 A. What I'm saying, you could tell that she was moved.
18 Like I say, I am not a professional at it. No.

19 Q. I'm not trying to bait you on it, Chief, but you
20 said you could tell she was moved. Is there anything else
21 other than the way she was laying that indicate to you that
22 she was moved?

23 A. No, sir.

24 Q. And when you say that, what are you talking about?
25 Are you saying she was moved from one spot to another? How
26 far? How far was she moved? How could you tell? Do you
27 know?

28 A. Looked like they were trying to pull her out of the
29 aisleway in front of the counter.

1 Q. Have you testified to that before?

2 A. Sir.

3 Q. Have you testified to that before in either trial?

4 A. Talking about it looked like she'd moved -- been
5 moved?

6 Q. Been pulled. Yeah.

7 A. No, sir.

8 Q. For the record, so we can be clear, are you saying
9 it looked like she had been moved or are you saying it looked
10 like she had been pulled?

11 A. Pulled.

12 Q. Pulled. Now, Chief, I believe the evidence is that
13 the first time you went in -- and I, I certainly understand it
14 is a real startling event that you came upon. But the first
15 time you went in, you didn't see the shoe print, did you?

16 A. No, sir, I did not.

17 Q. You saw it the second time.

18 A. Yes, sir.

19 Q. Okay. And did you find or did somebody else find
20 it?

21 A. Me and -- me and Barry Eskridge were standing over
22 there when we found it. (Indicated.)

23 Q. Okay. Who saw it first - you or him?

24 A. I believe we saw it about -- almost the same time.

25 Q. Okay. And your testimony is that he didn't --
26 correct me if I'm wrong. He didn't see it and point it out to
27 you.

28 A. Just like I said, we seen it almost the same time.

29 Q. Okay. Saw it about the same time.

1 A. Um-hum.

2 Q. But did Mr. Eskridge also say Chief, there is a
3 bloody footprint or something along that nature?

4 A. I don't know if he did or not. We looked over there
5 and -- you know.

6 Q. Chief, did you make a, a report or summary of all
7 the work that you did that morning?

8 A. No, sir, I did not.

9 Q. Now, should you have?

10 A. That is why we had the investigators and all there.

11 Q. Shouldn't you have made a report, Chief?

12 A. What I'm saying, I was letting the investigators do
13 all the foot-work on that.

14 Q. Right. And so you are telling me that there is a --
15 there should have been or was an investigator, a leader. Is
16 that what you are saying?

17 A. They done -- they done paperwork on that shoe print.

18 Q. So you are telling us that somebody was assigned.

19 A. No, I am not saying anybody was assigned. What I am
20 saying, they done paperwork on that.

21 Q. Who is they?

22 A. The investigators.

23 Q. Who is it?

24 A. Jack Matthews and Wayne Miller.

25 Q. Okay. And now, isn't it a fact that Jack Matthews
26 and Wayne Miller wasn't at the scene for a pretty substantial
27 period of time? You were there first. And you were there
28 some period of time before Jack Matthews and Wayne Miller got
29 there; is that correct?

1 A. Yes, sir.

2 Q. And they have no way of knowing what you saw or what
3 you did; is that correct?

4 A. I pointed it all out to them when they got there.

5 Q. Okay. So you didn't make a report of your duties.
6 You pointed it out to Mr. Matthews and Mr. Miller.

7 A. Yes, sir.

8 Q. Did they make a report of what you did, Chief?

9 A. I don't know if they did or not. I didn't ask them.

10 Q. You didn't ask them.

11 A. I did not.

12 Q. Did you see a report that they wrote up or compiled
13 that set forth what you did?

14 A. No, sir.

15 Q. Chief, how long had you been a police officer before
16 you became chief?

17 A. About eight years.

18 Q. About eight years.

19 A. Yes, sir.

20 Q. Isn't it fair to say that standard police protocol
21 requires that -- well, strike that. First of all, you knew
22 this was a major, major, major, major homicide; is that
23 correct?

24 A. Yes, sir. That's why I called for help.

25 Q. That's why you called for help. That's a good
26 thing. I'm proud of you for doing that.

27 MR. EVANS: Your Honor, I object to him
28 commenting back to the witness.

29 THE COURT: That is improper.

1 Q. Well, making -- calling for help, I believe, is the
2 right thing to do, Chief.

3 MR. EVANS: I object to comments. He can ask
4 questions.

5 THE COURT: You've got to just ask questions.

6 Q. In a major homicide, Chief, isn't making reports
7 important and critical?

8 A. Yes, sir.

9 Q. And you didn't do it. Is that also true?

10 A. That's why I said I called for help. They know more
11 about it than I did.

12 Q. Okay. But you did make a report; is that correct?

13 A. No, I did not.

14 Q. And you had been chief for how long?

15 A. Just had became chief.

16 Q. Just had become chief. And before you had become
17 chief, had you worked any homicides before?

18 A. No, I haven't.

19 Q. Been an officer for eight years?

20 A. Yes, sir.

21 Q. And what rank did you make as a regular officer?

22 A. In eight years I went from captain to assistant
23 chief to chief.

24 Q. Did you start out as a captain?

25 A. I started off as patrolman.

26 Q. And didn't you learn within eight years that police
27 protocol requires making reports of your findings and duties
28 as you investigate a crime?

29 A. Different departments do it different ways.

1 Q. So the Winona Police Department didn't require
2 reports. Is that what you are saying?

3 A. We didn't have protocol.

4 Q. Didn't have any protocol.

5 A. We didn't haven't protocol.

6 Q. So you could just kind of do as you wanted.

7 A. No, it ain't do it how you want. You do it.

8 Q. You do it how?

9 A. You do it with the best of your knowledge. You
10 don't do it the way you want.

11 Q. So you are not --

12 A. What I'm saying, we did not have protocol on it.

13 Q. So there was no standard police protocol.

14 A. No, sir.

15 Q. Rules that you had to follow.

16 A. That's right.

17 Q. So each officer -- what did each officer follow
18 then? I don't want to put words in your mouth.

19 A. That is what I am trying to tell you. That is why
20 we called investigators.

21 Q. I understand, Chief. But that was a while before
22 the investigators got there. What do you do in cases,
23 Chief --

24 A. We, we secured the crime scene.

25 Q. In cases where you don't, don't call the Mississippi
26 highway patrol, how do you document and memorialize and make a
27 permanent record --

28 A. Offense --

29 Q. -- of what you did?

1 A. Offense report.

2 Q. Okay. Did, did you fill out an offense report?

3 A. No, I did not.

4 Q. Did Vanhorn fill out a offense report?

5 A. No, sir, she did not.

6 Q. Did Townsend fill out a offense report?

7 A. No, sir.

8 Q. And you have been chief for, I didn't get it, about
9 15 years now?

10 A. About 15.

11 Q. Is that correct? Now, you had these investigators,
12 who I assume were leading. Did they not ask you to do a
13 written report?

14 A. No, sir, did not.

15 Q. Okay. Now, Chief, up until you became captain and
16 assistant chief and chief, did you ever go to the police
17 academy in Jackson --

18 A. Yes, sir.

19 Q. -- for training?

20 A. I did.

21 Q. And didn't they stress the importance of doing
22 documentation?

23 A. We went into criminal justice and stuff like that
24 and no report writing. Yeah.

25 Q. Now, Chief, the first officer on the scene supposed
26 to do certain things. Is that fair to say?

27 MR. EVANS: Your Honor, I object to him telling
28 the police chief what they are supposed to do. He can
29 ask him what they are supposed to do.

1 MR. CARTER: He is on cross, Your Honor. Mr.
2 Evans knows it.

3 THE COURT: I will overrule the objection.

4 Q. Chief, I am going to do Mr. Evans a favor and
5 rephrase it.

6 MR. EVANS: I don't need any favors, Your
7 Honor.

8 THE COURT: Mr. Evans, keep your comments to
9 yourself.

10 MR. EVANS: I would ask that both sides do,
11 Your Honor.

12 THE COURT: I think I asked that of y'all
13 yesterday.

14 MR. CARTER: I will certainly comply, Your
15 Honor.

16 Q. Chief, what is the first responding officer supposed
17 to do when he arrives up on the scene?

18 A. Secure the crime scene.

19 Q. And what, what does that mean?

20 A. That mean when you secure it, you make sure don't
21 anybody tamper with the evidence or can mess up evidence there
22 at the scene.

23 Q. Okay. And what exact steps did you take to secure
24 the area?

25 A. I made sure that nobody entered the store. And then
26 I also start moving people back away from the front of the
27 store. And then we start securing the tape all the way
28 around.

29 Q. Chief, did you ever go behind the building?

1 A. Yes, sir.

2 Q. And did you walk up that little street? What is
3 that little street called that's behind the building?

4 A. Keyneck, I think. Something like Vine. Something
5 like that.

6 Q. Did you walk all the way up Vine?

7 A. No. I didn't walk all the way up it. I walked
8 around, come out by Coast to Coast, that little alley-way in
9 there.

10 Q. Okay.

11 A. By Coast to Coast in front of the store.

12 Q. Did you -- did you lock the door as you walked
13 behind the building? Was Tardy's locked?

14 A. By that time, when I done that, everybody was there.
15 The investigators and everybody were there.

16 Q. Okay. And did they walk Vine Street with you?

17 A. No, sir, they did not. But before the investigators
18 and all got there, I -- there on Carrollton, on the corner
19 where I could see the back door and the front door.

20 Q. Right.

21 A. I didn't move. I didn't go around it before then.

22 Q. Okay. Chief, I refer again to State Exhibit 1-A.

23 A. Um-hum.

24 Q. And there is something that looks like some tape
25 here.

26 A. Some tape.

27 Q. You put that there?

28 A. Yes, sir.

29 Q. Did you do it by yourself?

1 A. Me and Officer Townsend.

2 Q. And you put that there to secure the area and let
3 people know that you are not supposed to go into that area if
4 you are not an officer --

5 A. Yes.

6 Q. -- called to the scene; is that correct?

7 A. Um-hum.

8 Q. And at what point did you do that?

9 A. I done that right after we got Stewart, Med Stat got
10 Stewart out.

11 Q. Now, I realize this is probably a real stressful
12 situation but could -- should you have done that earlier, in
13 your opinion?

14 A. Done it earlier?

15 Q. Yeah. Taped it off earlier.

16 A. No, sir, I don't think so. Because I was sitting
17 there waiting for backup. And you know, I wasn't going to be
18 fooling with no tape. I didn't know if the person was still
19 in the store or not.

20 Q. I understand. Thank you.

21 Chief, wouldn't you agree that all police officers should
22 have some training in protecting a crime scene, preserving
23 physical evidence, collecting and submitting evidence for
24 scientific examination? Would you agree with that?

25 A. Yes, sir.

26 Q. Would you also agree that great emphasis should be
27 placed on properly documenting and preserving evidence?

28 A. Yes, sir.

29 Q. And would you agree that one of the goals, if not

1 the main goal, is to make sure that the investigating process
2 yields reliable information?

3 A. Yes, sir.

4 Q. Now, all crime scenes are unique. Is that fair to
5 say?

6 A. All of them. They are not the same.

7 Q. Right. And that although every crime scene is
8 different, there should be certain techniques of preserving
9 evidence and documenting evidence that should be applied in
10 every case. Is that fair to say?

11 A. Yes, sir.

12 Q. And you further agree that all officers should have
13 basic skills, knowledge and abilities with respect to
14 processing a crime scene. Is that fair to say?

15 A. All departments don't -- all departments officers
16 not, you know, skilled in that area.

17 Q. But as many as you can make skilled in that, you
18 agree that's a good idea.

19 A. Yes. It's a good idea if you got the money to send
20 them through it.

21 Q. Okay. And you roped the area off, Chief, because
22 you didn't want any contamination, contamination or
23 disturbance of the physical evidence; is that right?

24 A. Yes, sir.

25 Q. That's why you did it. Now, Chief, with respect to
26 this canvassing that went on in the neighborhood. And correct
27 me if I'm wrong. I believe that occurred after Mississippi
28 Highway Patrol had gotten there. Well, I don't want to put
29 words in your mouth. When did that happen? At what point did

1 that happen?

2 A. It, it happened shortly after everybody got there.

3 Q. And when you say everybody, are you also talking
4 about the crime scene folks from Jackson?

5 A. Yes, sir.

6 Q. Now, the crime scene folks from Jackson got there
7 about 1:00, I believe; is that correct?

8 A. I can't tell you what time she got there.

9 Q. But you do know that canvassing the neighborhood
10 occurred after the crime scene folks from Jackson got there.

11 A. No. I can't tell you right off. Because my blood
12 pressure went sky high, and I had to go get some medication.

13 Q. Okay. So now you are saying -- and I'm not trying
14 to play games with you. But initially you said it happened
15 after everybody got there. And I just want to make sure that
16 you are clear, that the jury is clear. You initially said it
17 happened after the crime scene investigators from Jackson got
18 there. So now you are saying you are not really sure.

19 A. What, what I'm saying is it was a lot of officers
20 there. Everybody, you know, just doing different things,
21 canvassing and stuff like that.

22 Q. Okay. What time did the canvassing start?

23 A. I, I can't tell you what time it started.

24 Q. Who was the next officer to get there after you,
25 Chief?

26 A. I think Officer Townsend and Bill Thornburg. He was
27 there.

28 Q. And about how long after you, if you recall?

29 A. It wasn't long when they got there, because they

1 were in Winona.

2 Q. Okay. Would you say 15 minutes?

3 A. It was a few minutes. Yeah. Less -- fifteen or
4 less.

5 BAILIFF: Your Honor, I have been informed by
6 the jury we need a break.

7 THE COURT: Okay. Ladies and gentlemen, we
8 will take a 10-minute recess at this time.

9 (A RECESS WAS TAKEN.)

10 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
11 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS RESUMED AS
12 FOLLOWS:)

13 THE COURT: Court will come back to order.

14 If you will, bring the jury back in now, please.

15 (THE JURY RETURNED TO THE COURTROOM.)

16 Mr. Carter, you may proceed.

17 Q. (By Mr. Carter:) Now, Chief, is it fair to say that
18 this was the biggest crime that had ever occurred in Winona --

19 A. Yes, sir.

20 Q. -- at the time? It probably still is; is that
21 correct?

22 A. Yes, sir.

23 Q. Now, with respect to canvassing, now, I understand
24 this was a traumatic incident. And I believe you told me your
25 blood pressure ran up. I understand that. But wouldn't you
26 say that canvassing, no matter what time it occurred, should
27 have occurred as quickly as possible to do so?

28 A. Yes, sir.

29 Q. Now, can you tell me, as best you can, about what

1 point could you say that you were there, you had arrived on
2 the scene, Sheriff Thornburg had arrived on the scene, Jack
3 Matthews had arrived on the scene, Wayne Miller had arrived on
4 the scene, Officer Townsend had arrived on the scene, Officer
5 Vanhorn had arrived on the scene? What time would you say
6 that all of them had made it there?

7 A. As far as time, I can't tell you. As far as time, I
8 don't know.

9 Q. You think they all made it there within 30 minutes.

10 A. Townsend and Thornburg and all, yeah. I'd say that.

11 Q. But you are not sure what time the other ones got
12 there.

13 A. Yeah.

14 Q. Now, why did you do the canvassing? What is the
15 purpose of that?

16 A. Canvassing. You try to find evidence and try to see
17 if the suspect is still in the area and stuff like that.

18 Q. Which should occur as quickly as possible you said.

19 A. Yes, sir.

20 Q. Now, how many pairs of shoes did you check, Chief?
21 Do you know?

22 A. I checked all the E.M.T.'s and Mr. Sam and the
23 officers that were there.

24 Q. What kind of shoes did the first technician have on?

25 A. They had those boot-like shoes on.

26 Q. Which one? Both of them?

27 A. All three of them.

28 Q. What color were they?

29 A. Black.

1 Q. Like boots, boots, boots -- the long boot that, that
2 you pull up and --

3 A. No. It's going to be sort of like those cloth-like
4 military boots.

5 Q. Okay. What kind of shoes did Mr. Sam Jones have on?

6 A. Some of those like Oxford -- you know, those shoes
7 that they sort of like the military shoe but it's, it's not.
8 You know, made like the military dress shoe.

9 Q. Okay. It wasn't similar to what the Med Stat
10 technician had on, was it?

11 A. No.

12 Q. What kind did -- did Mr. Johnson show up at the
13 scene at some point?

14 A. Yes.

15 Q. John Johnson. Mr. Evans.

16 A. Um-hum.

17 Q. Did you check all their shoes too?

18 A. Looked at their shoes.

19 Q. What kind did they have on?

20 A. They had on some -- he had on dress shoes. And John
21 had on some shoes too.

22 Q. I'm sorry. I didn't get that.

23 A. Shoes. They had on shoes.

24 Q. Oh, when you say shoes, shoes as opposed to tennis
25 shoes or boots.

26 A. Opposed to boots.

27 Q. Okay.

28 A. They had on shoes.

29 Q. And did you make a report of that?

1 A. No, sir, I didn't.

2 Q. Now, Chief, for the record, can you tell us exactly
3 what you did to canvas the neighborhood?

4 A. What I did?

5 Q. Yourself.

6 A. Only thing I done, I walked around the building.

7 Q. Okay. So you didn't -- that is the extent of your
8 canvassing.

9 A. Yes.

10 Q. Now, right behind Tardy's there is some businesses
11 there; is that correct?

12 A. Yes, sir.

13 Q. What businesses were there back then?

14 A. You had that -- Coast to Coast had a shop back
15 there.

16 Q. And they did what?

17 A. They worked on tires and lawn mowers and stuff like
18 that.

19 Q. And what other business was back there?

20 A. It was that body shop, I think, back there.

21 Q. Okay. Did you talk to any of those people?

22 A. I didn't.

23 Q. Did you see anybody talk to them?

24 A. No, sir.

25 Q. Okay. Now, Chief, there was a reward offered in
26 this case for information at some point; is that correct?

27 A. That's correct.

28 Q. And the reward money was offered almost immediately;
29 is that correct?

1 A. Yes, sir.

2 Q. How much was it? Do you remember?

3 A. I think it was about -- approximately about 30,000.
4 Something like that.

5 Q. And your police department didn't put up any money,
6 did it?

7 A. No, sir. I think the money is still there.

8 Q. And this reward money was, was written about in the
9 newspaper; is that correct?

10 A. It was in the newspaper.

11 Q. I think it might have been posters on -- or signs
12 put on poles around town.

13 A. Yes, sir.

14 Q. Now, Chief, did you make a report of every single
15 person that went in and outside of Tardy's before the crime
16 scene got there?

17 A. No, sir.

18 Q. Now, with respect to Mr. Matthews and Mr. Miller,
19 which one did you view as the, I guess, the senior or superior
20 officer?

21 A. Both of them.

22 Q. Did they have the same rank?

23 A. I believe so.

24 Q. Did either identify themselves as the commander or
25 leader?

26 A. No, sir.

27 Q. And you released the crime scene over to whom?

28 A. Highway patrol.

29 Q. Now, which one did you see first?

1 A. I think they both came in about the same time.

2 Q. And "about the same time", what you mean?

3 A. Yes, sir.

4 Q. They came at different times. Which one came first?

5 A. Right offhand, I can't tell you which one came
6 first.

7 Q. Did you not testify at a earlier point that you
8 released the crime scene to Jack Matthews?

9 A. I don't believe I did. I couldn't tell you right
10 off-hand.

11 Q. And Chief, tell the jury and the Court what other
12 role, if any, did you play in the investigation of this case
13 once the crime scene had been released to the Mississippi
14 Highway Patrol?

15 A. I didn't play any other role.

16 Q. Didn't play any other role.

17 A. No, sir.

18 Q. Didn't you go to some houses with other officers to
19 interview people and to collect certain items? Did you not?

20 A. No. Sure didn't.

21 Q. You didn't go to Connie Moore's house.

22 A. No. I don't think I went to her house.

23 Q. You didn't go to Doyle Simpson's house.

24 A. I don't remember going to his house.

25 Q. Now, this crime occurred in -- is there some reason
26 you didn't participate any further once the highway patrol got
27 involved?

28 A. I had my officers doing it, my captain.

29 Q. So you had some captains, some officers --

1 A. I had Officer Vanhorn.

2 Q. -- to continue participating --

3 A. Yes, sir.

4 Q. -- with any investigation.

5 A. Yes, sir.

6 Q. What did she do?

7 A. She set in on interviews and stuff like that.

8 Q. What did you assign her to do?

9 A. To help. To assist.

10 Q. To assist.

11 A. Yes, sir.

12 Q. And, and did you give her any specific ways in which
13 she should be assisting?

14 A. No, sir, I did not.

15 Q. Left it up to her.

16 A. Yes, sir.

17 Q. And did you make a report of what you assigned her
18 to do?

19 A. No, I did not.

20 Q. And no other officer within your department but Miss
21 Vanhorn participated upon her being assigned the case.

22 A. Yes, sir. Mostly her.

23 Q. Mostly her now.

24 A. Yes, sir.

25 Q. Does that mean that it was partially somebody else
26 too?

27 A. Townsend.

28 Q. Townsend.

29 A. Um-hum.

1 Q. What did he do?

2 A. He assisted too.

3 Q. Exactly how did he assist?

4 A. You know, like, going around, sitting in on
5 interviews and stuff like that.

6 Q. Did he make a report?

7 A. No, sir, he did not.

8 Q. Did you ask him to?

9 A. No, sir.

10 Q. Did you discuss with him his findings?

11 A. No, sir.

12 Q. Did you discuss with Officer Vanhorn her findings?

13 A. She talked to me every now and then.

14 Q. Okay. And upon talking to you, is it your position
15 that all she did was sit in on interviews?

16 A. Sit in on it.

17 Q. And she did nothing else.

18 A. To my knowledge.

19 Q. Now, isn't it a fact that Officer -- Mississippi
20 Highway Patrolman Jack Matthews was, in fact, in and out of
21 Tardy's that morning several times prior to the C.S.I. people
22 getting there from -- crime scene people getting there from
23 Jackson?

24 A. There was a lot of folks in and out of there, you
25 know, officers.

26 THE COURT: Speak up a little. I am having
27 trouble. And I figure the people back there on the
28 second row are too.

29 MR. CARTER: Okay. I will, Your Honor.

1 THE COURT: No, I was talking about the chief,
2 getting him to speak up.

3 MR. CARTER: I don't remember the question.

4 Q. Oh, I believe my question was wasn't Mr. Matthews in
5 and out of, on several occasions, Tardy Furniture store before
6 the crime scene people got there? I don't know if I heard
7 your answer.

8 A. I think he was mostly in there.

9 Q. Mostly inside.

10 A. Yes, sir.

11 Q. Do you know what he was doing inside?

12 A. Investigating.

13 Q. All right. Did he ever supply you with a report of
14 -- a written report of what he was doing inside?

15 A. No, sir.

16 Q. And did you ask for one?

17 A. No, sir I did not.

18 MR. CARTER: One moment, Your Honor.

19 THE COURT: Take your time.

20 Q. Chief, I show you what has been marked as Exhibit
21 2-A. Do you recognize that?

22 A. Yes, sir.

23 MR. EVANS: Your Honor, we have no objection to
24 that being offered into evidence, if they would like to.

25 THE COURT: Apparently, it hasn't been admitted
26 into evidence at this time so it --

27 Q. What is it, Chief?

28 A. That's the front of Tardy's.

29 THE COURT: Wait. Wait.

1 MR. CARTER: Move for admission, Your Honor.

2 THE COURT: It hasn't been admitted yet, so the
3 jury can't see it until it is admitted.

4 MR. CARTER: Sorry. Sorry.

5 THE COURT: And the State said they had no
6 objection to it being admitted.

7 MR. CARTER: I move for admission.

8 THE COURT: It had a State i.d. number on it.

9 MR. EVANS: It is one of our exhibits. We have
10 no problem with it being admitted under our exhibit
11 number.

12 THE COURT: Is that all right with you, Mr.
13 Carter? You are showing it to him?

14 Let the court reporter go ahead and mark it into
15 evidence.

16 (THE BLOW-UP OF STATE'S EXHIBIT NUMBER 2 PREVIOUSLY
17 MARKED STATE'S EXHIBIT NUMBER 2-A FOR IDENTIFICATION WAS
18 ADMITTED INTO EVIDENCE.)

19 THE COURT: You can proceed now.

20 MR. CARTER: Yes, sir. Thank you.

21 Q. Chief, what is this now?

22 A. That's the front of Tardy's.

23 Q. Okay. Where is the entrance into the store?

24 A. Entrance to the store. (Indicated.)

25 Q. In this picture.

26 A. I believe it is going to be right here.

27 (Indicated.)

28 Q. Okay. And --

29 A. See, the store sort of like two stores, but it don't

1 have doors down there. This going to be the door right there.

2 Q. Okay. Do you know who those people are that are
3 standing there?

4 A. Those people there, no.

5 Q. Okay. Are they in front of the tape or behind the
6 tape? Can you tell?

7 A. They are behind the tape.

8 Q. Okay. And do you know who took the picture?

9 A. No, I don't know.

10 Q. You didn't take it, did you?

11 A. No, sir.

12 MR. CARTER: One moment, Your Honor.

13 THE BAILIFF: Your Honor.

14 THE COURT: Yes, ma'am.

15 THE BAILIFF: The -- I've had several jurors
16 say they are having a very difficult time hearing. And
17 also, they are not being able to see the pictures like
18 they need to.

19 THE COURT: Okay. Chief, if you will, speak a
20 little louder. I know you are a soft-spoken man. But if
21 you will, speak as loud as you can.

22 MRS. STEINER: Your Honor, may we approach for
23 a moment?

24 THE COURT: You may.

25 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
26 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
27 OUTSIDE THE HEARING OF THE JURY.)

28 MRS. STEINER: At this point there is some
29 exhibits we want get in through the chief to which --

1 MR. EVANS: I can't hear you.

2 MRS. STEINER: At this point there is some
3 exhibits that we need to get in through the chief. Two
4 of which are exhibits from a prior trial, which were just
5 brought in and need to be marked either -- and make a
6 record of what they were before and that needs to be done
7 outside the presence of the jury or at the bench. That
8 should take a couple of minutes.

9 THE COURT: I'll send them to the jury room, it
10 will be easier that way, a minute rather than trying to
11 do stuff quietly.

12 (THE BENCH CONFERENCE WAS CONCLUDED.)

13 THE COURT: Ladies and gentlemen, if you will,
14 just step in the jury room for a couple of minutes. I
15 think there were some things that, maybe, need to be
16 marked for identification or something.

17 (THE JURY LEFT THE COURTROOM.)

18 MRS. STEINER: Your Honor, I don't want to be
19 irregular. This is some documents that we originally
20 were going to use with another witness, but this witness
21 has already testified about them. And I'd like to get
22 them marked at this point.

23 THE COURT: If the State can look at them, it
24 might be things that y'all could agree to go ahead and
25 have admitted. I don't know if it is or not.

26 MRS. STEINER: Yes. These only arrived this
27 morning.

28 THE COURT: But if y'all can --

29 MR. EVANS: What do you mean they only arrived

1 this morning?

2 MRS. STEINER: I -- Mr., Mr. Hill physically
3 had them.

4 MR. EVANS: But you have had access to them.

5 MRS. STEINER: We have had.

6 MR. EVANS: I just want to make that clear.

7 Your Honor, I have no objection to the previous
8 Exhibit D-5. But the other exhibits, I do object to. I
9 object to all the rest of them.

10 MRS. STEINER: All right. Your Honor --

11 THE COURT: I need to --

12 MRS. STEINER: Yes, Your Honor.

13 THE COURT: I guess we probably need to have
14 those marked for identification that they are objecting
15 to before I can go --

16 MR. EVANS: And we could -- if the Court would
17 like, we can go through the objections at this point
18 without the jury here.

19 THE COURT: That is what I am saying. They
20 first have to be marked for identification even for the
21 Court to view. But there is an agreement that D --

22 What is that number?

23 MRS. STEINER: The exhibit marked as D-5 for
24 admission in Case Number B2401-98-00960, initials of the
25 court reporter L.B. I'd like to have that marked with
26 that sticker obscured as --

27 THE COURT: We will place the new exhibit
28 sticker on. But will that be Defense Exhibit 1?

29 MRS. STEINER: This will be Defense Exhibit 1.

1 THE COURT: Let her just go ahead and mark that
2 into evidence.

3 MRS. STEINER: That's into evidence.

4 (THE REWARD POSTER WAS MARKED DEFENDANT'S EXHIBIT NUMBER
5 1 AND ADMITTED INTO EVIDENCE.)

6 THE COURT: Okay. I mean these have been
7 marked in a previous case for identification. But I, I
8 assume -- I am not sure.

9 MRS. STEINER: One of them has. I want to put
10 on the record what we are obscuring.

11 THE COURT: Okay.

12 MRS. STEINER: As Defense Exhibit 2, I would
13 like to have marked for -- 2 for identification what was
14 formerly designated in Defendant's Exhibit D-3 for
15 identification in Case Number B2401-98-00960, court
16 reporter initial L.B. I would like that marked as
17 Defendant's Exhibit 2 for identification.

18 (A COPY OF A WINONA TIMES ARTICLE WAS MARKED DEFENDANT'S
19 EXHIBIT NUMBER 2 FOR IDENTIFICATION.)

20 MRS. STEINER: For the record, since we are
21 outside the presence of the jury, I'll just state that is
22 a *Winona Times* newspaper article dated Thursday, July 25,
23 1996, with the headline *Cash Reward Offered for*
24 *Information*. Thank you, Your Honor.

25 And in light of -- since there is an objection, if
26 you want me to go ahead and lay a foundation.

27 THE COURT: Well, why don't you just go ahead
28 and -- while I am looking at this, and you can be
29 having those --

1 MR. HILL: Can I see those?

2 MRS. STEINER: Yes. These are the other ones.

3

4 MR. HILL: Where did you get these?

5 MR. EVANS: That is part of the Change of Venue
6 Motion.

7 MR. HILL: This is -- this is our stuff, I
8 guess. These have not been previously marked, and they
9 are not yours.

10 MRS. STEINER: They were -- they are copies of
11 yours.

12 MR. HILL: That's right. They are my copies,
13 and I didn't give them to you.

14 MRS. STEINER: No. No. They are photocopies I
15 made of what you gave me, and I sent you back on a disk.

16 MR. HILL: You made those today?

17 MRS. STEINER: No. I made those -- you had a
18 disk copied of those back in May.

19 MR. EVANS: It is.

20 MRS. STEINER: Actually, I think I had gotten
21 them out of your records. Out of an abundance of
22 caution, I gave you a copy back of those.

23 MR. EVANS: So we didn't get our originals
24 back.

25 MRS. STEINER: No, I made them at your -- at
26 here. And I -- these are the only copies I have. I --
27 Some of these may have come from either the newspapers or
28 the archives. All I know is you gave me some copies of
29 things which I made copies of. And then I put everything

1 I proposed to have marked here on the disk we served with
2 discovery about a month ago.

3 THE COURT: Have those been marked for
4 identification.

5 MRS. STEINER: They have not been. The State's
6 been looking at them.

7 (A COPY OF A *GREENWOOD COMMONWEALTH* ARTICLE WAS MARKED
8 DEFENDANT'S EXHIBIT NUMBER 3 FOR IDENTIFICATION.)

9 (A COPY OF A *WINONA TIMES* ARTICLE WAS MARKED DEFENDANT'S
10 EXHIBIT NUMBER 4 FOR IDENTIFICATION.)

11 (A COPY OF A NEWSPAPER ARTICLE WAS MARKED DEFENDANT'S
12 EXHIBIT NUMBER 5 FOR IDENTIFICATION.)

13 (A COPY OF *WINONA TIMES* ARTICLE WAS MARKED DEFENDANT'S
14 EXHIBIT NUMBER 6 FOR IDENTIFICATION.)

15 (A COPY OF A *WINONA TIMES* ARTICLE WAS MARKED DEFENDANT'S
16 EXHIBIT NUMBER 7 FOR IDENTIFICATION.)

17 (A COPY OF A *WINONA TIMES* ARTICLE WAS MARKED DEFENDANT'S
18 EXHIBIT NUMBER 8 FOR IDENTIFICATION.)

19 MRS. STEINER: May I approach?

20 THE COURT: You may. Now, what, I mean I --
21 what's the objection now?

22 MR. EVANS: Your Honor, the objection to these
23 is that we cannot try a case through the newspapers.
24 This is newspaper articles about a case, has nothing to
25 do with the facts. I think it could be highly
26 prejudicial either way by trying to introduce what was in
27 a newspaper.

28 We did not object. We don't object to the reward
29 poster coming in. They have asked him about it. They

1 can ask him about that. But to produce newspaper
2 articles about a crime to the jury, I think, would be
3 highly prejudicial.

4 And even if they introduced it, it would be rank
5 hearsay. And it would be something that appellate
6 counsel would object on the ineffective assistance of
7 counsel for them introducing.

8 THE COURT: I'll say this. Without the
9 prosecutor making his comment, I, I am very concerned
10 about the idea of showing Mr. Golden's casket being
11 brought out of the church and a number of other things
12 here that talk about the victims being laid to rest.

13 You know, I think -- and you know, this article --
14 D-8 for i.d., you know, has an article about Mr. Flowers
15 being arrested for the crime. I mean there is a
16 number -- I mean, you know, I think the reward poster is
17 going to be sufficient evidence that there was a reward
18 offered. And the chief has stated that already.

19 MRS. STEINER: Your Honor, let us just leave
20 them marked for identification for the time being, and
21 I'll read on the record what they are now. We are not
22 going to move their admission at this time.

23 THE COURT: I mean if they are marked for
24 identification, it will be a -- they will be -- I mean
25 there is a record of everything. So that will speak for
26 itself.

27 MRS. STEINER: Thank you, Your Honor. But in
28 case we do wish to use them --

29 MR. CARTER: That is already in; right?

1 THE COURT: Okay. So we can bring the jury
2 back in now.

3 MRS. STEINER: Thank you, Your Honor.

4 (THE JURY RETURNED TO THE COURTROOM.)

5 THE COURT: Court will come back to order.

6 Mr. Carter, you may continue.

7 MR. CARTER: Thank you, Your Honor.

8 Q. (By Mr. Carter:) Chief, do you remember what year
9 you went to the academy?

10 A. It was in '87.

11 THE COURT: Speak up Chief, please.

12 A. Back in '87.

13 Q. '87.

14 A. Yes, sir.

15 Q. About ten years or so before this crime occurred.
16 And had Officer Vanhorn been to the academy by the time this
17 crime occurred?

18 A. Yes, sir.

19 Q. And had Officer Townsend been to the academy by the
20 time this crime occurred?

21 A. Yes, sir.

22 Q. And certainly, by the time this crime occurred
23 neither one of them was working their first day; is that
24 correct?

25 A. That's correct.

26 Q. In fact, how long had Mr. Townsend been there before
27 this crime occurred? I realize it's --

28 A. About four or five years. Somewhere in there.

29 Q. How long had Officer Vanhorn been there before this

1 crime occurred?

2 A. She had been there about -- probably about eight
3 years.

4 Q. Eight years.

5 A. Somewhere in there.

6 MR. CARTER: May I approach the witness, Your
7 Honor?

8 THE COURT: You may.

9 Q. Officer Hargrove, I hand you what is called D-1
10 Exhibit. And can you look at it and tell us whether you can
11 recognize that?

12 A. It's going to be one of the posters that were --
13 some of them were on light poles and stuff like that. \$30,000
14 reward.

15 Q. Thank you.

16 May I approach the witness again, Your Honor?

17 THE COURT: You may.

18 Q. Would you mind reading this for us, Chief? Just
19 read it.

20 A. For information leading to the arrest or conviction
21 of person/persons responsible for murder that occurred July
22 16, 1996, at Tardy Furniture, Winona, Mississippi.

23 Q. Is that all that is on there?

24 A. No, sir. The identification of the person providing
25 information kept confidential. Got the telephone number
26 Mississippi Highway Patrol Crime Investigation, Winona Police
27 Department. And also, it got the numbers at the bottom at the
28 police department and the number at the highway patrol.

29 MR. CARTER: May I approach again, Your Honor?

1 THE COURT: You may.

2 Q. Officer Hargrove, I certainly understand you
3 couldn't see everything. But do you know if Mr. Wayne Miller
4 and Mr. Jack Matthews worked in conjunction with each other at
5 the crime scene?

6 A. Yes, sir, I believe they did.

7 Q. And do you know what specifically each one did at
8 the crime scene?

9 A. No, I do not.

10 Q. Did you ever see a report setting forth what they
11 did?

12 A. No, sir.

13 Q. How long did you stay at the crime scene that day?

14 A. Stayed there till almost everybody left.

15 Q. That would have been about what time?

16 A. I can't -- I don't know right offhand.

17 Q. Was it afternoon or morning?

18 A. It was pretty late.

19 Q. Pretty late.

20 A. Yes, sir.

21 Q. But the crime scene folks from Jackson had gotten
22 there. Is that fair to say?

23 A. Yes, sir.

24 Q. Who closed the building? Was it you? Or do you
25 know?

26 A. It wasn't me.

27 Q. Do you know who closed it?

28 A. No, sir.

29 Q. Thank you.

1 THE COURT: Any redirect?

2 MR. EVANS: Yes, sir.

3 REDIRECT EXAMINATION BY MR. EVANS:

4 Q. Chief, you've stated the reason you called in help
5 was so you wouldn't be criticized for handling it yourself; is
6 that correct?

7 A. That's correct.

8 Q. That didn't help, did it?

9 A. No.

10 Q. You still got criticized?

11 A. Yes, sir, I did.

12 MR. CARTER: Your Honor, I object to that.

13 It's leading.

14 THE COURT: It's leading. I sustain the
15 objection.

16 Q. Chief, you were asked about that reward poster.
17 There was a reward poster put up. Did you have anything to do
18 with putting it up?

19 A. No, sir, I did not.

20 Q. Has any witness in this case ever claimed a reward?

21 A. No, they haven't.

22 Q. You were asked about your memory being like a
23 recorder. Are you aware a videotape of the crime scene was
24 made?

25 A. No, sir.

26 Q. But if one was made, that would be a pretty good
27 recording, wouldn't it?

28 A. Yes, sir, it would.

29 MR. CARTER: Your Honor, I object to that too.

1 How would he know?

2 THE COURT: Well, I sustain the objection.

3 Q. You were asked about your memory. Chief, do you
4 think you could ever forget that crime scene?

5 A. No, sir, I won't.

6 MR. EVANS: Nothing further of this witness,
7 Your Honor.

8 THE COURT: Chief, you may step down.

9 MR. CARTER: Your Honor, we are going to call
10 him during our case. That will probably be next week.
11 Well, I don't know.

12 THE COURT: Well, I mean, you are not leaving
13 the city or anything.

14 THE WITNESS: No.

15 THE COURT: Can you be available at short
16 notice to come back and testify if you are needed again?

17 THE WITNESS: Yes, sir. I'm supposed to be out
18 of town.

19 THE COURT: Supposed to be out of town.

20 THE WITNESS: The 27th.

21 THE COURT: Okay. Well, I don't think we will
22 still be hearing this on the 27th.

23 So is it acceptable for y'all to be available and
24 not have to stick around the courthouse?

25 MR. CARTER: Yes, sir, that is fine.

26 THE COURT: Okay. Chief, you can go about your
27 other duties. If you will just be available when needed
28 to come back if they call you.

29 THE WITNESS: Okay.

1 THE COURT: Who would be your next witness?

2 MR. EVANS: Your Honor, I think at this time it
3 would be appropriate to read the transcript from Sam
4 Jones.

5 THE COURT: I have got a copy of that.

6 Counsel, if you will just approach for just a
7 second.

8 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
9 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
10 OUTSIDE THE HEARING OF THE JURY.)

11 THE COURT: It's no big issue. I think last
12 time when we had transcripts read y'all were asking me to
13 say, like, this was an elderly black male. When Porky
14 testified you were asking me to state the approximate age
15 of the person testifying, when they were being read.
16 Y'all asked me last time.

17 MR. CARTER: I don't remember, but I don't want
18 to do it this time. I object to it.

19 THE COURT: Okay. Well, that is fine. That
20 was something that was done last time, and I didn't know
21 whether that was something you wanted to be done this
22 time.

23 MR. CARTER: I think it is unnecessary, Your
24 Honor. I really don't want to do that.

25 THE COURT: That is fine. I just wanted to
26 clear that up.

27 MR. CARTER: Do you remember doing it, Doug? I
28 don't even remember.

29 MR. EVANS: Yeah.

1 MR. CARTER: Do you think it was a good reason
2 to do it?

3 MR. EVANS: It was just to explain to the jury,
4 since the witness wasn't here, who they were.

5 THE COURT: Since they can't look physically
6 and see what they look like. But I don't have any
7 problem with not doing it.

8 MR. CARTER: Just forget it then.

9 THE COURT: That is fine. I just wanted to
10 clear it up.

11 (THE BENCH CONFERENCE WAS CONCLUDED.)

12 THE COURT: If y'all will come back just a
13 second.

14 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
15 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
16 OUTSIDE THE HEARING OF THE JURY.)

17 THE COURT: The court reporter was asking. I
18 assume it will be all right to just, you know, if it
19 comes a point where this was an appeal, to have her --
20 the court reporter was wanting to know if she needed to
21 sit there and type the reading of --

22 MR. EVANS: It is going to have to be
23 word-for-word.

24 THE COURT: I mean it is word-for-word, and so
25 I didn't see any need for her to type.

26 MR. EVANS: I don't either.

27 MRS. STEINER: We haven't in the past required
28 that.

29 THE COURT: So I will just allow her to have

1 this as a part of the record, but it would not be
2 something that she is going to sit here and transcribe --
3 I mean type right now.

4 But if y'all make available a copy of this for the
5 court reporter's benefit in preparing the record.

6 MR. HILL: Your Honor, we already marked
7 State's Exhibit Number 127.

8 THE COURT: Okay. This is from the -- this is
9 from the trial when I tried it, which was the testimony
10 that was read last time.

11 MRS. STEINER: Right.

12 THE COURT: I assume that is going to be the
13 same testimony to be read again.

14 MRS. STEINER: Thank you. I just need to know
15 what to pull up on my computer.

16 (THE BENCH CONFERENCE WAS CONCLUDED.)

17 THE COURT: Ladies and gentlemen of the jury, I
18 want you to -- I want to explain the process that we are
19 going to be going through now.

20 Sam Jones was a witness or was testifying under oath
21 at a previous time, and he is deceased now. So the
22 testimony that he gave under oath at a previous time is
23 now going to be read to you.

24 You will be asked to consider this testimony just
25 like you would the testimony of anybody that is
26 testifying here as a live witness.

27 Who is going to be reading Mr. Jones?

28 MR. EVANS: Mr. Blackmon. William Blackmon.

29 THE COURT: Okay. Mr. Blackmon is going to be

1 sitting over here. And when the prosecution asks
2 questions, Mr. Blackmon will be speaking Sam Jones'
3 words. They are not Mr. Blackmon's words. They will be
4 what Mr. Jones had said at a previous time.

5 And so you can come around now and proceed.

6 (MR. WILLIAM BLACKMON WAS SEATED ON THE WITNESS STAND.)

7 State your name, please, sir.

8 MR. HILL: Your Honor, before we begin, I am
9 just going to move the Court, if we could, to have
10 State's Exhibit 127 for identification, which is the
11 former testimony of Sam Jones, Jr., received and it, it
12 has been previously marked and received as a --

13 THE COURT: I'll allow it to be marked as
14 identification, but it would not be something that would
15 be actually admitted to the jury -- I mean admitted into
16 evidence.

17 (THE TRANSCRIPT WAS READ.)

18 MR. HILL: Your Honor, if we could break long
19 enough, I am going to get S-2-A and put up on an easel.

20 (THE READING OF THE TRANSCRIPT CONTINUED.)

21 THE COURT: I don't know if maybe we --

22 MR. HILL: Read the court reporter note?

23 THE COURT: No, it's not about the court
24 reporter note. I just don't know if there is something
25 that is going to be admitted at this time based on what
26 we were reading on Page -- on this --

27 MR. HILL: I have those photographs here. I
28 thought maybe I would read a few more lines and then I
29 will --

1 THE COURT: Okay. Go ahead.

2 (THE READING OF THE TRANSCRIPT CONTINUED.)

3 (MR. HILL, MR. HOWIE AND MRS. STEINER APPROACHED THE
4 BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD OUTSIDE THE
5 HEARING OF THE JURY.)

6 MRS. STEINER: If the Court please, I note that
7 Mr. Hill has gotten out a composite display that includes
8 photos.

9 You are going to offer that now?

10 MR. HILL: Your Honor, what I suggested was
11 what we had done previously was just moved all the
12 photographs into evidence. That was our agreement.

13 MRS. STEINER: That's fine.

14 MR. HILL: Do we have any problem with that?

15 MRS. STEINER: No, we have no problem with
16 that.

17 MR. HILL: Okay. If we can do that, then we
18 don't have to stop and move them into evidence. We can
19 just move all the photos into evidence.

20 MRS. STEINER: Yes, Your Honor.

21 And I was going to say, on the large display, their
22 S-12 and 12-A, which have not even been identified yet
23 are being displayed.

24 MR. HILL: No, they are not being displayed.

25 MRS. STEINER: Oh, okay. Thank you.

26 MR. HILL: They are not being displayed.

27 That, that is what I told counsel for the defense.
28 I was not going to show them at this time.

29 THE COURT: Until they have -- we got to the

1 point in the testimony where they were admitted.

2 MR. HILL: Right.

3 MRS. STEINER: Thank you, Your Honor. We have
4 no problem with that, Your Honor.

5 THE COURT: Okay.

6 MR. HILL: Can we just go ahead and move all
7 photographs into evidence at this time?

8 Do y'all have any problem with --

9 MRS. STEINER: No. No.

10 THE COURT: I'll allow the admission of all of
11 them that were mentioned in this --

12 MR. HILL: Okay.

13 THE COURT: -- at prior trial.

14 MR. HILL: We will identify them as we go
15 through.

16 THE COURT: That will be fine.

17 (THE BENCH CONFERENCE WAS CONCLUDED.)

18 (MR. HILL AND MRS. STEINER APPROACHED THE BENCH FOR THE
19 FOLLOWING BENCH CONFERENCE HAD OUTSIDE THE HEARING OF THE
20 JURY.)

21 MRS. STEINER: They're actually being shown to
22 the jury. Can that be turned so -- I don't know if any
23 of the jurors can see it.

24 It is -- I guess it is looking into the courtroom
25 right now.

26 THE COURT: Yeah, I don't think anybody can see
27 it at all right now that is on the jury.

28 MRS. STEINER: Thank you, Your Honor.

29 (THE BENCH CONFERENCE WAS CONCLUDED.)

1 have all these been handed to the court reporter for her
2 to mark now?

3 MR. HILL: Yes, Your Honor, they have.

4 THE COURT: I just wanted to -- has she marked
5 those for evidence?

6 MR. HILL: She has not marked them into
7 evidence at this point.

8 THE COURT: Based on the bench agreement, why
9 don't we just go ahead and let her mark them again so
10 that it will save time in a few minutes?

11 MR. HILL: That will be fine, Your Honor.

12 (THE PHOTOGRAPHS PREVIOUSLY MARKED FOR IDENTIFICATION
13 WERE ADMITTED INTO EVIDENCE. THE PHOTOGRAPHS WERE S-2,
14 S-3-A, S-6, S-7, S-8, S-9, S-10, S-11, S-12, S-12-A, S-13,
15 S-13-A, S-14, S-14-A, S-15, S-15-A, S-16, S-16-A, S-17,
16 S-17-A, S-18, S-18-A, S-19, S-19-A, S-20, S-20-A, S-21,
17 S-21-A, S-22, S-22-A, S-23, S-23-A, S-24, S-25, S-26, S-27,
18 S-28, S-28-A, S-29, S-29-A, S-30, S-31, S-32, S-33, S-34,
19 S-35, S-38, S-38-A, S-41, S-41-B, S-45, S-45-A, S-46, S-46-A,
20 S-53, S-54, S-55, S-56, S-57, S-58, S-59, S-65, S-66, S-67,
21 S-68, S-69, S-70, S-71, S-95-A, S-95-B, S-96-A, S-97-A, S-98,
22 S-98-A, S-98-B, S-99, S-99-A, S-100, S-100-A, S-101, S-101-A.)

23 THE COURT: I think it's taking a little longer
24 than I thought. I know the jury will be -- I think they
25 have prepared lunch. You will be fed in a building over
26 adjacent to the courthouse. It looks like it is going to
27 take a few more minutes to get this done. I know they
28 told me, or I think, right at noon every day is when they
29 were supposed to be ready.

1 take a few more minutes to get this done. I know they
2 told me, or I think, right at noon every day is when they
3 were supposed to be ready.

4 So if you will just step in the jury room for a few
5 minutes, and then you will be shown out.

6 And the court will stand in recess until 1:00.

7 (COURT RECESSED FOR THE NOON HOUR.)

8 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
9 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS RESUMED AS
10 FOLLOWS:)

11 THE COURT: We will resume at this time.

12 Mr. Hill, you may continue.

13 (PROCEEDINGS CONTINUED WITH THE READING OF THE TRANSCRIPT
14 OF THE TESTIMONY OF MR. SAM JONES.)

15 MS. STEINER: Your Honor, this transcript does
16 not have blow-ups displayed at this time. I would ask
17 that they be removed from the pedestal.

18 THE COURT: Were those the blow-ups of the --

19 MR. HILL: We are fixing to...

20 THE COURT: They can be moved momentarily.

21 MS. STEINER: I just think it's confusing to
22 the jury to have evidence that is being talked about --
23 maybe not with what they are seeing.

24 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF MR.
25 SAM JONES CONTINUED THROUGH TO CONCLUSION.)

26 MR. HILL: Your Honor, at this time we are
27 going to call Barry Eskridge.

28 (THE WITNESS ENTERED THE COURTROOM.)

29 THE COURT: If you will, come around, face the

1 bench and raise your right hand.

2 (THE WITNESS APPROACHED THE BENCH.)

3 Do you solemnly swear or affirm that the testimony
4 you give in this case will be the truth, the whole truth
5 and nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE COURT: Come around please and have a seat.

8 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

9 THE COURT: State your name for the record,
10 please.

11 THE WITNESS: Barry Eskridge.

12 BARRY ESKRIDGE, Called on behalf of the State, having
13 been duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION BY MR. HILL:

15 Q. Mr. Eskridge, will you tell us how you are employed,
16 sir?

17 A. I'm the owner of MedStat Ambulance Service here in
18 Winona.

19 Q. How long have you been so employed?

20 A. I've owned the company since January of 1996.

21 Q. Were you -- tell us, if you will, what kind of
22 medical training you have and, maybe, where you were before
23 you came here to Winona.

24 A. Sure. By education, I'm a paramedic.

25 Q. Okay.

26 A. And been in the profession for 29 years now.

27 Q. Okay.

28 A. Before coming back to Winona, I worked for the City
29 of Jackson, Jackson Fire Department Ambulance Services down

1 there.

2 Q. Okay. Since we are talking about your training with
3 Jackson Fire Department, while you were there did you have any
4 -- did your job require you to go to any crime scenes or
5 homicide scenes there?

6 A. Yes, sir. Quite a few.

7 Q. Did you have any training in evidence recognition or
8 anything or anything like that?

9 A. Yes, sir. We did quite a bit of training with the
10 Jackson Police Department, SWAT teams and their crime scene
11 folks.

12 Q. Attend any seminars or instruction or anything?

13 A. Yes, sir, we did.

14 Q. Were you -- were you working here in July of 1996?

15 A. Yes, sir.

16 Q. Specifically, I'd like to, if I could, call your
17 attention to July 16, 1996, and ask you if you got a call, if
18 your ambulance service got a call that morning.

19 A. Yes, sir, we did.

20 Q. Do you remember the precise time at which you got
21 that call?

22 A. I believe the call was that morning. I think it was
23 10:20, if I recall.

24 Q. 10:20 a.m.

25 A. A.m. Yes, sir.

26 Q. On the morning of July 16, 1996.

27 A. Yes, sir.

28 Q. Could you tell us the nature of the call, what kind
29 of call it was?

1 A. The original dispatch came into us as a call on
2 Front Street at Tardy Furniture store. I believe they said
3 there was some people laying in the floor was the original
4 call.

5 Q. Okay.

6 A. We didn't know exactly what it was.

7 Q. What did you do, or what did your personnel do when
8 y'all got that call?

9 A. Well, I had an ambulance crew that was on duty. I
10 was not the primary responding paramedic. They immediately
11 responded. The police department at that time dispatched us,
12 and they dispatched us along with the police department.

13 They responded immediately. They had been out the door
14 probably about 30 seconds or so when the dispatcher, I heard
15 over our radio, came back and made a comment to them that
16 indicated that it was a pretty serious situation.

17 I don't remember if she said that there were people that
18 were deceased or there were people laying all over the place
19 or something to that effect that caught my attention that it
20 was something significant going on. When I heard that I left
21 right behind the ambulance and followed them down there.

22 Q. An ambulance was dispatched.

23 A. Yes.

24 Q. Do you know who the people were in that ambulance?

25 A. The paramedic was Bo Owens and the driver, I
26 believe, was Bruce Storey.

27 Q. All right. Mr. Storey, does he have any medical
28 training?

29 A. He was the E.M.T., was driving the ambulance. And

1 Bo Owens was the paramedic.

2 Q. Who was the first of your crew to arrive there?

3 A. It was the ambulance crew, Mr. Owens and Mr. Storey.

4 Q. I am going to ask you just primarily for record
5 purposes. Mr. Eskridge, when you went to the scene, can you
6 tell us the name of the company that it was?

7 A. It was Tardy Furniture company.

8 Q. What, what city was that in?

9 A. Winona.

10 Q. And what street in that city?

11 A. That's Front Street.

12 Q. And what county?

13 A. Montgomery.

14 Q. And what state?

15 A. Mississippi.

16 Q. I want to show you a poster, if I can. I'm showing
17 you State's Exhibit 2-A. Do you recognize that?

18 A. Yes, sir.

19 THE COURT: If you are wanting the jury to see
20 it, they were complaining earlier about not seeing it.

21 MR. HILL: I am going to let him see it. Then
22 I am going to release it and turned it around.

23 THE COURT: Okay.

24 Q. Can you tell us what that is?

25 A. That is the store front of Tardy Furniture.

26 Q. Is that the place you went to?

27 A. Yes, sir.

28 Q. Did I ask you who was the first to arrive of your
29 people there?

1 A. Yes, sir. It was my ambulance crew, Mr. Storey and
2 Mr. Owens.

3 Q. And what about you? How long were you behind them?

4 A. Probably no more than 30 or 40 seconds. It's not
5 but about a two-minute response from our office to that
6 location.

7 Q. And where was your office at that time?

8 A. At the time it was located in a -- in a trailer
9 behind what was then the old bus station, which is right at
10 the intersection at Highway 51 and Summit Street.

11 Q. Okay. So I think you already told us that when --
12 as your crew was dispatched, you heard some comments and you
13 went right behind them.

14 A. That's correct.

15 Q. What did you do when you got there? What was the
16 first thing you saw? What did you do when you went there?

17 A. When I pulled up the ambulance, obviously, was
18 parked in front of the store. Bruce Storey, who was the
19 E.M.T. driver, the ambulance, was at the back of the ambulance
20 getting the stretcher out and the equipment. Mr. Owens had
21 gone into the store and --

22 Q. That was your paramedic.

23 A. The paramedic. Correct.

24 Q. All right.

25 A. So Mr., Mr. Storey was still at the ambulance. He
26 had not gone in yet. And I went up to him and helped him get
27 the equipment, and we went straight into the store.

28 Q. Okay. And who was in the store when you went in
29 with Mr. Story?

1 A. Bo Owens, the paramedic, was in there. And Chief
2 Hargrove, I believe, if I recall correct, was standing at the
3 front of the store. And I believe, if my memory serves me, he
4 walked in or rushed in with us as we were taking the equipment
5 in.

6 Q. Did you see another older gentleman there? Do you
7 recall?

8 A. Yes, sir. There was an older gentleman standing on
9 the sidewalk at the front that I later learned was Sam Jones
10 that worked there. He was outside on the sidewalk --

11 Q. Okay.

12 A. -- when we got there.

13 Q. And when you went in, tell us what you saw. If you
14 would, just kind of describe for the ladies and gentlemen of
15 the jury, when you went in that door with your E.M.T.,
16 describe for us in step-by-step detail, if you would, what you
17 saw.

18 A. Sure. There, there were four victims who had been
19 shot. There was one white female as you were coming in.
20 There is -- there is a large -- a work station in the middle
21 of the store where they did their books and made their sales
22 and so forth. Right directly in front of that was a young man
23 who was -- who was at that time still, still alive that had
24 been shot. I believe just to the front of her, maybe to the
25 right just a little bit, was a white female. Then even
26 further on to the right, around the corner of the work station
27 was a black male. And then in the aisleway going toward the
28 back of the store was another white female, I believe was Mr.
29 Tardy.

1 Q. Okay. And you said Miss Tardy was in the aisle
2 toward the back.

3 A. Yeah.

4 Q. If you would come back. You mentioned a young,
5 white male; is that right?

6 A. Right.

7 Q. Near the aisle.

8 A. That was Bobo Stewart.

9 Q. And a female near him.

10 A. And I believe that was Carmen Rigby.

11 Q. And you said there was black male in front of the
12 counter, to the far end over there.

13 A. Yeah. That was Goldman, I believe.

14 Q. Robert Golden.

15 A. Golden. Yes, sir.

16 Q. Could you tell whether any of them were alive when
17 you got in there?

18 A. No. None of the other three were alive. They were
19 deceased and the only --

20 Q. You said none of the other three. Who was still
21 alive at that time?

22 A. Bobo Stewart.

23 Q. And how could you tell he was alive, sir?

24 A. He was breathing.

25 Q. What, what did y'all do with Bobo? What was your
26 action, I guess? What is the first thing that you and your
27 staff were doing?

28 A. Well, when we approached the young man lying down,
29 there was a large puddle of blood around his head. He had had

1 a gunshot wound to the head. And as we approached the young
2 man, we noticed that there were a lot of spent bullet casings
3 and some footprints that had been made in the blood that was
4 leading away from the -- from his, his body toward a lower
5 section of the store. And when we first got there, we -- I
6 mean as we looked at him, we immediately saw that. I
7 verbalized actually out loud to my crew, as well as to the
8 police chief, that there were some bullet casings and an
9 unspent shell lying there, as well as some footprints. I made
10 it aware to them and we need to stay away from that. At that
11 point we did.

12 Q. Let me stop you right there.

13 MR. CARTER: Can you give him time to finish
14 his answer if he hadn't finished?

15 THE COURT: Had you finished your answer?

16 THE WITNESS: Yes, sir.

17 Q. When was the first time that you noticed the shell
18 casings and the bloody foot track?

19 A. As I approached where the young man was lying, I
20 noticed it.

21 Q. So you saw it actually before you even got up to
22 where Bobo Stewart was.

23 A. That's correct.

24 Q. Mr. Eskridge, I am going to show you a photograph.
25 In particular, I am pointing out State's Exhibit 13-A. Do you
26 see this photograph here, sir?

27 A. Yes, sir.

28 Q. And also, I am pointing out to you State's Exhibit
29 12-A. You, you can -- you are free to get up out of that

1 chair and look at these closely.

2 (THE WITNESS GOT UP FROM THE WITNESS STAND.)

3 Q. Would you tell us whether or not you recognize 13-A
4 and 12-A? And would you tell the ladies and gentlemen of the
5 jury what these photographs represent, please?

6 A. Yes, sir. The one down here, I guess 13-A, is, is a
7 view from, I guess, the south part of the store toward where
8 Mr. Stewart was lying. He was lying right here with his head
9 here, and I think his body toward that direction.

10 (Indicated.)

11 Q. Okay.

12 A. This would be the front of the store that a way.

13 (Indicated.)

14 Q. Okay. And there is in the lower left quadrant of
15 that photograph that you were just talking about, do you see a
16 cap there?

17 A. Yes, sir. There was a cap. There was some
18 footprints and so forth coming off of it going down towards
19 this a way.

20 Q. Now, you mentioned footprints. Could -- are those
21 visible in the photograph?

22 A. Yeah. I think some parts of them are. There were
23 more than that, but there -- those are parts of them.

24 (Indicated.)

25 Q. Okay. Take a look up at this other photograph that
26 we have here, state's Exhibit 12-A, and see if you see any of
27 the foot tracks that you saw. Are any of those visible in
28 there?

29 A. Yes, sir. They are right around in this area here.

1 And it was leading kind of down toward a ramp that goes down
2 into a lower part of the store. (Indicated.)

3 Q. And do you notice -- do you know who this victim
4 was, this lady?

5 A. That is Miss Rigby.

6 Q. All right. You can take your stand back there.

7 A. (Complied.)

8 Q. Now, you indicated that you verbalized, I think is
9 the word that you used, to your crew and to Chief Hargrove.
10 Did you give your people any instructions about the footprints
11 or the evidence there?

12 A. Yes. I told them to stay away from them.

13 Q. Okay. And while you were there, did they comply
14 with your instructions?

15 A. They did.

16 Q. Can you tell what, if anything, Chief Hargrove took
17 with regard to the footprints and anything that he did or any
18 of his people?

19 MR. CARTER: Object to the form, Your Honor.

20 THE COURT: Overruled.

21 A. In reference to took, I am not sure if I -- I mean
22 --

23 Q. Was Chief Hargrove made aware of those footprints?

24 A. Oh, yes. He was standing there with my crew and
25 myself when we -- when I identified them.

26 Q. Okay. Were you ever later contacted by any
27 investigators to confirm what kind of shoes you had on or
28 to -- maybe confirm is not the right word, to ascertain what
29 kind of shoes, what kind of footwear you had on and what kind

1 of shoes or footwear your --

2 MR. CARTER: Object to leading.

3 Q. -- your personnel had?

4 THE COURT: Overruled.

5 A. Very shortly after we had transported Mr. Stewart to
6 the hospital, a law enforcement official contacted me - and I
7 believe it was Wayne Miller - and told me that they wanted to
8 look at our footwear to make sure that, you know, it didn't
9 match.

10 MR. CARTER: Object to what Wayne Miller said.

11 THE COURT: Sustained as to things Mr. Miller
12 may have said.

13 Q. What was the -- what did he want with you when he
14 contacted you?

15 A. He told me that --

16 MR. CARTER: Object.

17 THE COURT: No. You can't say what he told
18 you. You can tell what you did as a result of this
19 conversation.

20 Q. Did he ever come see you?

21 A. I believe we saw them at the hospital.

22 Q. Okay. What was the purpose for him coming to see
23 you at the hospital?

24 A. He wanted to look at our shoes.

25 Q. Did he look at your shoes?

26 A. He did.

27 Q. Did you also look at your shoes?

28 A. We did.

29 Q. Did you look at Mr. Storey's and Mr. -- who was the

1 other guy?

2 A. Bo Owens.

3 Q. Mr. Owens.

4 A. I did.

5 Q. Did you look at their shoes, as well as yours?

6 A. Yes, sir.

7 Q. And did you have a chance while you were in there
8 near the foot track that you were talking about, did you have
9 a chance to look at it carefully?

10 A. The footprint?

11 Q. Yes, sir.

12 A. Yes. The bloody footprint.

13 Q. Yes, sir.

14 A. I did.

15 Q. Was there any similarity at all --

16 A. No.

17 Q. -- in the foot track in your footwear or any of your
18 staff?

19 A. No. None whatsoever. There were some very
20 distinctive markings in the footprint that was made in blood.
21 I believe a couple of my guys had slick sole boots on, and it
22 was another guy that had a pair of uniform shoes on that
23 weren't even close.

24 Q. No resemblance at all?

25 A. No resemblance whatsoever.

26 Q. Mr. Eskridge, while you were in the store, before
27 any additional law enforcement personnel arrived, did you
28 assist Chief Hargrove in looking through the store?

29 A. I did.

1 Q. And what was the purpose for that?

2 A. At the time we did not know where Mr. Tardy was. I
3 think Mr. Jones had mentioned that Mr. Tardy was normally at
4 the store.

5 MR. CARTER: Objection. Objection, Your Honor.

6 MR. HILL: That's not -- that's not hearsay.

7 THE COURT: What is the basis of your
8 objection?

9 MR. CARTER: Well, he said at the time Mr., Mr.
10 Jones had mentioned something, I believe, he said.

11 A. We, we were told that Mr. Tardy was normally at the
12 store --

13 MR. CARTER: Objection, Your Honor.

14 A. -- that time of day.

15 THE COURT: Overruled.

16 A. And we were concerned that he was somewhere in the
17 store, possibly injured as well.

18 Q. Did you -- did you -- I guess the point of my
19 question is did y'all see anybody else in the store?

20 A. No.

21 Q. Did you make a thorough sweep of the store?

22 A. We made a loop around the store towards the back and
23 up toward the front, specifically to the back of the store
24 where Mr. Tardy's office was to see if he was back there.

25 Q. Okay. Okay.

26 MR. HILL: One moment, please.

27 Tender the witness, Your Honor.

28 CROSS-EXAMINATION BY MR. CARTER:

29 Q. Mr. Eskridge, I don't have much for you. Just a few

1 questions. Did you make a written report of, of the things
2 you testified to today?

3 A. No, sir, I did not.

4 Q. Did anybody ask you to?

5 A. No, sir.

6 Q. How, how long did you stay at the scene that day, if
7 you remember?

8 A. After they left with Bobo Stewart, probably 10
9 minutes.

10 Q. That's all -- okay.

11 A. Somewhere in that neighborhood.

12 Q. Yeah, I'm not trying to tie you down.

13 A. Yeah. I, I wasn't timing it. It was -- as soon as
14 other law enforcement agencies started showing up, I left and
15 went to the hospital with my crew.

16 Q. Now, as to the area where you saw the footprints, as
17 to the area where you saw the, the hulls you said you saw.

18 A. The what now?

19 Q. Some bullet hulls.

20 A. Yes, sir. Shell casings.

21 Q. Shell casings. How many did you see?

22 A. I didn't count them. I just noticed that there were
23 some lying there. And we were in the process of taking care
24 of Mr. Stewart.

25 Q. Did that area ever get taped off by any police
26 officer while you were there?

27 A. In my presence, no.

28 Q. One moment. Did you see anybody take pictures of
29 the bloody footprint while you were there?

1 A. No, sir.

2 Q. Now, you checked the shoes of your personnel at
3 Tardy's or did you do it later?

4 A. It was later.

5 Q. How late?

6 A. I believe --

7 Q. Best you can recall. You don't have to be accurate.

8 A. I believe it was at the hospital, if I'm not
9 mistaken. They transferred him on to Jackson at a later point
10 from the hospital. I believe we looked at them there at the
11 hospital.

12 Q. Are you talking about the hospital in Jackson or
13 hospital --

14 A. In Winona.

15 Q. In Winona? Now, at the time you checked your
16 employees' shoes, who was with you, if anybody?

17 A. I don't recall.

18 Q. Do you recall if you had any police officers with
19 you or any investigators?

20 A. I don't think that it was at that point. I think
21 that I had looked at them before the investigators got up
22 there.

23 Q. Okay.

24 A. And talked to them.

25 Q. Were you asked to do that or did you do it just kind
26 of based on having learned you should just on --

27 A. We knew that was an issue that would be important.
28 And I think we checked ourselves. And I looked at them to
29 make sure that we didn't have something that needed to be

1 turned over to the police if we had blood on our shoes or
2 anything like that.

3 Q. Did you see anybody else shoes get checked?

4 A. No, sir.

5 Q. Now, did you say that you -- when you was in Jackson
6 and the Jackson Fire Department that you used to train with
7 Jackson Police Department as far as crime scene investigation?

8 A. Yeah. We had as part of our regular continuing
9 education programs with the fire department. And, of course,
10 we worked for the City of Jackson so the police and the fire
11 departments were the same.

12 Q. Did you --

13 A. We had monthly in-services where they came in and
14 showed us different techniques and things to do at crime
15 scenes.

16 Q. Did you see any evidence or did you find anything
17 that indicated to you that either of the victims had been
18 dragged or turned over or disturbed in some kind of way?

19 A. Nothing that stuck out to me. I'm not -- wasn't
20 really looking for that. But there is nothing that stuck out
21 to me that way.

22 MR. CARTER: No further questions.

23 Thank you.

24 THE COURT: Any redirect?

25 MR. HILL: Yes, sir. Just a couple of
26 questions.

27 REDIRECT EXAMINATION BY MR. HILL:

28 Q. Mr. Eskridge, how long did it take your crew to
29 attend to Bobo Stewart and get him -- to check him and get him

Barry Eskridge - Redirect/Melissa Schoene - Direct

1 out of the store and on the way to the hospital?

2 A. I don't have -- it's, it's all on our medical
3 records. But it was less than ten minutes. I don't know the
4 precise time.

5 Q. Yeah. And I'm just --

6 A. It was --

7 Q. It was pretty quick.

8 A. Ten minutes or less. It was pretty quick.

9 Q. And did I understand you to tell defense counsel
10 that you checked your shoes and your employees' shoes and the
11 law enforcement investigators also did that?

12 A. Yes, sir.

13 Q. They were checked twice.

14 A. Yes, sir.

15 MR. HILL: Okay. I don't have anything
16 further.

17 THE COURT: Is Mr. Eskridge excused finally?

18 MR. HILL: Yes, sir.

19 THE COURT: You may step down. And you are
20 excused as a witness and free to go.

21 Who would be your next witness?

22 MR. EVANS: Miss Melissa Schoene.

23 (THE WITNESS ENTERED THE COURTROOM.)

24 THE COURT: Come around, please, face the
25 bench, raise your right hand and take the oath.

26 (THE WITNESS APPROACHED THE BENCH.)

27 THE COURT: Do you solemnly swear or affirm the
28 testimony you give in this cause to be the truth, the
29 whole truth and nothing but the truth, so help you God?

1 THE WITNESS: I do.

2 THE COURT: Come around please and have a seat.

3 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

4 THE COURT: State your name for the record,
5 please.

6 THE WITNESS: It's Melissa Schoene.
7 S-c-h-o-e-n-e.

8 THE COURT: When you are ready, you may
9 proceed, Mr. Hill.

10 MR. HILL: Thank you, Your Honor. Your Honor,
11 if the Court will indulge me just one minute. It may
12 speed us along if I can get some photographs ready before
13 we begin.

14 THE COURT: That will be fine.

15 MR. HILL: Okay. I'm now ready, Your Honor.

16 THE COURT: You may proceed.

17 MELISSA SCHOENE, Called on behalf of the State, having
18 been duly sworn, was examined and testified as follows:

19 DIRECT EXAMINATION BY MR. HILL:

20 Q. Miss Schoene, would you tell us your current
21 employment, please?

22 A. I'm currently employed as a -- an assistant
23 professor of chemistry at Georgia Perimeter College in
24 Atlanta, Georgia.

25 Q. How long have you been doing that?

26 A. Approximately six years. Probably more like seven
27 years.

28 Q. What did you do before then?

29 A. Prior to moving to Atlanta I was a forensic

1 scientist and crime scene lab analyst at the Mississippi Crime
2 Laboratory in Jackson.

3 Q. Will you tell us Miss Schoene, if you would, about
4 your educational background that equipped you to hold such a
5 position at Mississippi Crime Laboratory?

6 A. Yes, sir. My educational background, I earned a
7 bachelor of arts degree in criminal justice from the
8 University of Alabama and a masters of science in the field of
9 chemistry, also from the University of Alabama.

10 Q. And prior to working for the Mississippi Crime
11 Laboratory, where did you work?

12 A. Prior to my full-time employment at the Mississippi
13 Crime Laboratory I worked with the Alabama Department of
14 Forensic Sciences and the Alabama State Medical Examiners on a
15 part-time basis while I was in graduate school.

16 Q. And while you were working for the Alabama
17 authorities, did you have an occasion to assist or participate
18 in any death investigations in the state of Alabama?

19 A. Yes. It was my job responsibility to assist
20 investigators when they were responded to request for crime
21 scene -- crime scene investigations. With the state medical
22 examiner's office, I assisted with autopsy procedures.

23 Q. Do you know how many times you had participated in
24 different death investigations?

25 A. I would say including, including Alabama and
26 Mississippi at least 500.

27 Q. What about any special training, on-the-job training
28 or apprenticeship or supervised work? Did you have any
29 special training while you were at the Mississippi Crime Lab?

1 A. Yes. My training at the crime lab was an
2 apprenticeship-type training, where I worked along side of an
3 examiner -- of another examiner who was doing the same thing.
4 While at the crime laboratory I was full-time -- my job title
5 was a forensic scientist. I also had a national certification
6 for that as a crime scene analyst.

7 Q. Okay. And have you ever been qualified as an expert
8 in your field before in the circuit courts of the state of
9 Mississippi?

10 A. I have. I've been qualified as an expert crime
11 scene specialist, as well as a footwear and tire track
12 examiner and a trace evidence examiner.

13 Q. Miss Schoene, can you give us an approximation of
14 about how many times you have been so qualified by circuit
15 courts in this state?

16 A. I believe conservatively I would say at least 20.

17 Q. And you say you were -- you had been previously
18 qualified as an expert in crime scene --

19 A. Crime scene. Crime scene analysis.

20 Q. -- analysis. And footwear and tire track and --

21 A. Trace evidence.

22 Q. -- and trace evidence; is that right?

23 A. Yes.

24 MR. HILL: Your Honor, at this time I would ask
25 the Court to allow Miss Schoene to testify as an expert
26 in the fields that she has announced for us.

27 THE COURT: Do you wish to voir dire her on her
28 qualifications?

29 MRS. STEINER: No, Your Honor.

1 THE COURT: I will allow her to testify as an
2 expert in those fields.

3 Q. (By Mr. Hill:) Miss Schoene, were you working for
4 the crime lab on July 16, 1996?

5 A. Yes, I was.

6 Q. Did y'all get a call that day for assistance from
7 the Winona Police Department?

8 A. Yes, sir. July 16 was a Tuesday. And the crime
9 laboratory received a request from the Winona -- the chief of
10 police with the Winona Police Department, Chief Johnny
11 Hargrove, to assist with, what I was told at the time is, what
12 could potentially be a multiple homicide. That's, that's all
13 I knew.

14 Q. Okay. And what was your -- was there a violent
15 crime scene response unit at the crime lab in existence at
16 that time?

17 A. Yes. Violent crime response unit was a group of
18 forensic scientists who had received specialized training in
19 crime scene analysis.

20 Q. Were you part of that group?

21 A. Yes.

22 Q. Did you respond in request to Chief Hargrove's call.

23 A. Yes, we did. Myself another analyst, Jody Creel
24 responded. We left the crime laboratory that morning just
25 before lunch time, about 11:55 and arrived in Winona at
26 approximately 1:15.

27 Q. Okay. I want to show you a couple of pictures.
28 First of all, I'll just show you this one that is up on the
29 board. This is State's Exhibit 2-1. I would ask if, if you

1 can see that from your witness chair. Can you see the
2 poster-sized picture here that I have before you?

3 A. Yes.

4 Q. Can you tell us is this the place that you came to
5 in Winona?

6 A. Yes. What I'm looking at is an enlargement of
7 Tardy's Furniture, the outside the Tardy's Furniture store.
8 And I see the exterior the furniture store and one crime scene
9 tape barrier there on the outside.

10 Q. Okay. Was -- Miss Schoene, when you arrived would
11 you describe the condition of the crime scene as secure?

12 A. Yes, sir. When I arrived on -- when I arrived here
13 there was a perimeter set on the outside of the furniture
14 store that you can see here, the yellow crime scene tape.
15 There was another barrier on the inside of the furniture store
16 as well.

17 Q. Okay. Any law enforcement personnel on guard at the
18 store when you got there?

19 A. There were law enforcement officers present. Yes,
20 sir.

21 Q. Okay. Let's see here. I'm going to hold up State's
22 Exhibit 1-A. This is a -- also a photograph. I'm going to
23 back up so perhaps everybody can see it. Can you see it from
24 where you are sitting?

25 A. Yes, sir.

26 Q. Do you recognize the blue vehicle here?

27 A. Yes. That blue van is my crime scene van. That's
28 the, the van that contains the equipment that we need to
29 process and document evidence at a crime scene.

1 Q. Okay.

2 A. So that blue van is the blue van that I drove from
3 the Jackson Mississippi Crime Laboratory to, to Winona.

4 Q. And that picture was taken on that day. Can you
5 tell us who you first talked to when you got to the scene?

6 A. When I arrived at the scene I first spoke with Chief
7 Johnny Hargrove of the Winona Police Department.

8 Q. Okay. And did you gain some information from him
9 about what kind of situation he had?

10 A. Yes. When I arrived on scene I spoke with the chief
11 who lead myself and my partner through the crime scene,
12 pointing out evidence that they had already discovered and
13 also giving me as much of a background that he could based on
14 the facts as he knew them at the time.

15 Q. Just in general terms right now, when you said you
16 lead in -- were you escorted into the crime scene?

17 A. I don't know the difference between lead and
18 escorted.

19 Q. Lead. I'm sorry. You said you were lead in there
20 by Chief Hargrove; is that right?

21 A. I believe so, yes.

22 Q. And what I was getting to is I think you said they
23 pointed out to you some stuff, some potential evidence. And I
24 was going to ask you if you would just tell us what kind of
25 potential evidence that you were talking about that you saw.

26 A. Yes. There were two main types of evidence that
27 were pointed out to me. One was fairly -- was bloody footwear
28 impressions or what appeared to be footwear impressions that
29 were made in blood. In addition to the, the partial -- there

1 were partial footwear impressions. In addition to those there
2 were several different types of firearms evidence. And by
3 that I mean casings, projectiles and, and fragments. What a
4 forensic scientist would term a casing is what you might term
5 a hull or it's what's left behind when a bullet is fired
6 through a gun and it's what originally held, held a bullet.
7 What a forensic scientist would refer to as a projectile or a
8 fragment would be what most people would call a bullet or
9 partial bullet. So those types of evidence were the main
10 types of evidence that were pointed out to me when I arrived
11 at the scene, the partial footwear impressions and the
12 firearms evidence.

13 Q. Okay. In addition to those forensic sorts of
14 evidence, were there any deceased victims still on the scene
15 when you got there?

16 A. Yes. There were three victims lying on the floor
17 upon my arrival.

18 Q. Do you -- did you document who they were?

19 A. I did. In my crime scene sketch, I noted the
20 victims at one, two and three. The first victim that I came
21 upon was Miss Bertha Tardy. No. Excuse me. Miss Bertha
22 Tardy was at the rear of the furniture store. The two other
23 victims that were close to the front of the store were Robert
24 Golden, who was leaning up against a counter that was in the
25 middle of the store, and also Miss Carmen Rigby was in the
26 middle of the store as well.

27 Q. Okay. I think I'll just -- Miss Schoene, I've got
28 I've got -- a bunch of photographs in my hand. I am going to
29 pass them to you one at a time.

1 A. Okay.

2 Q. And I will ask, if you will, to identify the State's
3 exhibit number on the back first so we can tell what you are
4 talking about. And then, if you will, just tell us what the
5 picture -- if you recognize the picture, and what it shows.
6 Would you do that for us, please?

7 A. Are these enlargements that are going to correspond
8 to what the jury is going to look at?

9 Q. We will probably have some enlargements of most of
10 them, yeah.

11 A. So you would just like for me to look at the
12 picture, see if I recognize it, give the State's exhibit and
13 go to the next picture.

14 Q. Right.

15 A. Certainly.

16 Q. Let me hand them to you because I may -- I hand you
17 that one first.

18 A. This is State's Exhibit S-1, and I do recognize it.

19 Q. What is it a picture of?

20 A. It's a picture of my blue crime scene van in front
21 of Tardy Furniture store.

22 Q. You said that is S-1.

23 A. This is S-1. Yes, sir.

24 Q. So if this is S-1-A, S-1-A is an enlargement of the
25 picture that you are holding; is that right?

26 A. It appears to be, yes.

27 Q. Okay. Okay. I'm going to hand you State's Exhibit
28 Number 23. Would you just tell us what that is, please?

29 A. State's Exhibit 23 is a photograph of Miss Bertha

1 Tardy lying face down near the back of the store.

2 Q. Okay. Miss Schoene, you, you may step down, if you
3 would like.

4 A. (Looked at The Court.)

5 THE COURT: You may.

6 Q. With the Court's permission.

7 You have -- you identified State's Exhibit Number 23.
8 These are -- these are photographs. This is Miss Tardy. You
9 have identified that. I'm going to show you a couple of other
10 photographs here. I have 21 and 22-A. Would you just tell
11 the ladies and gentlemen of the jury so -- this will be before
12 they get to see the small photos. What, what are these photos
13 of here?

14 A. State's Exhibit 21-A is a picture of Bertha Tardy
15 taken on the day of July 16 from a distance slightly farther
16 away from here. And this is a close-up of Miss Bertha Tardy's
17 head, State's Exhibit 22-A is a close-up of Miss Bertha
18 Tardy's head in, in the condition that I saw her when I
19 arrived at the scene. And this is what appears to be blood on
20 the floor --

21 THE COURT: Mr. Hill and Miss Schoene, the
22 jurors are indicating they are ready to take a recess --

23 MR. HILL: Yes, sir.

24 THE COURT: -- for a few minutes. So we will
25 be in recess for 15 minutes and resume.

26 MR. HILL: Yes, sir.

27 (A RECESS WAS TAKEN.)

28 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
29 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS RESUMED AS

1 FOLLOWS:)

2 (THE JURY RETURNED TO THE COURTROOM.)

3 THE COURT: Court will come back to order.

4 You may continue, Mr. Hill.

5 MR. HILL: Thank you, Your Honor.

6 Q. (By Mr. Hill:) Miss Schoene, I think when we left
7 off I was fixing to hand you some photographs. Okay. Miss
8 Schoene, I'm going to ask you to describe these, tell us what
9 these photographs show, if you know. And you have already
10 told us about the front of the store with S-1 and S-2.

11 I want to now hand you State's Exhibit Number 8. Would
12 you look at that and tell us what that is, please?

13 A. State's Exhibit 8 a photograph of the back of Tardy
14 Furniture store.

15 Q. Okay. State's Exhibit Number 9.

16 A. State's Exhibit Number 9 looks like also the back of
17 the Tardy Furniture store but taken at a different angle.

18 Q. So you can see the roof.

19 A. Yes.

20 Q. State's Exhibit Number 10.

21 A. State's Exhibit Number 10 is a photograph inside of
22 Tardy Furniture store taken at approximately the middle of the
23 store back toward the -- towards the back of the store. And
24 in this I can see Bertha Tardy's body lying on the floor, as
25 well as the office door open.

26 Q. All right. Now, look on the back of that photograph
27 please. Is there some handwriting or a number on there?

28 A. Yes.

29 Q. Do you recognize that, that number written in?

1 A. Yes. It's J96353601C and has my initials M.P.S.

2 Q. What does that mean when you -- if it has your
3 initials, why did you -- did you label that photograph so you
4 could remember if you took it? Is that what that is for?

5 A. This would be part of -- yeah. The photographs that
6 I took, this is our crime laboratory case number and my
7 initials.

8 Q. Okay. And most of these that -- these, I guess,
9 what is that, 3 by 5. What size photograph would you say that
10 is?

11 A. 4 by 6.

12 Q. Those 4 by 6's, if they have that number and your
13 initials on them, that means you took them.

14 A. Yes, if these 4 by 6 photographs have my initials
15 and the case number that means that I took these.

16 Q. Okay. And which one is that you are holding now?

17 A. This is State's Exhibit 11.

18 Q. And what does it show?

19 A. It is also a photograph taken on -- in the inside of
20 Tardy Furniture store, slightly -- my taking the picture
21 slightly closer to the front of the store and it shows the --
22 again, the body of Bertha Tardy at the very back with her
23 office door open and the feet of Carmen Rigby, as well as a
24 pool of looks like -- what appears to be blood.

25 Q. Okay. I am going to hand you State's Exhibit Number
26 23. This is a little out of order, but this -- who does that
27 show?

28 A. State's Exhibit 23 shows the body of Bertha Tardy.

29 Q. Okay. The reason I handed you that, would you just

1 tell, tell the jury, describe the clothing that she is
2 wearing, just in general terms, so they can distinguish that
3 from the other clothing, coloration and, and design. In other
4 words, what kind of blouse does she have, what kind of skirt.

5 A. Bertha Tardy is wearing a red, floral skirt and a
6 white top.

7 Q. Okay. I want to hand you now -- let me -- this is
8 State's Exhibit 13. Tell us, if you will, if you recognize
9 that photo.

10 A. State's Exhibit 13 shows the body of Carmen Rigby
11 lying face down, wearing what -- a pink outfit, pink pants and
12 a pink top. Also, in the pack of this picture is a third
13 victim, Robert Golden. He is lying on his side with a red cap
14 turned backwards and a blue shirt on.

15 Q. Okay. Thank you.

16 This is State's Exhibit Number 12 that I'm handing you
17 there. Tell us what's in that picture please.

18 A. State's Exhibit 12 is a picture of another angle of
19 the feet of Carmen Rigby, with one sandal on and one sandal
20 off. Also, in this photograph there is what appears to be a
21 pool of blood and a baseball cap.

22 Q. Okay. Now, in this particular photograph I want to
23 draw your attention, if I may, to, to the floor and any,
24 anything of evidentiary significance on the floor in that
25 photograph.

26 A. Yes. There are partial footwear impressions here.

27 Q. Okay. And is there an item of clothing near
28 Carmen's feet there, just above them?

29 A. A baseball cap.

1 Q. Right.

2 A. Which I had mentioned earlier.

3 Q. Okay. Thank you.

4 This is State's Exhibit Number 14. Tell us what that is.

5 A. State's Exhibit Number 14 is the body of Carmen
6 Rigby lying face down on the linoleum tile inside of the
7 furniture store.

8 Q. This is State's Exhibit 15.

9 A. State's Exhibit 15 is a key chain with a plastic,
10 yellow number one.

11 Q. Where was it when -- do you recall, when you went in
12 the store was it located next to any particular individual?

13 A. I, I don't recall.

14 Q. Okay. This is Number 17. State's 17. Would you
15 look at that, please?

16 A. This is State's Exhibit Number 17, and what it shows
17 is -- it's taken on the inside of Tardy Furniture store. It
18 shows the body of Robert Golden in the foreground. And as the
19 picture goes deeper, you see the arm of Carmen Rigby, what
20 appears to be a pool of blood with a blue baseball and also a
21 ramp that goes downward to the second half of the furniture
22 store.

23 Q. Okay. Thank you, ma'am.

24 A. Um-hum.

25 Q. I am going to now hand you State's Exhibit Number
26 16.

27 A. State's Exhibit Number 16 shows the body of Robert
28 Golden lying against the counter in the middle of the store.

29 Q. And does that photo show what kind of clothing he

1 has?

2 A. Yes. He is wearing a blue short-sleeve shirt and
3 blue pants and a brown belt and a red baseball cap turned
4 backwards.

5 Q. Okay. I show you State's Number 18.

6 A. State's Exhibit Number 18 is a photograph of Robert
7 Golden. And again, the arm and head of Carmen Rigby.

8 Q. States 19.

9 A. State's Exhibit 19 is the body of Robert Golden.

10 Q. State's Exhibit Number 20.

11 A. State's Exhibit Number 20 is a photograph of a
12 linoleum floor, a bed, eyeglasses and what looks to be a bit
13 of firearms evidence.

14 Q. And the glasses.

15 A. There is a pair of glasses underneath this bed.
16 Also a Serta, a plastic sign that says Serta.

17 Q. Okay.

18 A. This is taken at the back of the store near the body
19 of Bertha Tardy.

20 Q. State's Exhibit 21.

21 A. State's Exhibit 21 is another angle of victim Bertha
22 Tardy, shows her floral skirt and legs lying on the floor of
23 the -- of the furniture store.

24 Q. Twenty-two.

25 A. State's Exhibit 22 is the head of Bertha Tardy and
26 her shirt, lying face down on the floor of the furniture
27 store.

28 Q. Twenty-four.

29 A. State's Exhibit 24 is a picture of Bertha Tardy

1 lying at the back of this picture. You can also see her
2 office as well. In the foreground is a blue baseball cap, the
3 sandal of Carmen Rigby in the floor of the furniture store.

4 Q. And another angle, State's Exhibit 25.

5 A. State's Exhibit 25 is an image of what appears to be
6 a pool of blood with a blue baseball cap in it and the foot of
7 Carmen Rigby. In the background, very small, you can see the
8 body of Bertha Tardy.

9 Q. Okay. This is State's 26.

10 A. State's Exhibit 26 shows the body of Carmen Rigby
11 and Robert Golden and what appears to be a pool of blood.

12 Q. Okay. Just put it right there.

13 A. (Complied.)

14 Q. Twenty-seven.

15 A. This -- State's Exhibit 27 is taken inside of Tardy
16 Furniture store behind the counter, facing the front of the
17 store. And there is a picture of a purse on the ground, as
18 well as the contents and the condition of the counter that was
19 in the center of the store.

20 Q. Twenty-eight.

21 A. State's Exhibit 28 is a very similar picture from a
22 slightly different angle.

23 Q. Okay. Twenty-nine.

24 A. State's Exhibit 29 is a picture of an open, wooden
25 cash drawer.

26 Q. Number 30. State's 30.

27 A. State's Exhibit 30 is photograph from the inside of
28 Tardy Furniture store of the body of Robert Golden against the
29 counter. And you can see the arm and head of Carmen Rigby.

1 Q. Let me ask you a question about that photograph.
2 You mentioned Miss Rigby's arm.

3 A. Um-hum.

4 Q. Is that extended out beyond her head there in that
5 picture?

6 A. Yes.

7 Q. Okay. I want to show you State's Exhibit Number 31,
8 please.

9 A. If I may also go back on State's Exhibit 30, there
10 is a -- what appears to be a yellow key chain.

11 Q. Whose -- that yellow key chain, is that the same key
12 chain you described in a earlier picture?

13 A. Yes.

14 Q. And whose hand is it near?

15 A. It is near Carmen Rigby's hand.

16 Q. Thank you. Next photograph.

17 A. The next photograph is State's Exhibit 31, and it is
18 a picture of the inside of Tardy Furniture store showing the
19 feet and shoes of Bertha Tardy taken from the back of the
20 store toward the front.

21 Q. Okay. State's 32.

22 A. State's Exhibit 32 is a photograph of the interior
23 of Tardy Furniture store of the center counter. There is a
24 u-shaped counter in the middle. And this is a photograph of
25 that.

26 Q. Thirty-three.

27 A. State's Exhibit 33 is a picture of that same
28 counter, but from the opposite side. So this is a picture
29 taken from, if you will, the inside of the counter looking

1 outwards.

2 Q. What is that object right there in the foreground,
3 lower right quadrant?

4 A. There is a purse on the floor.

5 Q. Okay. A lady's purse.

6 A. I would assume so.

7 Q. All right. And this is -- I want to hand you these
8 together. It's 35 and -- 34 and 35.

9 A. State's Exhibit 34 and State's Exhibit 35 both show
10 a gray Sunburst bank bag that was located on the counter on,
11 on that u-shaped counter that I referred to on the lower level
12 of that.

13 Q. Thank you, ma'am.

14 This is State's 38.

15 A. State's Exhibit 38 is a photograph of a safe that
16 was in the back office, what appeared to be Bertha Tardy's
17 office. And it shows the safe door as closed, and the seat is
18 backed away from the desk.

19 Q. Okay. State's 98. Take a look at that, please.

20 A. State's Exhibit 98 is a photograph of firearms
21 evidence on, on the piece of linoleum inside of Tardy
22 Furniture store.

23 Q. I am going to also give you State's Exhibit Number
24 41. Take a look at that, please.

25 A. State's Exhibit 49 is a close-up photograph of a
26 piece of firearms evidence on the floor of Tardy Furniture
27 store. It appears to be a fragment or a projectile.

28 Q. All right. Did you say 49?

29 A. I don't --

1 Q. I, I read this --

2 A. This is State's Exhibit 41.

3 Q. Okay. Thank you.

4 You say that's a piece of firearms evidence.

5 A. Um-hum.

6 Q. As perhaps a projectile or fragment of a projectile.

7 A. Right. It appears to be a projectile.

8 Q. Okay. I've got a couple of photographs, State's 6
9 and 7. That's what I was looking for a while ago.

10 A. State's Exhibit 6 is a photograph of -- from the --
11 taken from the inside of the furniture store of one of the
12 doors in Tardy Furniture.

13 Q. Could you comment, when you look at that photograph,
14 is there anything that you can tell us about?

15 A. It's an older, wooden door with a handle and through
16 the handle is a slat of wood.

17 Q. Okay. The door is closed in that picture; is that
18 right?

19 A. Yes.

20 Q. And locked from the inside with the bar.

21 A. I would say secured from the inside. I can't say
22 that it is locked.

23 Q. Okay. Secured from the inside. All right. Next
24 photograph.

25 A. This is State's Exhibit Number 7, and it is a
26 photograph of an interior wall of Tardy Furniture.

27 Q. Okay. All right. Now, I've got a couple more
28 photographs, Miss Schoene, State's 46 and 45. Those are black
29 and white photographs. Would you call out the number and tell

1 us what they are, please?

2 A. Yes. State's Exhibit 45 and State's Exhibit 46 are
3 both black and white photographs of the same area in the
4 store, but taken from different angles. This shows -- this is
5 at the top of a ramp that connects the two sides of the store.
6 And in the photographs are white markers that are labeled "A",
7 "B", and "C". These photographs were taken by me in black and
8 white film, and what they show is the location and
9 relationship of partial footwear impressions that appear to
10 have been made in blood.

11 Q. Okay. Now, you took those in black and white. And
12 I believe you took -- besides those two, you took a lot of
13 photos in black and white, but we have selected those two.
14 Why did you take those in black and white as opposed to color
15 on the other photographs?

16 A. The other photographs were taken in color as a part
17 of general crime scene photography to document what the crime
18 scene looked like and to document evidence that was there.
19 Black and white film is used to document footwear impressions
20 or very -- impressions that require a great deal of detail.
21 We call this examination quality photography.

22 And it's a -- just a special technique that is used in
23 photography and in forensic science to document evidence that
24 can't be collected and taken back to the crime laboratory. So
25 we use a special film and special equipment in order to record
26 those images. And black and white film is one of that -- one,
27 one of those requirements. So these are taken in black and
28 white film, because these are part of footwear evidence.

29 Q. Okay. I want to ask you a couple more questions

1 about the black and white pictures, if I may. Is there any
2 special technique used in -- you mentioned special equipment,
3 I believe. Since you -- since you couldn't take that
4 footprint evidence back to the lab, you took examination
5 quality photographs. And could you explain to the ladies and
6 gentlemen of the jury a little bit --

7 MRS. STEINER: Your Honor, I've been giving a
8 lot of leeway, but I am going to object to leading here.
9 I think Miss Schoene is very competent in telling her own
10 story.

11 MR. HILL: I didn't recall --

12 THE COURT: You can rephrase the question. I
13 think there has been --

14 Q. Miss Schoene, would you explain to the ladies and
15 gentlemen of the jury a little bit about the technique that
16 you used and the methodology that you used in taking those
17 footwear impression photographs?

18 A. Yes.

19 May I step down?

20 THE COURT: You may.

21 A. To take examination quality photographs, it's --
22 examination quality photographs are different from evidence
23 photographs in that the film is, is used is going to be blown
24 up by the analyst for a one-to-one ratio.

25 So in this case if there is a bloody footwear impression
26 here, what's required of somebody to collect the evidence in
27 the proper way is to set up a tripod over that, because it is
28 impossible for us to hold our hands steady as long as we need
29 to to get the detail that is required of the impression.

1 So we have to have a tripod, black and white film and the
2 other bit of equipment is something called a detachable flash.
3 So it's a flash on the camera that we can take off. And we
4 quite literally move it around at different angles and
5 different heights, and we take many, many pictures of
6 impression evidence like that. Because we are not sure at the
7 time which pictures are going to be clear, which are going to
8 give the most definition.

9 And so the oblique lighting technique is used for that.
10 Its a requirement use black and white film, because -- it
11 seems strange, but the contrast between the different shades
12 of gray in black and white film affords much more detail to
13 the examiner than does color photograph or color film. So
14 that would be the special technique. And it is called
15 examination quality photography, what we need to do that is
16 oblique lighting, a tripod and black and white film.

17 Q. And you said a tripod. What is the purpose of that
18 tripod? What does that tripod allow you to achieve when you
19 use a tripod with your camera?

20 A. Well, it actually serves two purposes. The tripod
21 one, allows the camera not to shake when the analyst is taking
22 a photograph. But also, if there is a, an image that we need
23 to record that is on a slant or on a curve, what the tripod
24 allows us to do is get the angle exactly the same on the plain
25 of film where the image is recorded as what's on the ground.
26 So sometimes it's necessary to -- if you are walking slightly
27 up a hill to take that plain of film and tilt it to that same
28 angle that's on the ground. So that image is recorded in a
29 one-to-one, one-one ratio.

1 Q. These pictures here, these pictures were on a flat
2 floor, is that right, flat linoleum floor?

3 A. Yes.

4 Q. By using the tripod were you able to put that over
5 there and get a parallel plain just above it?

6 MRS. STEINER: Same objection. I believe he is
7 leading here.

8 THE COURT: That is leading. You can ask her
9 what she did.

10 Q. I think my question was were you able to take that
11 picture on parallel plain - yes or no?

12 A. Yes.

13 Q. Okay. And were, were you aware that when you took
14 these back to the lab, were you aware that they would be
15 handed to another analyst and enlarged?

16 A. Yes.

17 Q. Did you ever see any of the enlargements? You may
18 or you may not have. I'm just...

19 A. I don't remember if I saw enlarge -- I did not see
20 them in an examination capacity. As I said earlier, I'm also
21 certified crime scene -- I mean a certified footwear and tire
22 track analyst and have testified to footwear and tire track
23 evidence in the past. But this is not a case that I examined
24 the footwear impressions for.

25 Another analyst did that analysis and issued a report for
26 that. So whether or not I saw the enlargements -- yes, I did
27 see the enlargements, but I didn't see them in a capacity that
28 I was doing the examination.

29 Q. Okay. Thank you for explaining that. I want you to

1 just look at generally State's 47, 48, 49 and 50 and see if
2 this is the type of enlargement that you refer to when you say
3 that pictures you took would be enlarged so that another
4 analyst could take a look at them. I just want to know in
5 general terms, is that the type of enlargement you are talking
6 about as shown in those exhibits?

7 A. What I'm looking at is State's Exhibit 47 through
8 50. It's four black and white photographs of enlargements of
9 footwear -- of images that I took using the technique
10 described earlier on that day. So yes, I don't know if these
11 were necessarily the photographs that the examiner used for
12 his analysis, but certainly these are the type.

13 Q. Are those photographs you took?

14 A. Yes.

15 Q. Okay. You took them at Tardy's that same day.

16 A. Yes.

17 Q. And those are enlargements of black and white
18 photographs like this, that I'm holding up, State's 45, of
19 this photograph like that. Is that what you are telling us?

20 A. Yes.

21 Q. Okay.

22 A. Yes.

23 Q. That's all I was wanting to know. Okay. Thank you.

24 Now, you have -- you have told us about the photographs
25 that you took. Is that part of documenting what is present at
26 a crime scene, by photographing it? You have a good record of
27 what is there when you photograph it.

28 A. Yes. Generally in crime scene documentation we use
29 three primary types of documentation - one is narrative or we

1 take notes, another is photography, and the third is a rough
2 sketch that we draw.

3 Q. Okay. Speaking of rough sketches, I want to hand
4 you State's Exhibit 51 for identification. Would you look
5 that, please?

6 A. Yes. State's Exhibit 51 is a rough sketch that was
7 drawn at the scene of the interior of Tardy Furniture store
8 and it locates the victims' bodies and the location of the
9 footwear impressions, as well as the locations of the firearms
10 evidence that was collected.

11 Q. Okay. That hand drawing there, did you or your
12 associate draw that?

13 A. I did not draw this. Jodie Creel, who assisted --

14 Q. That's your assistant that day.

15 A. Right. She, she drew this.

16 Q. Okay. And have you seen it before, and are you
17 familiar with it?

18 A. Yes.

19 Q. Okay. I want to show you --

20 MRS. STEINER: Which exhibit number is this?

21 THE WITNESS: Can I say --

22 THE COURT: Yeah, you can.

23 THE WITNESS: Can I say 51?

24 MRS. STEINER: 51.

25 THE WITNESS: Yes.

26 MRS. STEINER: I have that as a blow-up
27 footwear a impression. May I approach, Your Honor?

28 THE COURT: You may look at it, or y'all may
29 get with the court reporter and figure out which number

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

1 it is.

2 (MRS. STEINER APPROACHED AND LOOKED AT THE EXHIBITS.)

3 THE COURT: We are clear on what number it is.

4 MRS. STEINER: Yes, your Honor. I am just
5 going to alter the list.

6 Q. Just for the record, I am showing you, Miss Schoene,
7 State's Exhibit 51. And so we make sure in the record what
8 that is, tell us what that is, please, State's 51.

9 A. Again, State's 51 is a rough sketch that was drawn
10 at the crime scene. It's the interior of Tardy Furniture
11 store, and it shows the victims, the location of the victims
12 in the store, location of the footwear impressions and the
13 location of the firearms evidence, as well as other furniture
14 and the center counter there in Tardy Furniture.

15 Q. Now, would you compare that? I'm going to hand you
16 now State's Exhibit 39.

17 MRS. STEINER: May I approach, Your Honor?

18 THE COURT: You may.

19 (MR. HILL SHOWED THE EXHIBIT TO MRS. STEINER.)

20 Q. State's 39. Tell us what that is, please.

21 A. State's Exhibit 39 is a polished sketch. State's
22 Exhibit 51 was drawn at the crime scene while we were there.
23 State's Exhibit 39 is what I would refer to as a polished
24 sketch. It is what is drawn back at the crime laboratory
25 under more controlled conditions when things can be a little
26 neater, lines can be straighter. And this is a polished
27 sketch representing the same information that is on this rough
28 sketch, which is labeled State's Exhibit 51. A difference
29 between these would be that State's Exhibit 39, the polished

1 sketch, does not have the key to what the evidence is written
2 on it. Whereas my rough sketch has jagged and kind of sloppy
3 handwriting while I'm taking notes, the polished sketch
4 doesn't show the key to what -- for example, things are
5 labeled 1,2, 3 and 4. There is nothing on this sketch that
6 tells you what that refers to. There is another set of data
7 that is the key.

8 Q. Okay. And when you got back to the lab, did you and
9 your assistant prepare such a key?

10 A. Yes.

11 Q. I am going to hand you State's Exhibit Number 40.
12 Identify that for us, please.

13 A. This is the key. This is the information that was
14 taken from the rough sketch. And in the polished sketch
15 numbers and letters that are on here like perhaps, 1-A, 1-B,
16 1-C. This is the key that tells -- describes to you what
17 those items are. This is State's Exhibit 40.

18 MR. HILL: Your Honor, we would ask at this
19 time that State's Exhibit 39, 40 and 51 be received.

20 MRS. STEINER: No objection, Your Honor.

21 THE COURT: I'll allow them to be admitted.

22 (THE CRIME SCENE SKETCH PREVIOUSLY MARKED STATE'S EXHIBIT
23 NUMBER 39 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

24 (THE KEY AND MEASUREMENTS THAT CORRESPOND TO STATE'S
25 EXHIBIT 39, THE CRIME SCENE SKETCH, PREVIOUSLY MARKED STATE'S
26 EXHIBIT NUMBER 40 FOR IDENTIFICATION WAS ADMITTED INTO
27 EVIDENCE.)

28 (THE CRIME SCENE SKETCH PREVIOUSLY MARKED STATE'S EXHIBIT
29 NUMBER 51 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

1 Q. Miss Schoene, on State's Exhibit Number 40, this
2 key, I think you said that it records typewritten list of
3 things that found; is that right?

4 A. Yes. The key is a list of key measurements -- key
5 and measurements for sketch of northwest room of Tardy
6 Furniture company in Winona, Mississippi. And it's labeled
7 with our crime laboratory case number. And what it is is a
8 description of a better, more clear, written description of
9 what is displayed in the rough sketch.

10 Q. Okay. Does the key that you have there list the
11 firearms evidence that you found on the floor around the
12 bodies of the victims?

13 A. Yes. This key lists everything that I collected at
14 the crime scene, footwear impressions and firearms evidence.

15 Q. Miss Schoene, speaking of firearms evidence. I am
16 going to hand you some boxes and ask if you can identify them.

17 I need my list.

18 I want to hand you State's Exhibit Number 88. That's the
19 first one I want to show you. This is State's Exhibit Number
20 88. Would you examine that and see if you can tell us what
21 that is, please?

22 A. Yes. State's Exhibit -- State's Exhibit 88 is a
23 casing. State's Exhibit 88 is Mississippi Crime Laboratory
24 Exhibit Number 25, and it is labeled casing collected from
25 near Robert Golden. And it is labeled Casing Number 1. That
26 Casing Number 1 would correspond to my sketch.

27 Q. Okay. So that casing that's in that box is one of
28 the ones that you picked up and collected from the crime
29 scene; is that right?

1 A. Yes.

2 Q. Do you recall how many casing you recovered?

3 A. I recovered five casings, one cartridge, two
4 projectiles and two fragments.

5 Q. And that is one of the casings that you recovered.

6 A. Yes. And again, a casing is -- what a forensic
7 scientist would call a casing is what other folks might call a
8 hull or a shell. It's what's left behind after the bullet or
9 the projectile goes through the barrel of the gun. A casing
10 is something that can be ejected. It's what's left behind.

11 Q. Was that casing labeled? Is there any marking on
12 the casing?

13 A. Yeah. The casing was labeled C.C.I.N.R. .380 auto.

14 Q. Okay. So it is a .380 auto casing and you, you
15 collected that one and others.

16 I want to show you State's Exhibit Number 89, please.
17 Tell us what that is.

18 A. State's Exhibit 89 is crime laboratory case --
19 excuse me, Crime Laboratory Exhibit Number 26.

20 Q. Okay.

21 A. It is a casing that is -- casing collected from near
22 Robert Golden. It is Casing Number 2. So it would correspond
23 to the casing on my sketch labeled -- for the area labeled
24 Number 2.

25 Q. All right. I want to show you State's Exhibit
26 Number 90, please.

27 A. Okay. State's Exhibit Number 90 corresponds to
28 crime lab case number -- Exhibit Number 27. And it is casing
29 collected from near Carmen Rigby, and it is labeled on my

1 sketch as Casing Number 3.

2 Q. Okay. State's Exhibit 91.

3 A. State's Exhibit 91 corresponds with our Exhibit
4 Number 28, and it is a casing collected from area between
5 Carmen Rigby and Bertha Tardy. It's labeled Casing Number 4.

6 Q. Okay. And finally, I have State's Exhibit Number
7 95. Would you look that please?

8 A. (Complied.)

9 Q. What did I say, case or exhibit?

10 A. You're right. It is State's Exhibit 92. It is
11 crime lab Exhibit Number 27, and it is a casing taken from
12 near the body of Bertha Tardy labeled Casing Number 5 on my
13 crime scene sketch.

14 Q. Okay. Did you collect all of these and take them
15 back to the crime lab?

16 A. Yes, I did.

17 MR. HILL: Your Honor, at this time I would ask
18 that these exhibits, 88 through 92, be received.

19 MRS. STEINER: No objection, Your Honor.

20 THE COURT: I'll allow them to be admitted into
21 evidence.

22 Hand them to be court reporter to be marked.

23 (THE CASING PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 88
24 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

25 (THE CASING PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 89
26 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

27 (THE CASING PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 90
28 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

29 (THE CASING PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 91

1 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

2 (THE CASING PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 92
3 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

4 (THE CARTRIDGE PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
5 92 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

6 MRS. STEINER: Your Honor, may I move around?

7 THE COURT: Ma'am.

8 MRS. STEINER: May I move around so I can see?

9 THE COURT: You may.

10 MRS. STEINER: I won't interrupt any time I
11 want to change positions.

12 THE COURT: Any time you need to move to see
13 the exhibits, you don't have to ask for permission. I'll
14 just say you've got blanket permission from here on out.

15 MRS. STEINER: That is very generous, Your
16 Honor.

17 MR. HILL: May I proceed, Your Honor?

18 THE COURT: The court reporter is still marking
19 them.

20 Q. Miss Schoene, I am going to call your attention to
21 this large poster-size sketch. It's marked State's Exhibit
22 39-A for identification. Can you tell us whether or not this
23 is simply an enlargement of your polished sketch, 39-A, that's
24 been received into evidence?

25 A. Yes.

26 MR. HILL: Your Honor, I would ask that 39-A be
27 received.

28 MRS. STEINER: No objection.

29 THE COURT: I'll allow it to be admitted.

1 MRS. STEINER: Your Honor, we have no objection
2 to receiving the enlargements of 40 and 51, if you want
3 to do that.

4 THE COURT: Why don't we just go ahead and have
5 the court reporter mark those exhibits too?

6 (THE BLOW-UP OF STATE'S EXHIBIT NUMBER 39, THE CRIME
7 SCENE SKETCH, PREVIOUSLY MARKED STATE'S EXHIBIT 39-A WAS
8 ADMITTED INTO EVIDENCE.)

9 (THE BLOW-UP OF STATE'S EXHIBIT NUMBER 40, PAGE 1 OF THE
10 KEY AND MEASUREMENTS, PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
11 S-40-A FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

12 (THE BLOW-UP OF STATE'S EXHIBIT NUMBER 40, PAGE 2 OF THE
13 KEY AND MEASUREMENTS, PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
14 S-40-B FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

15 (THE SKETCH PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 51
16 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

17 Q. Miss Schoene, if I could get you to step down from
18 the stand, please.

19 THE COURT: You may.

20 A. (Complied.)

21 Q. And I am going to ask -- maybe, stand -- keep in
22 mind so that all the jurors can see. Tell us -- 39-A, they
23 haven't seen this. Tell us just again what this is.

24 A. Exhibit -- State's Exhibit 39-A is an enlargement of
25 the polished sketch that was drawn based off of my rough
26 sketch that was done at the crime scene. This shows the
27 location of the victims - Victim Number 1, Robert Golden;
28 victim Number 2, Carmen Rigby; and Victim Number 3, Bertha
29 Tardy. There was a pool of what appeared to be blood here

1 that didn't seem to correspond to any of these three victims.

2 What you see labeled with just numerals 1, 2, 3, 4 and 5
3 correspond to the casings that we had just discussed earlier.
4 So Casing Number 1 was located here. Casing Number 2 was
5 located here. Casing Number 3. Casing Number 4. And Casing
6 Number 5. (Indicated.)

7 Q. Okay. I'm going to let you stand right there, if
8 you will. Did you recover any other firearms evidence from
9 the scene besides the five shell casings that you've already
10 told us about?

11 A. I did. I recovered two other types of evidence,
12 projectiles and fragments. Those are labeled here as well.
13 Also, on this diagram is the footwear impressions labeled "A",
14 "B" and "C".

15 Q. I'm going to hand you, Miss Schoene, State's Exhibit
16 Number 83. Can you look at that and tell us what that is,
17 please?

18 A. State's Exhibit 83 corresponds to Crime Lab Case
19 Exhibit Number 31, and it is projectile collected from the
20 northeast corner, near the body of Robert Golden.

21 Q. Okay.

22 A. This is labeled on this as Projectile 1-B.

23 Q. Would you point that out so everybody can see that,
24 please?

25 A. Right there. (Indicated.)

26 Q. Okay. When you say a projectile, describe for us
27 what that is, please.

28 A. A projectile would be a -- the large part of a
29 bullet, what you might call a bullet. It's what exits the

1 barrel of the gun when the casing is left behind. Most people
2 would call that a bullet. A forensic scientist would call
3 that a projectile.

4 Q. I have here State's Exhibit Number 84.

5 A. Okay.

6 Q. Tell us what that is.

7 A. State's Exhibit 84 corresponds with our Exhibit
8 Number 32. And it is a projectile collected from underneath
9 the loveseat next to the north side of the corner. It is
10 labeled Projectile 2-B.

11 Q. Did you mark that on your sketch?

12 A. Yes. This is the location of the projectile that
13 was -- that is here in this box. It was collected from this
14 location.

15 MR. HILL: Your Honor, we would ask that the
16 two projectiles 83 and 84 be received.

17 MRS. STEINER: No objection, Your Honor.

18 THE COURT: I'll allow them to be admitted into
19 evidence.

20 (THE PROJECTILE PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
21 83 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

22 (THE PROJECTILE PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
23 84 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

24 Q. (By Mr. Hill:) Did you collect still further
25 evidence that you hadn't yet testified about?

26 A. Yes.

27 Q. I hand you State's Exhibit 85. Ask if you recognize
28 that.

29 A. State's Exhibit 85 corresponds to Exhibit Number 33,

1 which is a fragment collected near Carmen Rigby. And it's
2 labeled as fragment 1-C. So what is in this box came from
3 this location.

4 Q. And that was near what victim?

5 A. Carmen Rigby.

6 Q. Okay. And when you say fragment, distinguish that
7 from a projectile.

8 A. A fragment is a smaller piece of a projectile.

9 Q. Okay. Bullet breaks in two.

10 A. Yes.

11 Q. Okay. Or into parts. State's Exhibit 93.

12 A. State's Exhibit 93 corresponds with our Exhibit
13 Number 30. And it contains a cartridge found near Carmen
14 Rigby. It is labeled 1-A on this. So this is a cartridge
15 collected from here. What a cartridge is, again, you may
16 consider that to be an unfired bullet. It has a -- the bullet
17 or projectile inside with the casing around it. So if you
18 were to go to the store and buy what you would call bullets,
19 that would be called a cartridge. Essentially, an unfired
20 bullet, if you will.

21 MR. HILL: Your Honor, I ask that 85 and 93 be
22 received.

23 MRS. STEINER: No objection.

24 THE COURT: I'll allow them to be admitted.

25 (THE FRAGMENT PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER 85
26 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

27 (THE CARTRIDGE PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
28 93 FOR IDENTIFICATION WAS RECEIVED INTO EVIDENCE.)

29 THE COURT: You may continue.

1 MR. HILL: Thank you, Your Honor.

2 Q. I am going to ask you to go over for us, if you
3 will, Miss Schoene, this chart, which is -- this is State's
4 Exhibit Number 40-A. In other words, Page 1 of your key.

5 A. Yes. This is State's Exhibit 40-A, and it's an
6 enlargement of the first page of the key that describes the
7 location of evidence on the crime scene diagram.

8 Q. Would you just do the headings that you have there
9 for us, please, on Page 1 as it relates to -- I see you have
10 got -- what did you have by Mr. Golden's name? In general,
11 what are those?

12 A. For victim -- again, this corresponds to what you
13 have seen in the -- in the sketch.

14 It might make more sense to...

15 Q. To have the sketch up.

16 Your Honor, if I could --

17 A. I would think.

18 MR. HILL: Your Honor, if I could, at this
19 time, I would ask the Court's permission just to pass to
20 the jury State's Exhibits 39, 51 and 40, which are the
21 small versions of the crime scene sketch.

22 THE COURT: You may hand those to the bailiff,
23 and they may be published to the jury while she is
24 testifying.

25 MRS. STEINER: Mr. Hill, are you distributing
26 duplicates or multiples or just a single copy for the
27 jury?

28 MR. HILL: Just a single copy.

29 A. Go on?

1 Q. Miss Schoene, if you would, just -- what I was
2 asking you to do is just explain your key as how it relates to
3 the sketch, please.

4 A. Yeah. I think it would be more helpful for you all
5 to get a feeling for the scene if you could see the picture
6 here. So again, what this is, this is my key that corresponds
7 to the labels that are here. So for this, where it says
8 Victim Number 1, Robert Golden, that is referring to this
9 person here or this representation in my sketch. Robert
10 Golden, Victim Number 1. Victim Number 2, Carmen Rigby, is
11 located here. Victim Number 3, Bertha Tardy, located in the
12 back of the store with the skirt. And Victim Number 4 was
13 reported to me to be Derrick Stewart, but I don't have -- he
14 was not there. The body of this person was not there when I
15 was there. So I have some notations about different items
16 that were collected near that suspected pool of blood.

17 You will also see the casings that were described 1
18 through 5. Again, those are located, Casing 1, Casing 2,
19 Casing 3, Casing 4, Casing 5. The cartridge, the unfired
20 bullet, was 1-A, and that was located here near Bertha
21 Tardy -- excuse me, near Carmen Rigby. The projectiles which
22 were labeled 1-B and 2-B were here. (Indicated.)

23 Q. And they are listed where?

24 A. 1-B and 2-B, and they are listed here, projectiles
25 1-B and 2-B. And the fragments, which are labeled 1-C and 2-C
26 on my key, correspond to 1-C. This is loveseat. And 2-C
27 here. And you can also see the location of the partial
28 footwear impressions that appeared to be made in blood that
29 were here near the body of Carmen Rigby.

1 Q. And you labeled those partial footwear impressions
2 by what lettering method or what identification method?

3 A. I labeled the partial footwear impressions as "A",
4 "B", and "C". "A" being closest to the front of the store.
5 "C" being closest to Carmen Rigby.

6 Q. Okay. And I have here State's Exhibits 45 and 46.
7 Would you tell us what -- if those are photographs of the
8 footwear impressions that you marked in your sketch?

9 A. Yes. State's Exhibits 45 and 46 are black and white
10 photographs that depict what was located here in the sketch.

11 Q. Okay. Thank you, ma'am.

12 And I want to just ask you to remain standing there, if
13 you will.

14 Your first victim listed up there on your chart -- I
15 assume you did that randomly; is that correct? Or what order
16 did you have? Was there any methodology for numbering of the
17 victims?

18 A. No. At the time of a crime scene I am not certain
19 of the victims' names. But I walked in and was certain there
20 were at least three different victims. So in order to
21 document I said Victim 1, Victim 2, Victim 3.

22 Q. Tell us if you recognize these photographs. The
23 jury has heard your description, but they have not seen those
24 photographs. Would you tell us -- just go, whatever method
25 you decide, and talk about each of those four photographs and
26 tell us how they relate there, please.

27 A. All four of these photographs, which are State's
28 16-A, State's Exhibit 18-A, State's Exhibit 17-A and State's
29 Exhibit 19-A depict the body of -- on my sketch labeled Number

1 1, Robert Golden. And these are taken just from various
2 angles.

3 This -- if you notice, on State's Exhibit 17-A is the
4 forearm and the head, little bit of the leg and foot of Carmen
5 Rigby. Also, here is the -- what appears to be a pool of
6 blood with the baseball cap. And in this area right here is
7 also where the partial footwear impressions were located.

8 Q. Okay. The next chart I have here -- this is -- I am
9 putting up State's Exhibit 12, 13, 14 and 15. Did you take
10 those photographs?

11 A. I did. But I would like to say for the record that
12 this is State's Exhibit 12-A --

13 Q. Right. I'm sorry.

14 A. -- 13-A, 14-A and 15-A. These are enlargements of
15 photographs that I took. What you see here is the body of
16 Carmen Rigby. And in the background here, Robert Golden.
17 Again, a different angle of Carmen Rigby with her arm extended
18 with the key chain, the plastic number one. These are Carmen
19 Rigby's -- the feet of Carmen Rigby, with the blue baseball
20 cap near a suspected pool of blood here, what appears to be
21 Carmen Rigby's other sandal. And this is the area where the
22 partial footwear impressions were found. And this is a
23 picture of the set of keys that were near Carmen Rigby here.
24 (Indicated.)

25 Q. Miss Schoene, can you tell the jury what this area
26 here is? What does that represent right here? (Indicated.)

27 A. This is a bookshelf, a half bookshelf. This is a
28 ramp that goes down to the second half. Tardy Furniture was
29 divided roughly into two halves. One that seemed to be a

1 showroom where customers were and the second seemed more to be
2 a storeroom. And this, this was a down ramp that went to that
3 second half of the store. (Indicated.)

4 Q. Okay. Now, you -- would you point out the footwear
5 impressions in blood, please?

6 A. What I believed was blood is here. I never -- I did
7 not test these to determine if that material was blood, but it
8 is definitely what appears to be blood. (Indicated.)

9 Q. Okay. Thank you, ma'am.

10 I think you can get back on the stand, please, for a
11 minute.

12 A. (Complied.)

13 Q. Miss Schoene, how long were you at the crime scene
14 preparing all this documentation, photography and collecting
15 this evidence?

16 A. Approximately six hours.

17 Q. And toward the end of your time there did you get
18 another call?

19 A. It wasn't necessarily another -- it was a, a
20 separate request.

21 Q. A request. I'm sorry.

22 A. Yes.

23 Q. Did you get a request from local law enforcement to
24 do something else away from the scene at Tardy's?

25 A. Yes, it was a request from --

26 MRS. STEINER: If the Court please, if she is
27 going to move on to something away from the physical
28 crime scene, I think it is kind of confusing to the jury
29 to have pictures when she is not working on any longer.

1 THE COURT: Are you through with these?

2 MR. HILL: Yes, sir. I am fixing to move those
3 and move to something else, Your Honor.

4 THE COURT: Well, you can take them down when
5 you are through with them.

6 MR. HILL: Thank you, Your Honor.

7 (MR. HILL REMOVED THE EXHIBITS FROM THE EASEL.)

8 Q. Miss Schoene, I've got a couple more, before we
9 leave the scene, I just remembered we have got a couple more
10 that I want you to -- come on back down here if you will, if
11 the Court will allow you too.

12 THE COURT: (Nodded.)

13 A. (Complied.)

14 Q. I don't think we covered this one right here. This
15 is State's Exhibit 20-A, 21-A, 22-A and 23-A. Would you tell
16 us what those photo enlargements are, please?

17 A. Yes. Three of these photographs here show the body
18 of Bertha Tardy. And this picture, which is exhibit --
19 State's Exhibit 20-A is the photograph that I identified
20 earlier as being glasses, firearms evidence, a bed and a Serta
21 plastic marker here.

22 Q. Okay. Miss Schoene, did you collect -- did you
23 collect the glasses and that piece of firearms evidence?

24 A. I did not collect the glasses. I did collect the
25 firearms evidence.

26 Q. Okay. They were collected by somebody, the glasses.

27 A. I just can testify to what I did, and I didn't
28 collect those glasses.

29 Q. Okay. While we have this picture up, I don't guess

1 -- you can't see in this photograph. This is close to the
2 back; is that right?

3 A. Yes. Bertha Tardy was located in the back of the
4 store.

5 Q. Okay. Now, was her office in proximity?

6 A. Let's see. If you look at, I believe, this
7 photograph. If you look back continuing in this direction is
8 the back wall of the furniture store, and that is where her
9 office was located.

10 Q. Okay. I want to show you this photograph here.
11 This is 38-A, the enlargement.

12 A. Yeah.

13 Q. Tell us what that is, please.

14 A. This is a photograph taken of Bertha Tardy's office
15 in the back of the store. You see that her chair is, you
16 know, pushed back, the contents of her desk appear to be neat
17 and orderly. This is the safe that was back there.

18 When I arrived it was closed. The content inside of the
19 safe appeared to be rather neat, did not appear to be
20 disheveled or ransacked in any way.

21 Q. So the safe was open but closed. Unlocked rather
22 but closed.

23 A. Yes.

24 Q. Because you indicated you looked at the contents.

25 A. Right. The safe was not locked.

26 Q. Then we had one more I don't think I asked you
27 about. This is the enlargement 45-A and 46-A. This may help
28 the jury to be able to see the footwear impressions. Explain
29 those, if you will.

1 A. These are the enlargements of the black and white
2 photographs that we mentioned earlier of the partial footwear
3 impressions that were labeled "A", "B" and "C", if you might
4 remember that from the sketch.

5 The partial impression "A" is closest to the front of the
6 store, as you can see here. Now, the body of Carmen Rigby and
7 Robert Golden were here. But in this photograph they have
8 been removed. So just -- and this is the ramp that I
9 indicated earlier that was also present in part of the --
10 (Indicated.)

11 Q. And the markers that appear there, that is what you
12 labeled "A", "B" and "C". The little white markers on the
13 floor. (Indicated.)

14 A. Yes.

15 Q. Okay. And those are those right there.
16 (Indicated.)

17 A. Yes. These are the same -- these correspond to the
18 same, the same image here. "A" is here in this photograph.
19 "B" is in the center. And "C" is farthest back to the back of
20 the store. As you can see here, this sort of gives you a
21 better feel. This is where Bertha Tardy's office was located
22 in the back of the store. (Indicated.)

23 MRS. STEINER: Your Honor, may the witness
24 identify which exhibit numbers those are again?

25 THE COURT: Which ones were you looking at,
26 exhibit numbers on the board there?

27 MR. HILL: The last ones.

28 THE WITNESS: I'm sorry. State's Exhibit 45-A
29 and State's Exhibit 46-A are enlargements of black and

1 white photographs.

2 MRS. STEINER: Thank you. Thank you.

3 Q. Miss Schoene, before you take your seat again, just
4 a minute ago I asked you if you got a secondary request later
5 on toward the end of the day to assist law enforcement by
6 processing another item. Can you explain who made that
7 request and what they were requesting of you, please?

8 A. Yes. I was requested to -- when we finished this
9 scene to go to the police department. I believe I was
10 requested by Investigator Wayne Miller with the Highway Patrol
11 Criminal Investigations Bureau to process a vehicle for the
12 presence of latent fingerprints. And they had asked -- he had
13 asked that we do that immediately, finishing here, finishing
14 up our scene here. So I left here at 6:00 and my partner and
15 I arrived at the police station at approximately 6:04 to do
16 that.

17 Q. And what was the request made of you?

18 A. The request was to dust for latent prints, to dust
19 for fingerprints essentially. Latent prints are hidden
20 prints, and we have different techniques to try to visualize
21 prints. So I should say look for fingerprints.

22 Q. Did you go to the police station and attempt to do
23 that for them?

24 A. Yes, I did. I arrived there at 6:04.

25 Q. I have one additional photograph, an enlargement.
26 The exhibit numbers are labeled on each individual picture. I
27 am showing you State's Exhibit 100-A, 99-A, and 101-A. And I
28 ask you if you recognize the photographs and what they show
29 there.

1 A. This is the vehicle that I was asked to process for
2 latent prints, the passenger side, to process for latent
3 prints. I recognize it by the tag number there. That is the
4 tag number that is -- that I recorded in my notes as being
5 this car. So this was the car that I processed for prints
6 after I left Winona Furniture -- Tardy Furniture store.

7 Q. Anything about the weather conditions that might
8 play into your processing?

9 A. Well, it had rained that day, and so the exterior of
10 the car was wet, which is quite detrimental to latent prints.
11 If you are trying to obtain fingerprints from something, a wet
12 surface is not a very probable surface to obtain fingerprints.
13 So yes, it had rained that day. It was not raining at the
14 time.

15 Additional issues with the vehicle that made it slightly
16 difficult -- well, it did make it difficult to process prints
17 is the general disrepair. The passenger door did not open.
18 The rear view mirror was missing. The dashboard was cracked,
19 like vinyl, kind of cracked and dusty. There were seat
20 covers. None of those conditions, unfortunately, lend
21 themselves to getting high-quality fingerprints, even if
22 someone does come in contact or touch that surface.

23 Q. Were you told or did you make any notes as to who
24 the car belonged to? Did you know at the time you went there
25 whose car that was?

26 A. I would have to refer to my notes. I don't know
27 that it would make a difference if I knew who it was. I am
28 more based, just on empirical evidence here. And I can
29 identify it based on the tag. I knew that this tag -- this

1 car had this tag. Who it belongs to, I don't really think I
2 did know.

3 Q. Okay. That's fine.

4 A. And I don't know now.

5 Q. Okay. The bottom photograph in the chart there,
6 tell us what that is, please.

7 A. This is the glove box and part of the door here.

8 Q. Did you notice any defect on the -- around the glove
9 box?

10 A. Not that was necessarily inconsistent with the
11 general disrepair of the car. A defect to me would be
12 something that would stick out from the norm of something that
13 would be expected for the object's condition, if you will.
14 And giving the general state of disrepair of the car, there
15 were defects, yes. There is also a defect here you will see.
16 Slight little defect here scratched off where the handle is,
17 but I don't consider that to be out of the ordinary for a car
18 that was in this condition. (Indicated.)

19 Q. Okay. I want to draw your attention specifically to
20 the glove box and the glove box lid or the door on the glove
21 box. Point that out for us, please.

22 A. Point out the lid of the glove -- of the glove box?

23 Q. Yeah. The door that opens and closes. It has got
24 the thumb lock and all that on it.

25 A. This door? (Indicated.)

26 Q. Right.

27 A. Okay.

28 Q. Look at the upper edge of that and tell us if you
29 noticed any, any marks or I don't know if you want to call

1 them defects or marking or damage or anything like that. When
2 you -- when you took that photograph and later saw it, did you
3 see anything that was recorded in your photograph along the
4 upper edge of that glove box door?

5 A. The defects here that -- you are talking about this
6 right here? (Indicated.)

7 Q. Yes, ma'am.

8 A. Yes. There are defects there. I would be hesitant,
9 hesitant to label them as something other than defects. I'm
10 not quite sure what you are asking. I don't know -- quite
11 know how to make the jury --

12 Q. I'm just wanting to know were there any defects or
13 marks on the upper edge of that glove box lid?

14 A. Yes, there, there were. Yes.

15 Q. And was it open or closed? Was it in that condition
16 just as you photographed it when you took that photograph?

17 A. I believe it was in that condition but I don't -- I
18 honestly don't remember.

19 Q. So you documented the interior area of that car in
20 that photograph by having it photographed.

21 A. Is that correct? Did I document the interior?

22 Q. Is photography a form of documentation?

23 A. Well, photography is a form of documentation. But
24 when you say document that means something different to me.
25 Document to me would mean to go through the contents of the
26 car, label them, photograph them. So document has a different
27 connotation, that terminology --

28 Q. Maybe I should use --

29 A. I just, just wanted to be clear on that. But yes,

1 photography is a legitimate form of documentation.

2 Q. Okay. Okay. So that is what -- you photographed
3 what you saw that day and that is a picture of it.

4 A. I'm not sure if this is my photograph or not without
5 seeing the small, the small photograph and having my initials
6 on the back. But this, this appears to be, yes.

7 Q. Okay. And were you able to get any fingerprints,
8 lifts out of the car?

9 A. I did take a fingerprint lift. Now, to explain to
10 you what that means. When we attempt to visualize
11 fingerprints, we typically use black powder and a brush. And
12 we will take the brush and dip it in the powder. And we will
13 rub it gently over the surfaces that we would -- we try to
14 visualize fingerprints. So when we visualize a fingerprint
15 that way, and then if we see a print, what we do is take a
16 piece of clear tape, a lot like packing tape, and take that
17 and literally press it down where we see that, where we see
18 the print and rub over it and pull it up.

19 So now you have it transferred to a piece of tape. You
20 take that piece of tape and put it down on a white card. And
21 on that white card, on the back, you label the position and
22 the location as to where that was obtained. So that way the
23 fingerprint examiner, when they are looking at it, they can
24 then look at the back. And we also note the position, because
25 sometimes the position of the fingerprint is important. So
26 that information goes on the back of a card.

27 Now, I did lift, make a lift -- I did make a lift of the
28 latch, I believe. But not being a fingerprint analyst, there
29 is another expert who will look at that and determine if there

1 is enough ridge detail to do a comparison. So I did make a
2 lift. Now, what was done with that lift after I took it, I
3 don't know.

4 Q. Or you can't say for us what ridge detail was
5 available on the lift, whether or not it was a print of value
6 or anything.

7 A. I can't. No.

8 Q. Okay.

9 A. And I would certainly never make that -- make that
10 determination at the scene. That is left to somebody that is
11 trained in fingerprint analysis.

12 Q. Miss Schoene, all these exhibits that you collected
13 that you've testified about, after you recovered them, did you
14 securely transport them to the Mississippi Crime Laboratory
15 where they were kept and examined there?

16 A. Yes. I -- after I collected the evidence, I secured
17 it in the boxes that you all saw, the small white boxes,
18 secured them with tape with my initials on them and
19 transported them to the crime laboratory where they were
20 deposited in our evidence vault until an examiner goes to that
21 vault and requests to have them. So the next person that has
22 those, for example, the firearms examiner, would go and sign
23 out that evidence and do the examination there. Yes.

24 Q. You can have your seat back on the witness stand.

25 A. (Complied.)

26 MR. HILL: Your Honor, at this time I would ask
27 that State's Exhibits 47, 48, 49 and 50, these are the
28 enlarged black and whites that Miss Schoene took the
29 originals of, ask that they be received.

1 MRS. STEINER: No objection.

2 THE COURT: I'll allow them to be admitted
3 without objection.

4 (THE BLACK AND WHITE FOOTWEAR IMPRESSION PREVIOUSLY
5 MARKED STATE'S EXHIBIT NUMBER 47 FOR IDENTIFICATION WAS
6 ADMITTED INTO EVIDENCE.)

7 (THE BLACK AND WHITE FOOTWEAR IMPRESSION PREVIOUSLY
8 MARKED STATE'S EXHIBIT NUMBER 48 FOR IDENTIFICATION WAS
9 ADMITTED INTO EVIDENCE.)

10 (THE BLACK AND WHITE FOOTWEAR IMPRESSION PREVIOUSLY
11 MARKED STATE'S EXHIBIT NUMBER 49 FOR IDENTIFICATION WAS
12 ADMITTED INTO EVIDENCE.)

13 (THE BLACK AND WHITE FOOTWEAR IMPRESSION PREVIOUSLY
14 MARKED STATE'S EXHIBIT NUMBER 50 FOR IDENTIFICATION WAS
15 ADMITTED INTO EVIDENCE.)

16 MR. HILL: Your Honor, I would now request that
17 the photographs -- all the photographs that have been
18 received into evidence not previously passed to the jury
19 that we be now allowed to publish them to the jury.

20 THE COURT: You may.

21 MR. HILL: Your Honor, we will tender the
22 witness for cross-examination.

23 THE COURT: We will take a recess at this time.
24 Recess for 15 minutes.

25 (A RECESS WAS TAKEN.)

26 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
27 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS RESUMED AS
28 FOLLOWS:)

29 (THE JURY RETURNED TO THE COURTROOM.)

1 THE COURT: Court will come back to order.

2 Mrs. Steiner, you may proceed.

3 CROSS-EXAMINATION BY MRS. STEINER:

4 Q. Good afternoon, Miss Schoene.

5 A. Good afternoon.

6 Q. You actually conducted this investigation, it will
7 be 14 years ago next month; is that correct?

8 A. Yes.

9 Q. And I'm assuming the reason you are able to talk
10 about it so fully is because you made very detailed and
11 specific notes; is that correct?

12 A. Am I able to talk about it because I made detailed
13 notes?

14 Q. Right. You have notes that you can review.

15 A. I do have notes that I can review. Yes.

16 Q. Did you bring them with you today?

17 A. I did.

18 Q. May I?

19 A. Sure.

20 Q. If you have them with you.

21 A. They are the same notes that were provided to you.

22 These are a copy of my notes. This is a copy of the crime
23 scene key and sketch. This is a copy of my partner's notes.

24 Q. And these are -- were deposited and left at the
25 Mississippi Crime Lab when you left to take your position in
26 Georgia; is that right? Copies of these?

27 A. The originals are actually at the crime laboratory,
28 and these are photocopies that were provided to me, I believe,
29 by the D.A.'s office.

1 Q. Okay. So you have very detailed notes. So you can
2 recall what you did 14 years ago very precisely by refreshing
3 your recollection with your notes; is that correct?

4 A. I don't know if I can recall it precisely, but I
5 will definitely use my notes to assist me with that, yes.

6 Q. Thank you. Thank you. Have you -- are you still
7 doing crime scene investigation work?

8 A. No, I am not. I teach chemistry and forensic
9 science at Georgia Perimeter College now.

10 Q. Now, I was actually extremely impressed with how
11 clear your notes were. I think when you -- you had an
12 assistant with you; is that correct?

13 A. Yes. Her name was Jody Creel.

14 Q. So it wasn't just you having to keep up with
15 everything. Is that an investigation technique that made your
16 crime scene investigators use to try to work in pairs so that
17 they -- you know, nobody does anything by him or her self?

18 A. Is it a technique that investigators use?

19 Q. Is it -- is it a practice that, when possible,
20 investigators like to use when investigating a major crime
21 scene?

22 A. I know that was our procedure --

23 Q. Right.

24 A. -- was to generally -- yes, take at least one
25 person.

26 Q. Right.

27 A. I mean at least two people, I should say.

28 Q. And you basically wrote down -- both you and your
29 assistant kept notes of what you did during the investigation;

1 is that correct?

2 A. Well, we don't actually have duplicate sets of
3 notes. I will take notes of some things, while she is taking
4 notes of the other. It would be a bit repetitive for us both
5 to write the same of everything. So she has some notes. She
6 did most of the sketching and the measurement taking and
7 assisted me with evidence collection and dusting for
8 fingerprints. And I took a detailed running narrative of that
9 while she was doing other things. So I don't -- they are not
10 very repetitive necessarily, but some of the information does
11 overlap, I should say.

12 Q. I understand that. But you are both taking notes of
13 what you as a team -- you were the lead on this, I think,
14 weren't you?

15 A. Yes.

16 Q. And so you would assign her to do something - why
17 don't you sketch or why don't you take these photos?

18 A. Yes. Certainly. Yes.

19 Q. And I believe I see in your notes that are copies of
20 the original at the crime lab, you had a little checklist at
21 the end to make sure you had done everything you were supposed
22 to have done.

23 A. A checklist?

24 Q. For your own use.

25 A. Do you recall what page that's on? Oh, I see. Yes,
26 Page Number 7 of my notes. Yes. There is a -- on Page Number
27 7 of my notes, and what I'm referring to is notes. These are
28 taken live while I'm at the crime scene. I'm there working.
29 And I'm making notes to myself, notes of things that I need to

1 do. And yes, on Page 7 there is a list with checks by it. I
2 don't know I would call it a checklist, but I have checked off
3 some things there along with a list of items that I did
4 collect - the casings, the cartridges, and that sort of thing.

5 Q. So you wrote it down, basically, almost immediately
6 after you had done it or as you were doing it; is that
7 correct?

8 A. Not necessarily. It was written down while I was at
9 the furniture store. But as far as when I wrote it down or
10 what order, I don't know even know that I sat down and wrote
11 this all at one time.

12 Q. Oh, I --

13 A. It is sort of a work in progress, as you can
14 imagine.

15 Q. Right. This is the notes, but you wrote it down
16 when you were there. You then, I believe, on the important
17 stuff, like the key, you had it typed up, and you had the
18 sketch. You know, your colleague made the sketch, a polished
19 sketch. That sort of thing. So you documented it again.

20 A. Well, I would like to correct you with wrote down
21 the important things. I am not quite sure what you mean by
22 that, but -- I feel that everything that I do when I'm there
23 is important.

24 Q. Okay.

25 A. So I would have to correct you on that or at least
26 ask you to explain what you mean by that.

27 Q. I'm saying that you, you said that on your checklist
28 you noted what you had collected, is that correct, by way of
29 evidence?

1 A. Well, you actually called it a checklist. I just
2 said it was a running list. I put checks by it. Yes. I do
3 have a list that lists things that I either did, was going to
4 do or was in the process of doing on Page 7 of my crime scene
5 notes.

6 Q. I appreciate that. And, you know, you wrote down
7 that you collected some casings, etc. Then I believe on --
8 after you got back to the laboratory, laboratory, you had
9 typed up, you prepared so that anybody looking at your or your
10 colleague's chart would have the key.

11 A. Yes. Yes.

12 Q. All right. And now that you have not been at the
13 laboratory for seven years, Mississippi State Crime Laboratory
14 has copies of all of this in case it ever became necessary, if
15 there were ever a case where you couldn't be there to testify
16 someone could review them; is that correct?

17 A. I'm not sure what the Mississippi Crime Laboratory
18 has. I received these from the D.A.'s office.

19 Q. Thank you. Now, you said that you arrived at the
20 secured crime scene about 1:15 in the afternoon.

21 A. I left shortly before lunch and arrived at 1:15 that
22 Tuesday.

23 Q. All right. And I believe you said Chief Hargrove is
24 who took you into the crime scene and showed you around; is
25 that correct?

26 A. Yes.

27 Q. Do you know if either of the Mississippi Highway
28 Patrol Investigators were at the scene when you arrived there?

29 A. There were two investigators that I worked with.

1 Investigator Wayne Miller.

2 Q. Um-hum.

3 A. And Investigator Jack Matthews. They were both
4 there. Now, if they were there at the time that my crime
5 scene van arrived, I don't recall.

6 Q. All right. But you were at the scene with them
7 during the course of the day.

8 A. Yes.

9 Q. All right. And one of the things that I believe you
10 had your assistant do was make a list of the people at the
11 scene; is that correct?

12 A. Yes. There is a list of people at the scene that
13 she generated that is Page 1 of her crime scene notes. And
14 it's labeled people at scene.

15 Q. I'm going to ask you --

16 May I approach, Your Honor?

17 THE COURT: You may.

18 Q. I'm handing you a document that has a Bates number
19 on the bottom and attestation from the crime lab. But other
20 than that, is what I'm handing you a true and correct
21 reproduction of that list of people at the scene that you had
22 your assistant generate?

23 A. Yes, it appears to be.

24 MRS. STEINER: I'd like this marked and would
25 offer it into evidence as Defendant's Exhibit 9.

26 MR. EVANS: No objection.

27 THE COURT: I'll allow it to be admitted.

28 THE WITNESS: May I explain to the jury what
29 this is?

1 MRS. STEINER: Oh, absolutely.

2 THE COURT: Wait. She has to mark that in
3 evidence.

4 THE WITNESS: Okay.

5 (A DOCUMENT LISTING PEOPLE AT THE CRIME SCENE WAS MARKED
6 DEFENDANT'S EXHIBIT NUMBER 9 AND ADMITTED INTO EVIDENCE.)

7 Q. Thank you. I'm handing you what is now marked
8 Exhibit D-9 in evidence. And you said you would like to
9 explain what it is. Would you please do so?

10 A. I'd like to keep the jury in the loop of what we are
11 talking about.

12 Q. I am going to stand back and let you do that.

13 A. Okay. Exhibit -- Defense Exhibit D-9 is a
14 photograph of -- photocopy of my partner's first page of her
15 notes. And what she did when we arrived is starting --
16 started to get a list of people who were at the crime scene at
17 the time. This doesn't necessarily mean that they intruded on
18 the crime scene barrier.

19 It just means that this is people -- we want to know
20 everybody that is there when we get there. This is a list of
21 23 people that range from police department employees,
22 sheriff's office, Mississippi Highway Patrol, E.M.T., Duck
23 Hill P.D. and various people. So we have a list of their name
24 and a list of who they are with or what agency they represent.

25 Q. Thank you. And I appreciate that explanation.

26 Do you -- do you recall -- did Wayne Miller -- I think
27 you said you worked with two detectives from the Mississippi
28 Highway Patrol, Mr. Miller and Mr. Matthews.

29 A. Yes.

1 Q. And they were certainly at the crime scene during
2 the time you were there.

3 A. Yes.

4 Q. Now, to your knowledge, is there anything in your
5 notes or your colleague's notes or any firsthand knowledge you
6 have of whether or not such a list had been prepared prior to
7 you and your partner arriving and her performing that task?

8 A. Do I have knowledge that there was a list that
9 existed before the one that she generated?

10 Q. Yes, that's correct.

11 A. I do not have knowledge of a list.

12 Q. All right. You were not furnished one for her to
13 work from any of the other investigators.

14 A. You would have to ask her that. I don't recall
15 anyone handing her a list. I just know that this is her list.
16 Now, where she got it, she may have asked people. I don't
17 know if someone had handed her a list or not.

18 Q. And you, yourself, were not handed a list --

19 A. No.

20 Q. -- for her to use.

21 A. No.

22 Q. Thank you.

23 Now, I think in your notes at one point you say you were
24 escorted -- you were met at crime scene by Highway Patrol
25 Officer D-43 but there is no name. After 14 years, do you
26 recall a name or a face that goes with D-43?

27 A. I have absolutely no idea. The Mississippi Highway
28 Patrol officers have badge numbers.

29 Q. Um-hum.

1 A. I worked with the highway patrol, and my badge
2 number was L, Lincoln, 54. So sometimes I'm referred to as L,
3 Lincoln, 54. This is just D-43. I do not know who D-43 is,
4 but we could find him through that number if we needed to.

5 Q. All right. Thank you.

6 And now, you -- I appreciate your precision. At the
7 crime scene when you collected evidence -- well, you attempted
8 to -- well, you say you didn't collect the glasses that were
9 shown in one of the photos that you talked about earlier. I'm
10 assuming that's because that did not appear to be something
11 that either you or any of the officers who had asked you to
12 process the crime scene thought would be of significant
13 evidentiary value other than having picture of it; is that...

14 A. The glasses at the -- underneath the bed were
15 consistent with coming off of the head of Bertha Tardy, who
16 was located very close to those glasses. So I concluded that
17 those were the glasses of Bertha Tardy.

18 Q. Okay.

19 A. So I, I did not collect those, nor did anyone ask me
20 to collect those.

21 Q. All right. And similarly, there were -- you
22 collected what you or the officers investigating considered to
23 be of evidentiary value and released other things to the --
24 strike that.

25 You collected what you and/or the officers who were
26 working in conjunction with you considered to be of
27 evidentiary value. Is that a safe thing to say?

28 A. That's what our job responsibility is when we
29 respond to a request, is to locate, document and collect

1 physical evidence from the crime scene.

2 Q. All right. Now, I, I believe -- did you do any
3 dusting for fingerprints at the crime scene?

4 A. At Tardy Furniture?

5 Q. Yes.

6 A. Yes, I did.

7 Q. All right. Can you describe the locations at which
8 you attempted to collect -- dusted for fingerprints? Let
9 me -- I'm going to put the chart --

10 A. Okay.

11 Q. -- that you -- I think you said your colleague
12 prepared this --

13 A. She did.

14 Q. -- polished chart. If you don't mind stepping down
15 and showing where on this chart you sought to collect -- you
16 dusted for fingerprints.

17 (THE WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

18 A. Okay. This is the, the counter that's located at
19 the center of the store. There was not a cash register per se
20 but more a cash drawer that was here at Tardy Furniture.

21 (Indicated.)

22 Q. Can, can I stop you?

23 A. Yeah.

24 Q. Was that drawer closed when you first laid eyes on
25 the crime scene?

26 A. I believe that it was.

27 Q. Okay. Thank you.

28 A. But I'm not certain, but I believe that it was
29 closed.

1 So this is the counter. As you see here, it has two
2 different levels. There is like an upper level, that you
3 might go lean on the counter. And then there is a lower level
4 that paperwork was kept. And the cash drawer here. We
5 dusted -- this was the area of what I would call a hot crime
6 scene, where the bodies were located, shell casings and
7 footwear impressions. We dusted this counter area, the
8 contents, the cash drawer.

9 I also dusted Bertha Tardy's office, the safe that I had
10 shown you the picture of earlier, had dusted the safe there
11 for fingerprints and truly, any other area around here that
12 would be viable to hold prints.

13 What I mean by that is for example, cloth, the chairs
14 that you are sitting in. A lot of the furniture in the store
15 was cloth. Well, cloth is not a good receiving surface for
16 fingerprints. A mattress is not a good receiving surface for
17 fingerprints or something old and worn and porous, scratchy
18 surfaces, surfaces like that type do not hold fingerprints
19 very well even if someone touches them.

20 They certainly won't hold them if someone has gloves on.
21 So we, my partner and I, dusted all the objects around this
22 area that we considered to be viable for fingerprints and also
23 Miss Tardy's office in the back. (Indicated.)

24 Q. Thank you. If I can find it, I may...

25 A. Do you want me to hold this?

26 Q. Thank you, Miss Schoene. It takes a village.

27 I'm showing you -- the chart you have been looking at is
28 S-39-A for -- in evidence. And I'm now putting up on the -
29 thanks, excuse me - S-38, which I believe you -- 38-A, you

1 previously identified as a shot of the desk and safe and some
2 paperwork in the back office; is that correct?

3 A. Yes. This is Miss Bertha Tardy's office in the back
4 of the store, and this was the safe. Again, the door here was
5 closed but not locked. And I did dust the safe area, the
6 handle here on the top. And anywhere around here that, that
7 would have been viable for fingerprints was dusted in
8 attempts -- attempts were made to visualize fingerprints.
9 Unfortunately, again, this is a rather, old metallic safe, as
10 you might be able to see from the photograph, a very textured
11 surface, which is not a good receiving surface for
12 fingerprints. (Indicated.)

13 Q. The handle appears - this is a great enlargement -
14 to be fairly shiny. The shinier the metal, the better the
15 receiving surface.

16 A. The shinier the metal, the -- I would say that's,
17 that's a fair statement if it's not scratchy. And this -- and
18 if it's clean. This is a shiny metal surface. However, if I
19 remember correctly, it was a bit brushed. Is that the right
20 term for a metal that is not polished but brushed? Brushed
21 metal. But anyway, everything that you see here was dusted
22 for fingerprints. Attempts were made to visualize
23 fingerprints that, that might have been there. Yeah, so we
24 dusted this.

25 Q. You are not saying you can never get lucky and maybe
26 get a print off of brushed metal or painted surfaces.

27 A. You will never hear me say I can never get lucky. I
28 like to try very optimistic when I'm at the scene. I like to
29 think that perhaps we can visualize a print even on surfaces

1 that I know are not generally conducive.

2 Q. For instance --

3 I hope I'm not blocking you.

4 A JUROR: No.

5 Q. I'm sorry.

6 This chair here appears to be a shinier, non-brushed
7 metal, maybe with paint on it or something. Did you -- I
8 don't even know if you tried to brush, to look there. And it
9 seems to have a vinyl or plastic chair. I, I know you don't
10 necessarily have notes of what -- you probably have notes --
11 did you make notes of every location you did try and pick up
12 prints from here?

13 A. I don't know. And it would not be my standard
14 practice to write every object that I dusted for prints. I
15 would make general notes like dusted counter area. And to me
16 that means that my partner and I would dust that general area
17 and everything that is -- that we could dust, we would dust.

18 Q. And you did that in that scene after these
19 photographs were taken; is that correct?

20 A. Yes. Dusting for fingerprints leaves a fair amount
21 of powder. On some surfaces, it, it depends sometimes. It
22 can be a bit messy, not always. But these appear to have been
23 made prior to any dusting.

24 Q. All right. And any prints which --

25 I will stand these up so I don't have to worry about when
26 it's going to fall. I may even be done with this one. Thank
27 you.

28 (MRS. STEINER MOVED SOME OF THE EXHIBITS.)

29 A. I'll let you decide.

1 Q. Let's leave that there for the moment since you may
2 wish to explain more.

3 And any latent lifts -- what you get is something called
4 a latent lift. Is that the term? You talked about taking a
5 film and putting it on a white piece of paper. Is that --
6 when we -- if we -- when we hear from a fingerprint examiner
7 is he or she going to call it a latent lift?

8 A. I'm not sure what they are going to call it. I
9 would call it a latent lift. I told you guys earlier after
10 you dust, to visualize it, you take a piece of what looks like
11 clear packing tape and put that on the impression, pull that
12 up. You have now transferred that to the tape. And then you
13 take that tape and you put it on a white -- something about
14 the size of a white index card. And on that white index card
15 notes are taken as to the measurements and the location and
16 the direction of that lift.

17 So in this case I did collect latent lifts. I don't know
18 how many there were. I can tell you that I believe there were
19 at least five cards. But it's quite common to put more than
20 one latent lift on a card. It just makes it easier on the
21 examiner to not have 15 or 16 different cards but maybe just a
22 few with various notes on the back.

23 Q. And those were part of the evidence that you
24 packaged up and had transferred to the Mississippi Crime Lab
25 so the print examiner could look at it, just as a firearms
26 person could look at the firearms evidence you collected; is
27 that correct?

28 A. Yes, ma'am. I didn't actually have it transferred.
29 I personally transported that evidence to the crime laboratory

1 in a sealed condition and submitted it to the evidence lab
2 myself.

3 Q. And you signed the chain of custody, evidence
4 submission form there in accordance with protocol.

5 A. I signed the seal on the bag to indicate that it was
6 sealed at the -- that I was the last person to open it, and I
7 was the last person to seal it. Now, as far as who signed it
8 into the crime lab, I don't know if that was me or not.

9 Q. If, if your signature shows up on the evidence
10 receipt log, that would be.

11 A. My, my initials, I think, would be on the items of
12 evidence themselves in a sealed -- in a sealed condition.

13 Q. Thank you.

14 I am going to step away, Your Honor, just a second.

15 I'm not trying to confuse you.

16 May I approach the witness, Your Honor?

17 THE COURT: You may.

18 Q. I am going to hand you a document that's entitled an
19 evidence submission form, Mississippi State Crime Laboratory.
20 And I am wondering if you can identify that form for us. Is
21 that a form routinely used in 1996 at the Mississippi Crime
22 Laboratory for the submission of evidence?

23 A. Yes.

24 Q. And is that the form, the first page of the
25 submission which you made to the Mississippi Crime Lab when
26 you took the evidence and returned it there on July 16, 1996?

27 A. Yes.

28 Q. And you show yourself as the receiver; is that
29 correct?

1 A. Yes. I was -- said delivered by and generally that
2 is the law enforcement officer's name. And the received by
3 would be the crime lab official that receives the evidence.

4 Q. All right. And in this case since you actually had
5 been the collector, it just says collected at crime scene; is
6 that correct?

7 A. Yes.

8 Q. And you show the two requesting officers here -
9 Chief Johnny Hargrove and Criminal Investigation Bureau
10 Captain, I believe, Wayne Miller.

11 A. I'm not sure of his title, but it is Wayne Miller.

12 Q. All right.

13 A. And whatever it was then may be different now.

14 Q. All right. Thank you.

15 Let me go ahead and have this --

16 (MRS. STEINER SHOWED A DOCUMENT TO MR. EVANS.)

17 MR. EVANS: That is not the whole report.

18 MRS. STEINER: May I approach again, Your
19 Honor?

20 THE COURT: You may.

21 Q. Miss Schoene, Mr. Evans pointed out to me I was only
22 showing you the first page of that.

23 A. You, you had said the first page.

24 Q. Yeah. I'm going to ask you to inspect the first
25 page that you have already seen, and I'm handing you a second
26 page behind it. I need to ask is that the complete evidence
27 submission form for the evidence collected by you at the Tardy
28 Furniture store crime scene on July 16, 1996?

29 A. Is this the complete --

1 Q. Those two --

2 A. What was your question?

3 Q. Is this -- is this -- is this the evidence log
4 listing all the evidence collected by you on the 16th and
5 submitted by you that evening?

6 A. What this appears to be is a copy from our main
7 file, because there are handwritten notes on this. This is
8 only a partial list of evidence submitted in this case. I
9 believe there were up to possibly 70 exhibits in this case.

10 Q. Did I --

11 A. I --

12 Q. But that you personally received. Is that what you
13 received that day and turned in?

14 A. I, I believe so. Yes.

15 Q. Okay. I'd like to offer these two pages as a single
16 exhibit.

17 MR. EVANS: We would ask that the entire list
18 of all exhibits that were submitted be introduced if part
19 of it is going to be introduced.

20 THE COURT: I think she said this was all she
21 did.

22 MR. EVANS: Well, I couldn't understand if this
23 was all she did or there were others that she did.

24 Q. I know that were 70-some ultimately pieces of
25 evidence submitted to the crime lab. All I'm asking you is
26 this a complete list of what you and your colleague at the
27 crime scene personally collected and, I believe, you said you
28 then transported in sealed form back to the crime lab that
29 day?

1 A. So I believe -- I believe what you are asking is is
2 this the evidence that I collected and submitted on this day
3 as the paperwork shows?

4 Q. Yes.

5 A. Yes. And there are two pages to this.

6 MR. EVANS: No objection.

7 THE COURT: I'll allow it to be admitted
8 without objection.

9 (THE MISSISSIPPI CRIME LAB EVIDENCE SUBMISSION FORM WAS
10 MARKED DEFENDANT'S EXHIBIT NUMBER 10 AND ADMITTED INTO
11 EVIDENCE.)

12 THE COURT: She has marked it now.

13 MRS. STEINER: Oh, thank you.

14 And is that in evidence now?

15 THE COURT REPORTER: Yes, ma'am.

16 MRS. STEINER: Okay. Thank you.

17 Q. Now, as part of documenting the crime scene your
18 notes reflect -- well, actually, your chart reflects there was
19 actually a purse sitting here behind the counter; is that
20 correct?

21 A. Yes.

22 Q. And that purse had money and credit cards and, I
23 believe, possibly one or two sets of keys in it; is that
24 correct?

25 A. That sounds correct, but I do have -- let me -- if
26 you would, give me a second to try to find that in my notes.

27 Are you reading that off of my notes?

28 Q. I thought I was, and I will try and find it here.

29 A. If you could just reference a page number for me.

1 That does sound correct, but I would like for the jury to hear
2 it from my notes.

3 Q. Oh, I'm -- it's on -- actually it's on Exhibit...

4 A. Here it is.

5 Q. I believe it's on your summary on Exhibit S --

6 A. Yes. But my raw notes, Page 9 of my crime scene
7 notes --

8 May I just read from my notes?

9 THE COURT: (Nodded.)

10 Q. Yes. Certainly.

11 A. Say that the purse of Carmen Rigby, which is the one
12 that -- well, the one that was behind the counter on the floor
13 there. Large tan and cloth. Located on the floor behind the
14 counter. Wallet with a \$10 bill was exposed. Check Number
15 2173 showing. I also go on to record her checks, and there
16 are two sets of keys also.

17 Q. And actually, in that same note, that is where your
18 note that all the drawers behind that counter were closed when
19 you entered and made your initial inspection --

20 A. Yes.

21 Q. -- of the scene.

22 A. Yes. That is behind the counter. Yes.

23 Q. So I believe you earlier identified one of the
24 photographs was a picture of a cash drawer in that counter
25 that was open.

26 A. Right.

27 Q. But that had been opened in order that you could
28 take a photograph of it, not because it was standing -- that
29 isn't how it was when you entered the scene.

1 A. Right. According to me, I say counter and counter
2 area, all drawers are closed, neat and orderly. So the
3 picture that was shown was documentation of the content of
4 that cash drawer or drawer that contained coins.

5 Q. Okay. And now, I believe that in addition to
6 actually yourself doing the processing that you explained to
7 the jury earlier, now, you actually requested that the
8 E.M.T.'s return to the crime scene so that you could
9 personally document their shoes for whoever was going to do
10 your footwear examination.

11 A. That's correct. If you recall, the partial footwear
12 impressions that appeared to be in blood near the body of
13 Carmen Rigby. When I arrived on the scene, Chief Johnny
14 Hargrove had pointed those out to me, those partial footwear
15 impressions and had said that they were there when he arrived.
16 So as the analyst on scene, I said well, I need to know -- I
17 mean those footwear impressions could have come from somebody
18 who had been in the scene. Don't necessarily mean that it
19 came from the perpetrator.

20 So part of my role there was to look at not only his
21 shoes but everybody else's shoes that had been there prior to
22 my arrival, and that included Chief Johnny Hargrove, the
23 gentleman who found the body, and that is who I requested to
24 come back and let me look at his shoes. The tread pattern on
25 his shoes were not -- was not similar to the impressions that
26 were made on that linoleum floor.

27 If you recall the linoleum, the impressions were zig-zag.
28 You could see it in the impression. The footwear outsole on
29 the person who found the scene was in a horizontal pattern.

1 So I could exclude the person who found the body as being the
2 person who left those impressions.

3 Q. And --

4 A. I also requested the E.M.T.'s who were there to
5 remove -- who arrived before I did and left before I got
6 there, I also requested that they return to the scene as well
7 so I could examine their, their footwear impressions as well.

8 Q. Thank you, Miss Schoene. I didn't mean to interrupt
9 you. You -- and, in fact, on Page --

10 A. 10, I believe.

11 Q. -- 10 of your notes. When the man who found the,
12 the bodies came back, you not only documented that he had come
13 back, but you made a little sketch of the pattern you had
14 observed on the soles of his shoes; is that correct?

15 A. It's a loose interpretation of sketch. It's
16 actually more like a scribble. But thank you. It's -- yeah,
17 I did draw a loose pattern of what his soles look like so I
18 could refresh my memory if it came up again.

19 If you recall, I am also nationally certified -- at the
20 time I was nationally certified as a footwear and tire track
21 impression analyst. So I did have training in footwear
22 comparison. So I felt quite comfortable excluding the
23 people's -- everybody who came back that I looked at their
24 footwear impression, I felt quite comfortable excluding those
25 as being potential depositors of those partial impressions.

26 Q. Miss Schoene, did -- so you are testifying here that
27 they actually did -- I don't find --

28 A. I'm sorry. Say that again.

29 Q. I, I note where you had asked the -- that the

1 E.M.T.'s return so you could make that inspection. And then
2 there are some notes about what had been said by them. And I
3 don't want you to talk about what was said by anybody else.

4 MR. EVANS: Your Honor. I object. If she is
5 going to go into her report, she can go into her entire
6 report.

7 THE COURT: Well, I think she can get into any
8 part of the report she wants right now. This is
9 cross-examination. So if that is an objection, it is
10 overruled.

11 Q. The -- I, I don't find a description anywhere in
12 your report of having a description of what the prints of the
13 E.M.T.'s looked like, and I -- what the shoe bottoms of the
14 E.M.T.'s looked like. And I am wondering is that because they
15 were unable to return for you to personally observe them? Or
16 does it just mean it was so distinct that you didn't make a
17 notation?

18 A. No. I believe, if you allow me a second to look at
19 the notes --

20 Q. Sure.

21 A. -- they did return, and I did a comparison.

22 Q. Okay.

23 A. And if they were in any way similar with, again, the
24 tread pattern, being these broad zig-zags, if they were in any
25 way similar, I would have collected those footwear impressions
26 from the E.M.T. And I have taken many boots from E.M.T.
27 personnel at crime scenes that came back that footwear
28 impression was similar. I have sent E.M.T.'s home without
29 shoes in the past. But what that would mean is that I did a

1 visual examination, was able to exclude the E.M.T.'s from
2 having made those impressions.

3 Q. Thank you.

4 And it was so divergent from anything on the crime scene
5 that you considered it not necessary to, to collect the boots
6 from these E.M.T.'s.

7 A. I wouldn't say -- divergent is not the term that I
8 would use. I could say that I did a visual examination as a
9 trained footwear impression analyst and on the spot excluded
10 those shoes as being even possible footwear that could have
11 left that impression.

12 Q. All right. And I mean -- you have been here for
13 almost three, two, two hours at least. And it's safe to say I
14 sat here and listened to you and feel like you collected
15 everything from that crime scene that in your professional
16 training as a crime scene analyst you considered to be of
17 significance to documenting this particular event, at least
18 from a forensic point of view.

19 A. Thank you.

20 Q. Thank you.

21 A. Was, was that a question?

22 Q. The question --

23 A. I, I appreciate that.

24 Q. Did you -- is that correct? You, you did -- you and
25 your associate using your professional training collected
26 everything from this scene that you thought to be of
27 evidentiary significance in this case that you observed.

28 A. I still don't think I understand your -- did we --
29 did we collect evidence that we found pertinent to the case?

1 Q. Yes.

2 A. Yes, ma'am.

3 Q. And you attempted to be as thorough as you possibly
4 could be in doing so. Is that also a fair statement?

5 A. Given the constraints of the large room, and the
6 multiple victims, yes.

7 Q. All right. Were you or any of your colleagues, to
8 your knowledge, ever called back to process anything else at
9 that scene besides what you actually processed that day? Did
10 you ever return to Tardy Furniture to do any further crime
11 scene processing?

12 A. No.

13 Q. Did you ever -- were you ever called to, to a
14 location -- did you ever come back to Winona to a location on
15 Poorhouse Road in rural Montgomery County to do any kind of
16 documentation or processing of an evidence collection place in
17 connection with this case?

18 A. In regards to this case?

19 Q. Yes.

20 A. No. I had -- I played two roles in this case. One
21 was to collect the evidence from Tardy Furniture. And I also
22 went to the police station after that --

23 Q. I --

24 A. -- to dust that car for prints. But outside of
25 that, I had no involvement.

26 Q. Okay. One more thing. You said that you sat your
27 -- when you took the photographs of the shoe prints -- I even
28 stopped taking notes, I was so interested in how you were
29 talking about that. But you set your camera at the angle that

1 was appropriate to get a true angle and took photographs.
2 This was before the advent of digital cameras. Is that
3 correct?

4 A. No, ma'am. Digital cameras existed then.

5 Q. Okay. But you did not use them for examination
6 quality black and white photography.

7 A. Correct. At the time black and white wet film
8 photography afforded much greater detail when the, the film is
9 enlarged. And if you recall, that film must be enlarged. We
10 take a little picture on a small piece of film, but that piece
11 of film has to be enlarged to a one-to-one ratio because when
12 the examiner examines that impression he or she literally
13 does -- looks at this, looks at the impression and looks at
14 the known -- looks at question impression and looks at the
15 known impression and literally does a visual side-by-side
16 examination. So that's why it is so necessary to use
17 examination quality photography that I described earlier with
18 the tripod and the oblique lighting and the black and white
19 fill. Digital photography was, was available, I believe, was
20 available then. But to use it for crime scenes is not
21 something that was well accepted yet.

22 Q. It is now; is that correct?

23 A. It probably would depend on the circuit and the
24 circumstances. I don't know that I would use digital
25 photography for examination quality photography.

26 Q. And did you have -- I'm trying to remember. I, I
27 saw some crime scene photos in the different cases that had
28 little laser points to try and identify things. Is that -- is
29 that -- has the technology of setting and measuring improved

1 any since, since then to your knowledge? I know you haven't
2 been doing it, but you testified you have been teaching it.

3 A. Right. I'm not sure -- has the technology advanced
4 since this time?

5 Q. Yeah.

6 A. Laser technology?

7 Q. Well, to, to, to place -- to make sure your camera
8 is placed in exactly the correct angle do they -- they don't
9 do that?

10 A. No. As far as -- as far as placing the film at
11 correct angle, we don't really need a laser for that. It is
12 something that really looks like a compass. It is called an
13 angle finder. It has a right angle to it. You might find
14 something like that similar in a hardware store. But quite
15 literally we place it on the ground. And if it says the
16 ground is tilted 20 degrees, then we come up to the tripod
17 where the camera is hanging down, and we tilt that in the same
18 direction 20 degrees. So as far as the technology advancement
19 on that, I, I don't think it could be advanced.

20 Q. Now --

21 A. And this was also a flat surface.

22 Q. Right.

23 A. This was not on the ramp.

24 Q. And so you didn't -- and so you took, I think, a
25 couple of rolls of film.

26 A. Yes, ma'am. I took at least two rolls of black and
27 white film. If a roll is 24, then I took a minimum of,
28 probably, 48 exposures. Because as I said earlier, when you
29 are taking -- I know there is only three impressions, but you

1 can never be sure which impression and which angle of that
2 oblique light is going to afford the most detail. So you
3 really -- it's really trial and error, and you want to take as
4 many as possible.

5 Q. Because you're only human. And the people who built
6 your tripod are only human, and the people who calibrated your
7 level are only human. And you have done -- you did it as well
8 as humanly possible, but no one can be perfect; is that --

9 A. Well, that's all interesting. But no, the reason
10 that we take so many photographs is because by holding the
11 oblique light at different angles, different parts of that
12 impression are highlighted. So what you are actually doing is
13 bouncing the light off of what the impression is made of. So
14 I might hold the light here in one, in one picture, and then
15 hold it just slightly lower in the next picture. I'm not sure
16 which one of those is going to look better to the examiner.
17 So that's actually the reason that we take so many, not, not
18 because of mistakes.

19 The, the film records the true image. There is not
20 really much room for error there. And the way that we can be
21 certain that it records the true image is one of the
22 requirements for examination quality photography, in addition
23 to the tripod and that oblique light, is placing a ruler or a
24 scale inside of that, the frame. And what that allows -- the
25 reason that we do that is so that when the film is
26 developed -- you saw us looking at 3 by 5's and 4 by 6 images.
27 Well, those images are blown up to life size when an examiner
28 does an impression -- does an examination.

29 So if there is a scale or a ruler inside of that frame,

1 when it goes to the lab to be developed, the person who's
2 developing the film blows that image up to where what we call
3 it's a one-to-one ratio. So one centimeter or one inch on the
4 image film will be quite literally enlarged to real life one
5 image and one centimeter. And that is how the examiner does
6 the comparison.

7 Q. But you have testified you were not the examiner in
8 this case and did not perform any of those comparisons here.

9 A. That is exactly right. I did not perform any
10 comparisons. However, I am qualified to do so, or was at the
11 time.

12 Q. Thank you.

13 One moment.

14 (THE WITNESS STRETCHED AND YAWNED.)

15 Have I put you to sleep, Miss Schoene?

16 A. No. It did look like that. But no, I'm eyeing the
17 Chips-A-Hoy cookies in the jury room.

18 Q. I'm sure there are --

19 A. I wonder if they would notice if I slipped back and
20 grabbed one.

21 Q. I am sure there are other people thinking about
22 those too.

23 I just have one more question.

24 Did you or your colleague, to your knowledge, take a
25 crime scene videotape of the crime scene?

26 A. That is a very good question. And no, we --
27 sometimes videotape is used in recording and documenting crime
28 scenes. However, at the Mississippi Crime Lab we have never
29 used that. At a time it was a bit cost prohibitive. But we

1 did -- at the Mississippi Crime Lab, myself nor did Jody
2 Creel, use a video camera. Although, other agencies may have.
3 If they have, I am not aware of it though.

4 MRS. STEINER: Thank you. That's all I have.

5 THE COURT: Any redirect?

6 MR. HILL: Yes, sir.

7 REDIRECT EXAMINATION BY MR. HILL:

8 Q. Miss Schoene, you were asked about the notes that
9 you took. And there was a -- you were questioned about the
10 thoroughness and the detail that you used in noting the things
11 that you saw at the crime scene. In your notes do you have a
12 page that -- where you -- I think you said you drew or made
13 notes on the pattern of the footwear impression.

14 A. Yes. It's on Page -- my notes, not my assistant's.
15 I should say colleague, not assistant. Here we go. My notes
16 on Page 10.

17 MRS. STEINER: Okay. Could I have this marked
18 for identification, please, as the next exhibit?

19 (A PAGE OF MELISSA SCHOENE'S NOTES WAS MARKED STATE'S
20 EXHIBIT NUMBER 129 FOR IDENTIFICATION.)

21 Q. Miss Schoene, I want to show you State's Exhibit
22 Number 129 for identification. Would you compare that to your
23 Page 10 of your notes, or I believe that indicates Page 10; is
24 that right?

25 A. Yes, it does. Yes. What State's Exhibit 129 is, is
26 a copy -- a photocopy of Page 10 of my crime scene notes.

27 Q. Okay. And it has the true copy certification at the
28 bottom --

29 A. Yes.

1 Q. -- from the crime lab; is that right?

2 A. Yes.

3 Q. And is that a copy of your notes?

4 A. Yes.

5 Q. Okay. Did you -- and you can refer to your Page 10,
6 if you like. The rough drawing at the top of that, Miss
7 Schoene, I would call that a -- kind of winged-looking
8 Chevron-looking -- maybe Chevron is not a good term, but
9 angles; is that right?

10 A. I would call it a Wide "M".

11 Q. A wide "M".

12 A. Yeah. It looks like the letter "M", but it is wide.
13 So it is almost like a zig-zag.

14 Q. Okay. And you also noted at the bottom of that same
15 page at 5:20 p.m., would you tell us what happened at 5:20
16 p.m. as reflected in your notes, please?

17 THE WITNESS: May I read from my notes?

18 THE COURT: You may.

19 A. I say 5:20 p.m. Jack Matthews brought in shoes of
20 man who found the bodies. The soles were horizontal lines
21 only, and that is where I drew a picture. The E.M.T.'s said
22 the bloody shoe impressions were here when they arrived, same
23 with chief, who was first on the scene.

24 Q. Okay. And you got that directly from those people,
25 the E.M.T.'s and the chief.

26 A. Yes. This is -- it's in my handwriting in my notes.
27 Yes.

28 MR. HILL: Okay. Okay. Your Honor, we would
29 ask that State's 127 -- I'm sorry, 129 for identification

1 be received.

2 MRS. STEINER: No objection, Your Honor.

3 THE COURT: I'll allow it to be admitted
4 without objection.

5 MRS. STEINER: Does Mr. Hill have another page
6 he is going to have marked?

7 MR. HILL: This -- I'm preparing 5, Page 5 of
8 the witness's notes.

9 (PAGE 5 OF THE CRIME SCENE NOTES WAS MARKED STATE'S
10 EXHIBIT NUMBER 130 FOR IDENTIFICATION.)

11 Q. Miss Schoene, I have State's Exhibit Number 130 for
12 identification. Would you please compare this with Page 5 of
13 your notes and tell us if that is a true photocopy of the
14 notes you have?

15 A. Yeah. State's Exhibit 130 is a photocopy of Jody's
16 original notes taken at the crime scene, her Page 5.

17 MRS. STEINER: I'm sorry. Wrong page. May I
18 see what it is?

19 MR. HILL: Sure.

20 THE WITNESS: It lists the contents --

21 THE COURT: Wait. Let her look at it.

22 MRS. STEINER: Your Honor, no objection.

23 THE COURT: Are you not objecting to it being
24 admitted? It hadn't been offered.

25 MRS. STEINER: I thought he was offering. I
26 certainly don't object to its being identified.

27 THE COURT: I mean I thought if you weren't
28 objecting to it, go ahead and just have it admitted.

29 MRS. STEINER: That will be fine.

1 THE COURT: I mean, assuming you are going to
2 seek to do that eventually.

3 MR. HILL: Yes, sir, I would.

4 THE COURT: I will go ahead and allow it to be
5 admitted.

6 MR. HILL: Yes, sir.

7 (PAGE 5 OF THE CRIME SCENE NOTES PREVIOUSLY MARKED
8 STATE'S EXHIBIT NUMBER 130 FOR IDENTIFICATION WAS ADMITTED
9 INTO EVIDENCE.)

10 Q. Now, Miss Schoene, I have State's Exhibit Number
11 130, which you've testified is a copy of the notes prepared by
12 you and your assistant, Miss Creel. And I'm interested for
13 the first part of my questioning, where it says money drawer,
14 do you see that in writing on your notes?

15 A. I do.

16 Q. I want to show you also a picture at this time of
17 State's Exhibit 29. Would you look at that and compare that
18 photograph to the notes that are in your file and tell us
19 first of all, what are the notes recorded as to the money
20 drawer there?

21 A. You want the notes first?

22 Q. Yes. If you would read the notes, please.

23 A. The notes on Page 5 say money drawer. No bills.
24 All types of coins. Several sets of keys. Exxon card.
25 Envelope containing two checks. There is also a receipt book.
26 Last receipt to Diana Moore on 7-16-96. Late charges 558.
27 Garnishment fee 15. Court costs 44. The number with a money
28 sign 162. And in quotes on a -- capital A-slash-C paid by
29 justice court.

1 Q. And that was in the receipt book; is that right?

2 A. Yes.

3 Q. Now I want to direct your attention, if I may, just
4 to the top part where it says money drawer.

5 A. Okay.

6 Q. Did, did you or your associate, Miss Creel, since
7 determine that there was any currency, any U.S. currency,
8 bills in the drawer?

9 A. There were no paper bills in the drawer.

10 Q. Okay. And did you have a photograph, S-29, of the
11 drawer available to look at there?

12 A. State's Exhibit 29 is a photograph that shows the
13 contents of the cash drawer, the money drawer, that I had just
14 called out, read out loud to you.

15 Q. Okay. And is that photograph consistent with the
16 notes up there on the money drawer section?

17 A. Yes, it is.

18 Q. Okay. And the .01. , .05 , .1 and .25 does that look
19 like indications for pennies, nickels dimes and quarters?

20 A. Yes.

21 MR. HILL: Your Honor, at this time I would ask
22 that State's Exhibit 130 be --

23 It's already in. I'm sorry. Pardon me just one
24 minute, Your Honor.

25 Your Honor, I would simply ask that State's 129 and
26 130 be published to the jury, and we would have no
27 further questions.

28 THE COURT: Miss Schoene, I assume is finally
29 excused.

In Open Court

1 MRS. STEINER: Your Honor, may the two
2 documents that were admitted by the defendant during the
3 examination also be published?

4 THE COURT: They can all four be handed over
5 there.

6 Miss Schoene is finally excused?

7 MR. HILL: Yes, sir.

8 THE COURT: You may go. You are excused.

9 THE WITNESS: I appreciate that.

10 THE COURT: I'm going to want the jury to step
11 in the jury room for just a couple of minutes. I guess
12 they can take those exhibits and look at them back in the
13 jury room. They were going to be published to them while
14 they were sitting here.

15 MRS. STEINER: That would be fine.

16 Should they be instructed the fact that they take
17 them back has no significance?

18 THE COURT: Ladies and gentlemen, I mean, I am
19 going to talk to the lawyers a couple of minutes. These
20 were items that have just been admitted that I was going
21 to let be handed to you. I am just going to let you look
22 at them back there. But don't place any more
23 significance on them just because I am letting you look
24 at them in the jury room instead of while you are sitting
25 here. Because all the evidence that is going to be
26 admitted in -- here during the course of trial will be
27 things you are going to consider and look at. You know,
28 you should look and weigh all the evidence equally. So
29 don't take any inference just because you are looking at

Jury Out

1 them back here as opposed to while you are sitting here.

2 If you will, step back there for a few minutes,
3 please.

4 (THE JURY LEFT THE COURTROOM.)

5 THE COURT: Counsel, I wanted -- I am going to
6 recess for the day, but I've got a -- I've got a note
7 from one of the jurors that was asking if they were
8 prohibited from watching the NBA finals and/or a portable
9 DVD player hooked up to the t.v. to watch movies.

10 It is my view that if I instruct them not to watch
11 any Mississippi television stations, they would be safe.
12 But I -- you know, I want input. And I don't know
13 whether -- I think most of the things in Grenada come out
14 of -- come out of Memphis but --

15 MRS. STEINER: Aren't the NBA finals on ESPN?

16 THE COURT: I'm not --

17 MR. CARTER: No. It's on ABC, isn't it?

18 THE COURT: I have been way to busy to even
19 think about it. I know I don't have any ABC affiliated
20 stations that has ever made any media request to be here.
21 And as I say, I don't know what to tell the jury, but I
22 am -- I felt like out of courtesy to them, I would give
23 them a response to what they were asking.

24 THE BAILIFF: It is on the news though.

25 MRS. STEINER: But, Your Honor, if it is a
26 local news outlet, the problem is that they can in ads
27 during the game be promo-ing upcoming -- I believe, there
28 is news after the game tonight; is that not correct? And
29 I'm concerned. I suppose if the bailiff were physically

Jury Out

1 present and every time there was a break he or she
2 flipped it off and timed it and put it back on that would
3 prevent that. But I am concerned --

4 THE COURT: I will just instruct that as long
5 as -- maybe they can all get in a group and watch the
6 game together or t.v. together, as long as the bailiff is
7 present with them when they are doing that. So that --

8 MRS. STEINER: With very specific instructions
9 that at no time anything other than the game is showing
10 should the jurors be able to watch it.

11 THE COURT: Get my night bailiffs in here. I
12 am going to tell them that before I tell them that,
13 because I don't want any confusion.

14 MRS. STEINER: And, Your Honor, I think it
15 should be in a common room with one television set.

16 THE COURT: Well, I mean we have got two
17 bailiffs. It would be impossible to have a bailiff in
18 everybody's room. So that is what I am going to...

19 MRS. STEINER: And, Your Honor, as well, I have
20 no problem with allowing televisions that are not
21 otherwise hooked up to cable or reception to have a DVD
22 player. But I think, again, that the bailiffs should
23 keep custody of all the movies and videos and make sure
24 that, you know, they don't just have a bunch of disks
25 sitting around in their own rooms and that they can check
26 them out from the bailiff one at a time to watch.

27 MR. EVANS: And, Your Honor, and the Court may
28 be ready to break anyway. We have got a short witness
29 left.

Jury Out

1 THE COURT: Who is that?

2 MR. EVANS: Patricia Hallmon. She would not be
3 very long.

4 THE COURT: Like how long?

5 MR. CARTER: She is going to be longer than
6 her, if I have anything to do with it, Your Honor.

7 MR. EVANS: That is her whole transcript from
8 last time, Your Honor.

9 THE COURT: Well, it isn't going to hurt her to
10 be back tomorrow, if it is very long.

11 (THE NIGHT TIME BAILIFFS ENTERED THE COURTROOM AND
12 APPROACHED THE BENCH.)

13 Anyway, I was going to -- I had -- the jury
14 requested if they could watch NBA finals on t.v. I will
15 allow, I mean, you know, if they all want to congregate
16 in one room together and watch something together at the
17 same time, that will be permissible. You could have the
18 cord to the television connected to one of them in a
19 particular room or even one of your rooms. But if there
20 comes any promo for news or for anything that's local,
21 immediately turn the channel until that is off. So
22 again, they can only do that if they are with y'all and
23 under your direct supervision and your watch.

24 THE BAILIFF: Yes, sir.

25 THE COURT: Otherwise, they could not.

26 THE BAILIFF: Yes, sir.

27 THE COURT: And they asked about a possible --
28 if they could watch, have portable DVD player. If they
29 have got a portable DVD player that they want to hook up

1 to the t.v., I do not have any problems with that. I
2 would want you before they played a movie to look at it.
3 I mean I don't think there is any chance that anybody
4 would have a video of any proceedings that they brought
5 with them. They certainly would have gone against my
6 instructions in doing that. But before anybody starts
7 looking at a DVD, I want you to look at it to make sure
8 it is whatever the outside of the package purports it to
9 be.

10 THE BAILIFF: Okay.

11 THE COURT: And I am going to tell the jury
12 that very same thing, but I wanted to tell y'all before I
13 told them.

14 THE BAILIFF: Yes, sir.

15 THE COURT: And we are -- I am going to call
16 them back out and recess -- you know, we'll recess for
17 the day. So y'all can be, I guess, getting the van ready
18 to load them up.

19 THE BAILIFF: Yes, sir.

20 THE COURT: You can bring them in here.

21 (THE JURY RETURNED TO THE COURTROOM.)

22 THE COURT: Ladies and gentlemen, we are going
23 to recess for the day. I did receive a note from one of
24 you asking if you could watch the NBA finals or watch
25 something on t.v.

26 What I'm going to do, and what I have already
27 instructed the bailiffs to do, is if a bailiff is present
28 and y'all -- you know, you might have to end up
29 congregating all in one room or two rooms because we have

1 just got two bailiffs. But if you want to watch
2 television, as long as there is a bailiff present in the
3 room with you, you can do that. They will, you know,
4 have to be there. And you know, if some news item were
5 to flash up they would immediately -- have been
6 instructed to change the channel where that you could not
7 see any or be exposed to any possible media about the
8 case.

9 So again, you know, I have already advised the
10 bailiffs of that. And also, I have a request about the
11 possibility of watching a movie, if you had a portable
12 DVD player. I will allow portable DVD players to be
13 connected to a television. But before any movie was
14 watched, I would want you to show that movie to the
15 bailiff to make sure that it was what it purported to
16 be. And I am not saying the bailiff sits there in the
17 entire movie watching it with you.

18 I am just saying I would want them to look at it and
19 make sure that it, you know, didn't have -- I mean I dare
20 say I'm not expecting anybody to try to slip something to
21 you that would be purporting to be a DVD and be something
22 else.

23 But also, there is a reason you are sequestered, and
24 that is to make sure you don't have any outside
25 influences. So, you know, before any movie was watched,
26 it would have to at least -- be at least, you know,
27 previewed by the bailiff to make sure that it was what it
28 was purporting to be.

29 And are y'all still looking at those exhibits that

1 was...

2 As soon as you get through looking at those last
3 ones, if you will pass them to the bailiff. And we will
4 be recessing for the evening. And we will be holding
5 court tomorrow. I am not going to ask you to sit around
6 all weekend and just -- without continuing court, because
7 I know that you are probably wanting to move things along
8 at a reasonably, orderly fashion. And so we will be
9 recessed until 9:00 in the morning.

10 As soon as you get through with that...

11 I'll have you step back in the jury room until they
12 do have the van ready to transport you. And I hope you
13 have a good evening.

14 And I hope whoever you're pulling for wins tonight.

15 And we'll see you in the morning.

16 (THE PROCEEDING ON THIS DATE WAS CONCLUDED.)

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HAYNE - DIRECT

1 (THE FOLLOWING PROCEEDINGS WERE HAD IN
2 OPEN COURT ON JUNE 12, 2010, WITH THE
3 COURT, THE COURT REPORTER, ALL COUNSEL FOR
4 BOTH PARTIES, THE DEFENDANT, AND THE
5 CIRCUIT COURT CLERK PRESENT, TO-WIT:)

6 **BY THE COURT:** Be seated, please. Now,
7 before I have the jury brought in, the bailiff
8 advised me one of them -- wherever they ate
9 last night, there was apparently shellfish on
10 the grill or something. One of them had a
11 shellfish reaction, and she's wearing shades
12 today because, I guess, her face swelled up a
13 little bit and I think a doctor is going to
14 come sometime this morning and administer some
15 kind of shot. So when that happens -- I
16 inquired as to the status of the juror and was
17 told that she was fine and able to go forward
18 today, but we'll recess at some point when she
19 needs that shot to be administered. With that,
20 we'll resume, and if you'll bring the jury in.

21 (THE FOLLOWING PROCEEDINGS WERE HAD IN
22 OPEN COURT WITH THE JURY PRESENT, TO-WIT:)

23 **BY THE COURT:** Morning, ladies and
24 gentlemen. The Court will come back to order.
25 And who would the State's next witness be?

26 **BY MR. EVANS:** Dr. Steven Hayne.

27 **BY THE COURT:** If you could come forward
28 and raise your right hand and take the oath,
29 please.

HAYNE - DIRECT EXAMINATION

1 **BY THE WITNESS:** Yes, Your Honor.

2 **BY THE COURT:** Do you solemnly swear or
3 affirm that the testimony you give in this case
4 will be the truth, the whole truth and nothing
5 but the truth, so help you God?

6 **BY THE WITNESS:** I do, your Honor.

7 **BY THE COURT:** Come around, please, and
8 have a seat.

9 **BY THE WITNESS:** Thank you, sir.

10 **BY THE COURT:** Will you state your name
11 for the record, please.

12 **BY THE WITNESS:** Steven Timothy Hayne,
13 Your Honor.

14 **BY THE COURT:** You may proceed.

15 **BY MR. EVANS:** Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 **BY MR. EVANS:**

18 **Q** Good morning, Dr. Hayne.

19 **A** Good morning, Counselor.

20 **Q** Dr. Hayne, would you state for the ladies
21 and gentlemen of the jury a little bit about what
22 your educational background is?

23 **A** I graduated from medical school at Brown
24 University in Providence, Rhode Island. I did my
25 pathology training at Letterman Army Medical Center
26 at the Presidio in San Francisco. Worked at
27 different institutions in the San Francisco bay area
28 including Irwin Memorial Blood Bank, the Children's
29 Hospital in San Francisco, California, University of

HAYNE - DIRECT EXAMINATION

1 California Moffitt Hospital of San Francisco, the
2 medical examiners office of the city and county of
3 San Francisco, the 6th Army Medical Laboratory, as
4 well as others. And the last six months, I spent in
5 nuclear medicine.

6 Q Okay. And do you have an occasion in your
7 profession to perform forensic autopsies?

8 A Yes, sir.

9 Q And what, other than your educational
10 background, has prepared you for that?

11 A Well, that's -- the primary training is
12 education and formal training, but also one is
13 required to maintain ongoing education each year for
14 licensure.

15 Q Yes, sir. As far as experience, what is
16 your experience in performing autopsies?

17 A Well, I've been practicing for some 35
18 years doing that, sir.

19 BY MR. EVANS: Your Honor, I would offer
20 Dr. Hayne as an expert in the field of forensic
21 pathology.

22 BY MRS. STEINER: We have no objection.

23 BY THE COURT: I'll allow him to testify
24 as an expert in that field.

25 BY MR. EVANS:

26 Q Dr. Hayne, did you have an occasion to
27 perform some autopsies in relationship to this case?

28 A I did, sir. I believe there are four
29 cases involving a postmortem examination or medical

HAYNE - DIRECT EXAMINATION

1 legal autopsies.

2 Q Do you have any certain order that you
3 would rather proceed with the autopsies in?

4 A No, sir. I defer to you.

5 Q Okay. Let's start with Ms. Bertha Tardy.

6 A Yes, Counselor.

7 Q When did you see Ms. Bertha Tardy?

8 A The postmortem examination started on the
9 16th of July, year 1996, and the autopsy started at
10 11 p.m., sir.

11 Q Would you tell the ladies and gentlemen of
12 the jury a little bit about what you do
13 preliminarily on starting an autopsy??

14 A There are a series of steps involving a
15 postmortem examination, some of which are required
16 by the attorney general's office of this state, but
17 also different national standards by different
18 organizations -- the Center for Disease Control, the
19 Armed Forces and Group Pathology, the National
20 Association of Medical Examiners plus others -- but
21 the different protocols are essentially the same.

22 The series of steps we start to
23 include the first step, which is communication with
24 the submitting officer. In this particular case, it
25 was the deputy county coroner/medical
26 examiner/investigator Skeeter Robinson that notified
27 me and that he also requested that they be done that
28 night. That's the reason they were late in starting
29 these cases. And he gave the basic summary of his

HAYNE - DIRECT EXAMINATION

1 impression of what had occurred.

2 The second step was an external
3 examination, looking at the external surface of the
4 body to see if there's evidence of disease or injury
5 that may have participated in the death of this
6 individual, recording those photographically as well
7 as an illustration body diagram sheets and
8 ultimately in written form. There was collection of
9 evidence appropriate to that step of the
10 investigation.

11 It's followed by the third step,
12 which is the internal examination, opening the body
13 cavities, looking at the different body organs.
14 Again, looking to see if there's evidence to see if
15 there's evidence of disease or injury that may have
16 participated in the death of this individual,
17 collection of evidence appropriate to that step of
18 the investigation. The fourth step is to discuss
19 the case with the submitting officer in this case,
20 Mr. Robinson, to see if there are differences
21 between the scene investigation and the autopsy
22 findings, and if there are, can they be explained or
23 not explained.

24 There's a series of additional steps.
25 And ultimately, in compliance with the attorney
26 general's rulings of this state, one must generate a
27 formal written protocol, summarizing the steps that
28 were taken, the observations and coming to
29 conclusions as to the cause and manner of death.

HAYNE - DIRECT EXAMINATION

1 The cause of death is the medical reason that person
2 died, and there are literally thousands of
3 possibilities. The manner of death is the
4 classification of death and only six possibilities
5 from which to choose, and they would include
6 suicide, accident, homicide, natural, pending in
7 some cases until additional information is gathered
8 and some cases undetermined when one cannot come to
9 a final conclusion. There are certain cases where
10 the cause of death one cannot come to a final
11 conclusion and those are also ruled undetermined.
12 And each of those steps was taken in the performance
13 of the postmortem examination of the remains of
14 Bertha Tardy.

15 Q All right, sir. And to keep from going
16 back through that on all of them, were those steps
17 taken on all four of the deceased?

18 A There were, sir.

19 Q All right. I want to start with, again,
20 on Ms. Bertha Tardy. On your external examination
21 of Ms. Tardy, what did you observe?

22 A The significant finding was a single
23 gunshot wound, sir. That entrance gunshot wound was
24 located over the right side of the head near the
25 right ear, slightly above it at a point three inches
26 below the top of the head, three and one half inches
27 forward from the back of the head. And if I point
28 to myself, Counselor?

29 Q Yes, sir.

HAYNE - DIRECT EXAMINATION

1 **A** The entrance gunshot wound was located
2 approximately here. It was ovoid, not quite
3 circular, measuring a half inch in greatest
4 diameter. There were certain findings that were not
5 present. Tattooing, smudging, flame injury, powder
6 residue, indicating that the weapon when fired was
7 no closer than two to two and a half feet from the
8 decedent when the weapon was discharged. How much
9 greater than that, I do not know. The angles of
10 trajectory were subsequently determined to be going
11 from right to left, it was going toward the front of
12 the head at approximately 40 to 50 degrees, and it
13 was going slightly down at approximately five to ten
14 degrees. The projectile -- again, if I point to
15 myself?

16 **Q** Yes, sir.

17 **A** Exited adjacent to the far side of the
18 left eye. There was a tear in the skin that
19 measured approximately one inch in greatest
20 dimension where the bullet exited the head. That
21 point was found to be four inches below the top of
22 the head, two and one half inches to the left of the
23 middle of the face.

24 **Q** All right. So this was a
25 through-and-through wound?

26 **A** It was through and through or medically, a
27 perforating gunshot wound and also described it as a
28 distant gunshot wound. That is, the weapon was no
29 closer than two to two and a half feet from the

HAYNE - DIRECT EXAMINATION

1 decedent when the weapon was fired.

2 **Q** When you did your internal examination,
3 were you able to determine what areas the bullet
4 passed through?

5 **A** I was, sir.

6 **Q** And what were those areas?

7 **A** The significant injuries included the
8 skull itself. There were fractures at the entrance
9 and exit wound, as well as additional fractures. It
10 was also, and most significantly, there was a gaping
11 gunshot wound through the large cerebral hemisphere
12 on the top part of the brain, including the right
13 and the left cerebral hemispheres. The wound track
14 measured approximately one inch in diameter
15 producing a gaping wound through the brain itself.
16 There was also bleeding around the surface of the
17 brain between the inner surface of the skull and
18 outer surface of the brain.

19 **Q** So the bullet went through both the right
20 and left cerebral hemispheres?

21 **A** Yes, sir.

22 **Q** And did you prepare -- you said one of the
23 steps was to prepare photographs and diagrams. Did
24 you do that in this case?

25 **A** I did, Counselor.

26 **BY MRS. STEINER:** Your Honor, to make sure
27 I'm on the same page with the State.

28 **BY THE COURT:** (Nodding).

29 (STATE'S COUNSEL SHOWS PHOTOGRAPHS TO

HAYNE - DIRECT EXAMINATION

1 DEFENSE COUNSEL)

2 BY MR. EVANS:

3 Q Dr. Hayne, I want to hand you Exhibits 57,
4 58, 59 and 73. I'll ask you if you would examine
5 these, please, sir.

6 A Yes, Counselor.

7 Q What are they?

8 A State's 73 includes five body illustration
9 diagram sheets documenting the entrance/exit gunshot
10 wound sites as well as the entrance to the cranial
11 vault at the base of the skull and the brain. There
12 is also the ME-17 form, which is the request for
13 postmortem examination attached to State's 73.

14 State's 57 shows the exit gunshot
15 wound adjacent to the far side of the left eye of
16 Ms. Tardy. There's also a bruise located around the
17 left eye and a smaller bruise located around the
18 right eye. Those were a product of the gunshot
19 wound. State's 58 shows the entrance gunshot wound
20 to the right side of the head located slightly above
21 the right ear. State's 58 also shows the entrance
22 gunshot wound above the right ear, and there is a
23 ABFO calibrated ruler placed adjacent to the gunshot
24 wound for documentation of size, sir.

25 Q Dr. Hayne, did you prepare these
26 photographs and diagrams?

27 A I did, sir.

28 Q And these truly and accurately depict what
29 you found with Ms. Bertha Tardy?

HAYNE - DIRECT EXAMINATION

1 **A** They do, sir.

2 **BY MR. EVANS:** I would offer these into
3 evidence, Your Honor.

4 **BY MRS. STEINER:** Your Honor, I believe
5 they have already been. No objection.

6 **BY THE COURT:** I'll allow them to be
7 admitted without objection.

8 (STATE'S EXHIBIT NO. 73 WAS RECEIVED
9 INTO EVIDENCE.)

10 **BY MR. EVANS:**

11 **Q** Dr. Hayne, were you able to determine from
12 your examination the manner and cause of death of
13 Ms. Bertha Tardy?

14 **A** I was, Counselor.

15 **Q** In addition to your diagrams, I believe
16 you have brought some mannequins here today; is that
17 correct?

18 **A** I did, sir.

19 **Q** Would those aid you in being able to show
20 the track of the wound to Ms. Tardy?

21 **A** It gives a three-dimensional aspect to the
22 wound track, sir.

23 **BY MR. EVANS:** Your Honor, may I have the
24 witness step down?

25 **BY THE COURT:** You may.

26 (WITNESS STANDS IN FRONT OF JURY)

27 **BY MR. EVANS:**

28 **Q** Dr. Hayne, I'll hand you this mannequin
29 for demonstration purposes. Would you tell us what

HAYNE - DIRECT EXAMINATION

1 that mannequin is to represent?

2 **A** It represents the decedent, Bertha Tardy,
3 sir.

4 **Q** Would you show the ladies and gentlemen of
5 the jury the path of the bullet that struck her and
6 where it exited?

7 **A** The entrance gunshot wound was located
8 slightly above the right ear. The exit gunshot
9 wound was located on the far side of the left eye.
10 As you can see, the trajectory is markedly forward,
11 approximately 40 to 50 degrees and slightly down, at
12 approximately five to ten degrees. And, of course,
13 it's traveling from right to the left.

14 **Q** All right. Thank you, sir.

15 **A** Yes, sir.

16 **Q** You may take your seat again.

17 **BY MR. EVANS:** Your Honor, I'd like to
18 pass these photographs to the jury while I
19 proceed.

20 **BY THE COURT:** You can hand them to the
21 bailiff and he may do that.

22 (PHOTOGRAPHS ARE PUBLISHED TO THE JURY)

23 **BY MR. EVANS:**

24 **Q** All right. Dr. Hayne, I would like you
25 next to tell the ladies and gentlemen of the jury
26 about the autopsy that you performed on Ms. Carmen
27 Rigby.

28 **A** Yes, Counselor. As to the external and
29 internal findings, sir?

HAYNE - DIRECT EXAMINATION

1 **Q** Yes, sir.

2 **A** The most significant finding, Counselor,
3 was a gunshot wound located to the back of the head
4 found at a point three inches below the top of the
5 head, one inch to the right. Again, if I may point
6 to myself.

7 **Q** Yes, sir.

8 **A** Located approximately here on the back of
9 the head. That particular projectile fragmented
10 when it struck the skull. One small fragment
11 traveled forward, down and to the right traveling
12 across the scalp. Again, if I may point to myself,
13 and there was a semicircular exit wound located on
14 the right side of the head behind the right ear
15 two inches behind the right ear, approximately three
16 and a half inches below the top of the head.

17 The larger fragment of the bullet
18 entered the head traveling to the right at
19 approximately six degrees and slightly downward at
20 only approximately ten degrees. The projectile
21 produced extensive lacerations of the back of the
22 right cerebral hemisphere as it tears the brain,
23 measuring up to approximately one and one half
24 inches individually.

25 **Q** All right.

26 **A** In addition, there was a large subdural
27 hematoma; that is, bleeding between the inner
28 surface of the skull and the outer surface of the
29 brain. Of course, there were fractures to the skull

HAYNE - DIRECT EXAMINATION

1 predominantly located around the occipital bone;
2 that is, the bone on the right back of the skull.

3 Q And, again, in this case, did you prepare
4 photographs and diagrams to demonstrate your
5 findings?

6 A I did, sir, in a like manner as we
7 discussed in the first postmortem examination case.

8 Q I'll hand you Exhibits 74, 68, 61, 62, 63
9 and 64, Dr. Hayne, and ask you if you'll take a
10 minute and look at those exhibits. I'm sorry. I
11 said 68; it's 86.

12 A Yes, Counselor.

13 Q Dr. Hayne, first starting with the
14 photographs, would you tell us what they show?

15 A State's 64 shows the exit gunshot wound
16 near the right ear. State's 63 shows the entrance
17 gunshot wound on the back of the head. State's 61
18 shows the entrance gunshot wound as well as the exit
19 gunshot wound which was produced only by a fragment
20 of the bullet. The remaining part of the bullet
21 remained within the head of Ms. Rigby. State's 62
22 shows one of several superficial lesions traumatic
23 in origin. This consisting of a small bruise
24 measuring approximately an inch and a third located
25 on the inner surface of the right forearm. There
26 were several other injuries that were
27 noncontributory to the death.

28 Q All right, sir. And the diagram that you
29 have up there, what is it?

HAYNE - DIRECT EXAMINATION

1 **A** There are a total of four diagrams.

2 **Q** What exhibit number is it?

3 **A** I'm sorry. It's State's 74.

4 **Q** Okay. 74?

5 **A** Yes, sir.

6 **Q** All right.

7 **A** And it shows, as I have indicated, there
8 are four pieces of paper. One shows the entrance
9 wound, one shows the exit wound, the third shows the
10 injury to the brain and the fourth one shows
11 injuries to the cranial vault.

12 **Q** And do those photographs and diagrams
13 truly depict what you found in your autopsy of
14 Ms. Carmen Rigby?

15 **A** They do, sir.

16 **Q** What is the other exhibit that I asked you
17 to look at?

18 **A** State's 86 consists of several items, one
19 of which is an evidence bag, and it's very difficult
20 to read the information on there. It's been
21 smeared. Inside it is a plastic tube, and I can
22 read the name Rigby on it. And, again, the ink has
23 been smeared. Located within the sealed tube is a
24 piece of paper and I can see a bullet fragment
25 located there, Counselor.

26 **Q** Do you know what that exhibit is?

27 **A** Yes, sir.

28 **Q** What is it?

29 **A** It's evidence that I recovered during the

HAYNE - DIRECT EXAMINATION

1 course of the postmortem examination and consisting
2 of the bullet recovered from the brain or a bullet
3 fragment. The bullet was washed, dried, wrapped in
4 paper, placed in the plastic tube, sealed, labeled,
5 placed in the evidence container, sealed and labeled
6 and the chain of custody was initiated for delivery
7 to the firearms division of the Mississippi Crime
8 Lab in Jackson.

9 Q And this is the bullet that you removed
10 from the head of Ms. Carmen Rigby?

11 A The bullet fragment, yes, sir.

12 BY MR. EVANS: Your Honor, I offer this
13 exhibit and the diagram into evidence.

14 BY MRS. STEINER: No objection, Your
15 Honor.

16 BY THE COURT: I'll allow it to be
17 admitted. I just want to be clear: These
18 previous photographs, I think y'all apparently
19 had agreed ahead of time on preadmission of
20 some evidence?

21 BY MRS. STEINER: Yes, Your Honor. The
22 photographs had been preadmitted. I believe
23 the diagrams too.

24 BY THE COURT: I think I just need to make
25 a ruling at this time that any items of
26 evidence that both sides agreed to ahead of
27 time will be admitted. Because I don't think
28 that was actually -- y'all agreed among
29 yourselves but you didn't ever notify the

HAYNE - DIRECT EXAMINATION

1 Court. And so just to get that all clear, for
2 the record, I will allow any evidence that both
3 sides agreed to ahead of time to be admitted.

4 BY MR. EVANS: Thank you, Your Honor. And
5 this particular autopsy, those photographs are
6 61, 62, 63 and 64.

7 BY THE COURT: That will be fine.

8 (STATE'S EXHIBIT NOS. 61, 62, 63, 64,
9 74 and 86 WERE RECEIVED INTO EVIDENCE.)

10 BY MR. EVANS: Your Honor, as I proceed, I
11 would like to ask that the bailiff pass these
12 photographs to the jury, also.

13 BY THE COURT: He may do so.

14 (PHOTOGRAPHS ARE PUBLISHED TO THE JURY)

15 BY MR. EVANS:

16 Q And Exhibit 68 -- 86. I did it again.
17 All right. Dr. Hayne, were you able to determine
18 the manner and cause of death of Ms. Carmen Rigby?

19 A Yes, Counselor.

20 Q And what was that?

21 A I ruled Ms. Rigby died from a gunshot
22 wound to the back of the head, distant and
23 penetrating, and the underlying cause of death was
24 homicide.

25 Q And do you also have a mannequin that
26 would help you to show the jury the angle and path
27 of the bullet that struck her?

28 A I did construct that, Counselor.

29 BY MR. EVANS: May the witness step down,

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1 Your Honor?

2 BY THE COURT: He may.

3 (THE WITNESS STANDS IN FRONT OF THE
4 JURY)

5 BY MR. EVANS:

6 Q Is this the one that you have prepared
7 Dr. Hayne?

8 A It is, sir.

9 Q Would you point out to the ladies and
10 gentlemen of the jury where she was struck and the
11 path that the bullet took?

12 A The bullet struck the decedent in the back
13 of the head, three inches below the top, one inch to
14 the right. And the bullet, as you can see, is
15 traveling markedly to the right, going from back to
16 front and to the right, going to the right at
17 approximately 60 degrees slightly down. One exit
18 wound was located approximately here behind the
19 right ear and three and one half inches below the
20 top of the head, two inches behind the ear. And
21 that was a fragment of the bullet that sheared off
22 when it struck the skull and traveled underneath the
23 scalp and then exited the scalp. The preponderance
24 of the bullet entered the cranial vault and was
25 recovered inside the brain, sir.

26 BY MR. EVANS: Thank you, sir. You may
27 take your seat.

28 (THE WITNESS RETURNS TO THE STAND)

29 Q Dr. Hayne, I would next like for you to

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1 look at the autopsy that you performed on Mr. Robert
2 Golden.

3 **A** Yes, Counselor.

4 **Q** Would you tell the ladies and gentlemen of
5 the jury what you -- your findings as far as the
6 external and internal examination of Mr. Robert
7 Golden were?

8 **A** The significant findings, Counselor,
9 included two gunshot wounds, both of which were
10 lethal, would produce death independent of the other
11 gunshot wound. There was a near-contact gunshot
12 wound located on the left side of the head actually
13 striking the ear, front part of the left ear and
14 that was located at a point five inches below the
15 top of the head, four inches forward to the back.
16 Again, if I may point to myself, Counselor.

17 **Q** Yes, sir.

18 **A** Located approximately here. There was
19 tattooing or unburnt fragments of powder that
20 extended around the entrance gunshot wound measuring
21 five inches on the vertical, or up down axis, and
22 four inches on the side axis, indicating that the
23 weapon was in close proximity to the decedent's head
24 when the weapon was fired. The bullet was noted to
25 go through the ear, entering the cranial vault
26 traveling to the right, also going slightly upward
27 and then to the back at approximately ten to 20
28 degrees. The bullet traveled through the cranial
29 vault of the skull, went through the brain and

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1 subsequently exited on the right side of the head.

2 And, again, if I may point to myself, Counselor.

3 Q Yes, sir.

4 A It was located behind the right ear
5 located at a point four inches below the top of the
6 head, one and one half inches forward from the back
7 of the head. The bullet went through the brain,
8 producing a wound track again of similar size to the
9 other wounds discovered in the first two autopsies
10 measuring approximately one inch in diameter,
11 producing massive injuries to the brain and also
12 bleeding between the inner surface of the brain --
13 the inner surface of the skull and outer surface of
14 the brain, producing what is medically called
15 cranial cerebral trauma; that is, a fracture to the
16 skull and injury to the brain. No bullet was
17 recovered from this gunshot wound as it was an exit
18 gunshot wound.

19 Q All right, sir. And the other wound to
20 Mr. Golden?

21 A The second gunshot wound consisted of a
22 lethal gunshot wound that was located on the top of
23 the head of the decedent and near the midline at a
24 point two and one half inches forward from the back
25 of the head. That particular gunshot wound was
26 noted to travel downward at approximately 30 to 40
27 degrees. It also was traveling to the right at
28 approximately ten to 15 degrees. Again, if I may
29 point to myself.

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1 **Q** Yes, sir.

2 **A** The entrance gunshot wound was located
3 approximately here on the midline traveling downward
4 and to the right. That bullet went through the
5 cranial vault, fracturing the skull after it went
6 through the scalp and then went through the brain,
7 subsequently fractured the base of the skull. A
8 fragmented bullet was recovered from that wound
9 track and, of course, it was massive trauma to the
10 brain producing death. As I indicated earlier,
11 either gunshot wound would have immediately
12 incapacitated this individual. And either gunshot
13 wound independent of the other gunshot wound would
14 produce death.

15 **Q** And, again, in the case, did you also
16 produce photographs and diagrams to help demonstrate
17 your findings?

18 **A** I did, sir.

19 **Q** And you've stated that you recovered a
20 projectile or a fragment of a projectile from one of
21 wounds of Mr. Golden, also?

22 **A** Yes, sir. That was the gunshot wound to
23 the top of the head.

24 **Q** Did you preserve it?

25 **A** Yes, sir. It was preserved in a like
26 manner to the previously discussed evidence; that
27 is, the bullet was washed, dried, wrapped in paper,
28 placed in a plastic container, labeled and sealed,
29 place in an evidence bag, labeled and sealed and

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1 then submitted to the Mississippi Crime Lab in
2 Jackson under chain of custody to the firearms
3 division.

4 Q Dr. Hayne, I want to hand you some
5 exhibits again. I'll hand you -- these may not be
6 in order but -- let's see -- 65, 66, 67, 68, 69, 70
7 and 71.

8 BY MR. EVANS: Which are already in
9 evidence by agreement, Your Honor.

10 BY MR. EVANS:

11 Q Then I will hand you State's 75A for
12 identification, State's 75 for identification and
13 State's 87 for identification. I'll ask you to
14 examine those if you would, please, sir.

15 A Yes, Counselor.

16 Q Can you tell what those exhibits are?

17 A Yes, I can, sir.

18 Q And the photographs that you have in your
19 hand, what are they?

20 A They are photographs taken of the decedent
21 during the course of the postmortem examination
22 after the body had been washed and dried, sir.

23 Q Do they truly and accurately depict your
24 findings?

25 A They do, sir.

26 Q The diagrams -- I noticed there are two
27 diagrams in this case. What is the significance of
28 the two diagrams, two sets of diagrams?

29 A Well, they were separated, one

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1 representing the gunshot wound to the top of the
2 head, one representing the gunshot wound to the left
3 side of the head.

4 Q So each gunshot wound, you have
5 specifically diagrammed in separate sets; is that
6 correct?

7 A Yes, sir. They have been isolated there.

8 Q And do those diagrams truly and accurately
9 depict each of those two gunshot wounds?

10 A They do, sir.

11 Q And the plastic bag that's in front of
12 you, what is that?

13 A It is an evidence bag, and it's difficult
14 to read some of the writing on it. I can see Robert
15 Golden, and some of it's worn off. Inside the
16 evidence bag, there's a fragmented bullet including
17 a lead core and copper jacket. And I can read part
18 of it. Part of it looks like Robert Golden.

19 Q Did you --

20 A And that would be consistent with what I
21 placed on both the bag and the tube before they were
22 sealed.

23 Q Yes, sir. Did you prepare those exhibits?

24 A I did, sir.

25 Q And what is it?

26 A It is the bullet fragments recovered from
27 the decedent's head corresponding to the gunshot
28 wound to the top of the head.

29 Q So it's the bullet you recovered from the

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1 head of Robert Golden?

2 **A** That's correct, sir.

3 **BY MR. EVANS:** Your Honor, I offer this
4 exhibit and the two diagrams into evidence.
5 That would be Exhibits 87, 75 and 75A.

6 **BY MRS. STEINER:** No objection, Your
7 Honor.

8 **BY THE COURT:** I'll allow them to be
9 admitted without objection.

10 (STATE'S EXHIBIT NO.s 87, 75 and 75A
11 WERE RECEIVED INTO EVIDENCE.)

12 **BY MR. EVANS:** All right. Your Honor, I
13 would, again, like to pass these photographs
14 that are in evidence and Exhibit 87 for the
15 bailiff to produce to the jury.

16 **BY THE COURT:** You may.

17 (EXHIBITS ARE PUBLISHED TO THE JURY)

18 **BY MR. EVANS:**

19 **Q** Dr. Hayne, did you also prepare exhibits
20 to demonstrate to the jury the path of the bullets
21 of the two different gunshot wounds to Dr. --
22 Robert Golden?

23 **A** I did, sir.

24 **Q** Would you step down, please, sir.

25 **BY THE COURT:** You may.

26 (THE WITNESS STANDS IN FRONT OF THE
27 JURY)

28 **BY MR. EVANS:**

29 **Q** All right. If you will, take one that's

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1 marked Golden 1 first, and explain that one to the
2 jury.

3 **A** The entrance gunshot wound is located to
4 the front of the left ear, found at a point five
5 inches below the top of the head, four inches
6 forward. As you can see, the bullet is traveling
7 upward and it's also traveling slightly to the back.
8 And, of course, it's going from left to right,
9 exiting above and slightly behind the right ear.

10 **Q** That would be a through and through?

11 **A** It was a through and through or a
12 perforating gunshot wound.

13 **Q** So there was no projectile recovered from
14 it?

15 **A** No bullet was recovered.

16 **Q** All right. And the one that you've marked
17 Golden 2 -- first, on Golden 1, is that the wound
18 that you have described was a close contact wound?

19 **A** Yes, sir, it was near contact. There was
20 tattooing or unburnt powder located around the
21 entrance gunshot wound measuring in extent
22 five inches on the vertical axis, four inches on the
23 horizontal axis, indicating that the weapon was in
24 close proximity to the decedent when the weapon was
25 fired.

26 **Q** All right, sir. And now we'll go to
27 Golden 2.

28 **A** The second described wound in Mr. Golden
29 consisted of a distant penetrating gunshot wound to

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1 the top of the head. As you can see, the projectile
2 is traveling downward significantly, approximately
3 40 degrees and slightly to the right, only about
4 five to ten degrees. And that bullet entered the
5 skull but did not exit the head.

6 Q And that is the one that you recovered,
7 the projectile that the jury is passing around now?

8 A That is correct, Counselor.

9 Q All right. Thank you, Dr. Hayne.

10 A Yes, sir.

11 Q All right. Dr. Hayne, we covered the
12 cause and manner of death on Ms. Bertha Tardy and
13 Carmen Rigby. What was the cause and manner of
14 death on Robert Golden?

15 A Mr. Golden died of two gunshot wounds to
16 the head, sir. One was penetrating and one was
17 perforating, either one of which would produce death
18 producing, again, cranial cerebral trauma; that is,
19 a fracture to the skull and injuries to the brain.

20 Q All right. Dr. Hayne, let's next go to
21 Derrick Stewart. Did you find anything, I wouldn't
22 say unusual, but different about him than the other
23 three victims?

24 A Yes, Counselor.

25 Q What was that?

26 A Mr. Stewart received hospitalization care
27 for a period of approximately a week after receiving
28 a gunshot wound. There was evidence of some
29 healing. There was also evidence of medical

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1 intervention on the decedent consisting of punctured
2 sites where an intravenous catheter had been placed
3 and also the entrance and exit gunshot wound had
4 been sutured.

5 Q Okay. Did you, again, follow the same
6 steps with him as you did with other three?

7 A I did, Counselor.

8 Q Would you tell the ladies and gentlemen of
9 the jury your findings as far as the external and
10 internal examination?

11 A Yes, sir. The significant findings on the
12 external examination consisted of a lethal
13 perforating gunshot wound. I could only conclude
14 that it was not a contact gunshot wound. There
15 was -- the area had been shaved and sutured, so I
16 could not determine if it were near contact or
17 distant, only that it was not a contact gunshot
18 wound; that is, the muzzle of the weapon was not
19 placed directly against the head of Mr. Stewart when
20 the weapon was fired.

21 The entrance gunshot wound was
22 located toward the back of the head. In this case,
23 slightly to the left at a distance of approximately
24 one inch, and also three inches below the top of the
25 head. The entrance gunshot wound measured
26 approximately one half inch in greater dimension.
27 As I had indicated earlier, it had been sutured by
28 medical personnel. The bullet was noted to travel
29 from back to front going to the right at

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1 approximately five to ten degrees and slightly
2 downward at approximately five to ten degrees. The
3 bullet went through the cranial vault, through the
4 brain and subsequently exited on the forehead near
5 the intermedial surface of the right eyebrow on the
6 forehead. And that was found at a point five inches
7 below the top of the head, one and one third of an
8 inch to the right. If I may point to myself,
9 Counselor?

10 Q Yes, sir.

11 A The exit gunshot wound was located
12 approximately here. It was quite a bit bigger than
13 the entrance gunshot wound, measuring seven-eighths
14 of an inch in greater dimension. The entrance
15 gunshot wound was located on the back of the head on
16 the left side, one inch to the left of the mid-back
17 of the head.

18 Q All right. Were you able to determine a
19 manner and cause of death to Derrick Stewart?

20 A I was, sir.

21 Q What was it?

22 A Mr. Stewart died from a gunshot wound to
23 the back of the head producing cranial cerebral
24 trauma, again fracture of the skull, injuries to the
25 brain. And I ruled the manner of death homicide,
26 sir.

27 Q And, again, did you also prepare a
28 photograph and diagrams to demonstrate your
29 findings?

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1 **A** Yes, sir, in a like manner to the other
2 three cases.

3 **BY MR. EVANS:** Your Honor, I'll hand
4 Dr. Hayne Exhibits 56, 55, 54 and 53, which are
5 already in evidence by agreement.

6 **BY THE COURT:** You may.

7 **BY MR. EVANS:** And Exhibit 72 for
8 identification.

9 **BY THE COURT:** Yes.

10 **BY MR. EVANS:**

11 **Q** What is Exhibit 72?

12 **A** 72 includes five sheets of body
13 illustration diagram papers. And it includes old
14 injuries, superficial scars, medical intervention.
15 It also shows what are called subacute periosteal
16 hematomas. Those are bruises on the right and left
17 eyes, and those are the product of the gunshot
18 wound. There is some healing to those. And the
19 last two illustrations -- diagram sheets shows the
20 entrance and exit wound as well as the trajectory,
21 sir.

22 **Q** And --

23 **BY MR. EVANS:** Well, let me just save
24 myself some time, Your Honor. Your Honor, I
25 offer Exhibit 72 into evidence.

26 **BY MRS. STEINER:** No objection.

27 **BY THE COURT:** I'll allow it to be
28 admitted.

29 (STATE'S EXHIBIT NO. 72 WAS RECEIVED

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1 INTO EVIDENCE.)

2 BY MR. EVANS:

3 Q The photographs that I've just numbered,
4 would you state what they are, please?

5 A State's 53 shows the entrance gunshot
6 wound to the back of the head of the decedent
7 Mr. Stewart. It has been sutured, and this is
8 before the sutures were removed during the course of
9 the autopsy. And there was also an ABFO calibrated
10 ruler placed adjacent to the entrance gunshot wound
11 documenting the size of the entrance gunshot wound.

12 State's 54 shows a more distant view
13 of the entrance gunshot wound where one can readily
14 see the entrance gunshot wound in relationship to
15 other physical parameters of the head. And, again,
16 as I stated before, the photograph was taken before
17 the sutures were removed during the course of the
18 autopsy.

19 State's 55 is a facial view of the
20 decedent, showing the bruises around the right and
21 left eye as a product of the gunshot wound. And
22 also the exit gunshot wound located on the bottom
23 right side of the forehead involving the right
24 eyebrow, which has also been sutured, and that was
25 an image taken before the suture's removed during
26 the course of the autopsy.

27 And State's 56 is a more distant view
28 of the decedent's face, again, documenting the exit
29 gunshot wound and also shows some relationship to

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1 other body markers to the face and neck, sir.

2 **BY MR. EVANS:** Your Honor, may these
3 photographs be passed to the jury?

4 **BY THE COURT:** You may pass them to the
5 jury.

6 (PHOTOGRAPHS ARE PUBLISHED TO THE JURY)

7 **BY MR. EVANS:**

8 **Q** Dr. Hayne, did you also prepare an exhibit
9 to show -- be able to better show the jury the path
10 of the bullet to Derrick Stewart?

11 **A** I did, sir.

12 **BY MR. EVANS:** Your Honor, may the witness
13 step down?

14 **BY THE COURT:** He may.

15 (WITNESS STANDS IN FRONT OF THE JURY)

16 **BY MR. EVANS:**

17 **Q** All right. If you would, show the jury
18 the path of the bullet that struck and killed
19 Derrick Stewart.

20 **A** The entrance gunshot wound is on the back
21 of the head, slightly the left from the midline.
22 The exit gunshot wound is on the face located on the
23 lower part of the forehead including the right
24 eyebrow. And one can see the bullet is traveling
25 front to back. It's traveling slightly to the right
26 at approximately ten to five degrees, and it's
27 traveling slightly downward again at approximately
28 five to ten degrees.

29 **BY MR. EVANS:** All right. Thank you,

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1 Dr. Hayne. You may take your seat.

2 (WITNESS RETURNS TO THE STAND)

3 **BY MR. EVANS:**

4 Q And I'm pretty sure I've covered this but
5 just to make sure, the cause and manner of death of
6 Derrick Stewart?

7 A Mr. Stewart died from a gunshot wound to
8 the back of the head producing cranial cerebral
9 trauma, again fracture of the skull, injuries to the
10 brain, and I ruled the manner of death a homicide,
11 sir.

12 **BY MR. EVANS:** Your Honor, at this point,
13 we would offer the mannequin heads that
14 Dr. Hayne has used to describe the paths of the
15 bullets into evidence. And they would need to
16 be marked.

17 **BY THE COURT:** Any objection?

18 **BY MRS. STEINER:** No, Your Honor.

19 **BY THE COURT:** I'll allow them to be
20 admitted. And as they're marked into evidence,
21 I want it read into the record which is which.

22 (STATE'S EXHIBIT NOS. 131 THROUGH 135
23 WERE MARKED AND RECEIVED INTO EVIDENCE.)

24 **BY MR. EVANS:** Your Honor, for the record,
25 the one marked Ms. Tardy is Exhibit S-131. The
26 one marked Rigby is Exhibit S-132. The one
27 marked Golden 1 is Exhibit S-133. The one
28 marked Golden 2 is Exhibit S-134. And the one
29 marked Stewart is Exhibit S-135. Your Honor, I

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1 will tender Dr. Hayne.

2 **BY THE COURT:** You may proceed.

3 Mrs. Steiner, I was just advised, I think
4 the jury is ready for a break, so we'll recess
5 for ten minutes and we'll resume then.

6 **BY MRS. STEINER:** Yes, sir.

7 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
8 CONTINUED IN OPEN COURT WITH THE JURY
9 PRESENT, TO-WIT:)

10 **BY THE COURT:** Court will come back to
11 order.

12 Mrs. Steiner, you may proceed.

13 **BY MRS. STEINER:** Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 **BY MRS. STEINER:**

16 **Q** Dr. Hayne, these heads that have just come
17 into evidence, that gunshot back to front, single
18 lethal wound, that's what popular parlance would
19 call execution style?

20 **A** I'm sorry?

21 **Q** Is that back to front, single bullet, what
22 in popular parlance they call execution style?

23 **A** It can be called that, yes.

24 **Q** All right. Now, you've -- the jury's been
25 looking at a lot of photographs today in connection
26 with your testimony and yesterday that I know --
27 you've done this for 30 years, so it may not be
28 disturbing to you. But to us lay people, it's kind
29 of disturbing to look at these pictures. And I'd

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1 like to ask you some questions that will help the
2 jury understand what those pictures do and don't
3 mean.

4 **A** Yes, ma'am.

5 **Q** You used the term immediately
6 incapacitated when you talked about the wounds that
7 were suffered by all four of these individuals.
8 What does that mean?

9 **A** It means, Counselor, that I would expect
10 they would be rendered unconscious upon receiving
11 those wounds; they were such massive wounds. I
12 would -- it would be my impression, Counselor, and
13 belief that there would be no purposeful action.
14 They would be unconscious, and death would
15 subsequently --

16 **BY MR. HILL:** Your Honor, the Defendant --

17 **BY THE COURT:** I didn't realize that. We
18 need Mr. Flowers in here.

19 (THE DEFENDANT ENTERS THE COURTROOM)

20 **BY THE COURT:** And I'll ask you now to
21 just start again. I think your first question
22 was about whether it was an
23 execution-style-type killing.

24 **BY MRS. STEINER:**

25 **Q** Dr. Hayne --

26 **BY THE COURT:** Mr. Flowers missed a couple
27 of questions, and I didn't want to proceed
28 without him.

29 **BY MRS. STEINER:** Thank you.

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1 BY MRS. STEINER:

2 Q Dr. Hayne, I think the first question I
3 asked you, in the popular parlance, these single
4 shot, back to front is known as execution-style
5 killings; is that correct?

6 A It is, ma'am.

7 Q And then you were explaining for the jury,
8 you know, what immediately incapacitated meant with
9 respect to all four of these individuals.

10 A Yes, ma'am. I would expect they would be
11 rendered unconscious upon receiving the gunshot
12 wound due to severe injury to the brain that the
13 bullet produced in each of the four deaths.

14 Q All right. And so -- and with the three
15 of who were -- came to you that evening on the 16th,
16 would -- from what you know of what those wounds
17 were, would death have been effectively
18 instantaneous for those people upon receiving those
19 lethal injuries?

20 A It may not be instantaneous, but
21 unconscious is what I would expect to be
22 instantaneous. Death would result somewhere
23 thereafter. The fourth case there was
24 hospitalization. There was evidence that the brain
25 had died at an earlier phase. With modern medical
26 intervention, one can keep a patient alive for a
27 period of time even though the injuries to the brain
28 are lethal. The brain had literally died, and there
29 was evidence of what's called hypoxic

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1 encephalopathy. That means that there was -- the
2 brain had actually died. It was soft and almost
3 mushy.

4 **Q** All right. And we heard some disturbing
5 testimony that when he was first found --
6 Mr. Stewart, who was, I believe, the one who --
7 whose body survived for a week -- there was
8 respiration and a vis- -- evidence of a heartbeat.
9 He was also unconscious and doing -- and immediately
10 incapacitated from his wounds?

11 **A** Yes, ma'am. And, of course, when you
12 describe death, there's so many different criteria
13 or different forms of death. You can have traumatic
14 death, cellular death, respiratory death,
15 cardiovascular death, central nervous system death
16 and each of them may differ in time frame from each
17 other, especially if one is being given medical
18 resuscitation and support. Brain death may occur
19 first, followed by a period of time before
20 respiratory and cardiovascular death occurs.

21 **Q** Thank you, Doctor.

22 Doctor, you don't know what caused --
23 what killed these people?

24 **A** Yes, ma'am.

25 **Q** You don't know anything about nor does
26 your autopsy tell us anything about who killed them.
27 Is that correct?

28 **A** I don't -- I don't partake in that part of
29 the investigation. That's up to other individuals

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1 who do that. I do not have an opinion as to who or
2 whom fired the shots or were involved in the deaths.

3 Q And that's the case for anybody who
4 sees -- any scientist or professional who sees these
5 people?

6 A Well, in my field specifically, because we
7 do not identify the perpetrator.

8 Q Thank you.

9 BY MRS. STEINER: I have nothing further.

10 BY THE COURT: May this witness be excused
11 finally?

12 BY MR. EVANS: Yes, Your Honor. We would
13 ask that he be finally excused.

14 BY THE COURT: Dr. Hayne, you may step
15 down, and you're finally excused.

16 BY THE WITNESS: Thank you, Your Honor.

17 BY MR. EVANS: Patricia Hallmon would be
18 next.

19 BY THE COURT: If you would, raise your
20 right hand, please, and take the oath. Do you
21 solemnly swear or affirm that the testimony you
22 give in this case to be the truth, the whole
23 truth and nothing but the truth, so help you
24 God?

25 BY THE WITNESS: Yes, sir.

26 BY THE COURT: If you'll please have a
27 seat. State your name, please.

28 BY THE WITNESS: Patricia Sullivan Odom.

29 BY MR. EVANS: All right. May I proceed,

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1 Your Honor?

2 BY THE COURT: You may.

3 DIRECT EXAMINATION

4 BY MR. EVANS:

5 Q Patricia, were you also a Hallmon?

6 A Yes.

7 Q I believe that was your name before you
8 were married; is that correct?

9 A Yes.

10 Q And what's your last name now?

11 A Sullivan Odom.

12 Q Okay. Patricia, I want to direct your
13 attention back to July the 16th of 1996. Where did
14 you live at that time?

15 A On McNutt Drive.

16 Q And in what town?

17 A Winona, Mississippi.

18 Q Did you know a person by the name of
19 Curtis Flowers?

20 A Yes, sir. Yes, sir.

21 Q About how long had you known him?

22 A I know him for a good while.

23 Q Would that be months or years?

24 A Years.

25 Q Where was he living at that time?

26 A With Connie. Connie Moore.

27 Q And where were they staying?

28 A In the next apartment to me. I think it
29 was -- it was on Magnolia Drive. I think it was

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1 like 702.

2 **Q** Okay. Before I go any further, do you see
3 the person that you have described knowing for
4 years, Curtis Flowers, in this courtroom?

5 **A** Yes, sir. That's him right there.

6 **BY MR. EVANS:** May the record reflect she
7 has identified the Defendant in the cause.

8 **BY THE COURT:** I'll let it so reflect.

9 **BY MR. EVANS:**

10 **Q** Now, you've stated that y'all lived in
11 apartments next to each other. For the benefit of
12 the jury, can you describe how far apart or how
13 close these apartments are?

14 **A** Well, just -- just right next door, I
15 guess about -- about -- it was about five feet or
16 so.

17 **Q** Okay. So they're right at each other?

18 **A** Yes, sir. They're right close together.

19 **Q** On the morning of the murders at Tardy
20 Furniture, did you see the Defendant Curtis Flowers
21 that morning?

22 **A** Yes, sir.

23 **Q** What was the first time approximately that
24 you saw him that morning?

25 **A** The first time I saw him as I was on my
26 morning walk, it was about 4:45, somewhere up in
27 there. Could have been -- it could have been like
28 20 'til or -- yeah, somewhere up in there, 4:45 or
29 20 'til, something like that, but I know it was

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1 before 5:00.

2 Q All right. And you had left out from your
3 house walking?

4 A Yes, sir.

5 Q What was he doing when you saw him that
6 early in the morning?

7 A He was sitting on the front porch of their
8 apartment, and he was smoking a cigarette.

9 Q Did you notice anything unusual as you
10 went by him?

11 A Yes, sir. I spoke to him but he didn't
12 speak. And I knew that wasn't usual because he
13 always speak. He was a very friendly person. We
14 was close friends, and I thought maybe I had did
15 something to him or something because he didn't
16 speak back to me, and he always spoke to me. But I
17 didn't even consider it when I walked my second time
18 around and I just went on home.

19 Q All right. Did you have an occasion --
20 well, when you went back home, did you see him as
21 you were going back to your house?

22 A That morning?

23 Q Right.

24 A No, I just went on. I had passed on by
25 and went on in my house.

26 Q What was the next time you saw him that
27 morning, if you did?

28 A Around about 7:30.

29 Q What was he doing at that time?

ODOM - DIRECT

1 **A** He was coming across the hill behind our
2 apartments going up to their -- going to the back
3 door of their house which is -- you're facing the
4 back door of their house going in.

5 **Q** Coming across the hill from where -- from
6 which direction?

7 **A** From Powell Street.

8 **Q** How was he acting at that time?

9 **A** Well, he was just -- he was walking. You
10 know, an ordinary person just be walking as a common
11 walk, but he was just --

12 **BY MR. CARTER:** Your Honor, I object to an
13 ordinary person, Your Honor.

14 **BY MR. EVANS:** May she proceed, Your
15 Honor?

16 **BY THE COURT:** I overrule the objection.

17 **BY MR. EVANS:**

18 **Q** You may proceed.

19 **A** He was walking in a fast motion coming
20 across the hill.

21 **Q** Did you have an occasion that morning to
22 see how he was dressed at any time?

23 **A** The first time? The first time that
24 morning or the second?

25 **Q** Either one.

26 **A** The first time that morning I saw him, he
27 was sitting on that porch. He had on some short
28 pants and a shirt. The second time I saw him around
29 about 7:30 he had on some black pants -- some wind

ODOM - DIRECT

1 suit pants, nylon, and he had on a white shirt. And
2 they was unzipped, the pants was unzipped at the
3 leg.

4 Q Okay. Did you have an occasion to notice
5 his feet?

6 A Yes.

7 Q What kind of shoes did he have on?

8 A He had on some white Fila's Grant Hill
9 tennis shoes.

10 Q Had you ever seen him wear those white
11 Fila Grant Hill tennis shoes before?

12 A Yes, I had.

13 Q Can you give us some idea of how long you
14 had seen him wearing them?

15 A Well, no, I can't. But I have seen him
16 wearing them before.

17 Q Did you ever see him wearing them after
18 the murders?

19 A Yes. Well, no. What you mean, after the
20 murders?

21 Q After the murders had occurred, did you
22 ever see him wearing them?

23 A No. I wasn't paying him that much
24 attention, but I saw him that morning at 7:30. And
25 I didn't -- I wasn't paying him no attention. I
26 really didn't see him no more after then really.

27 Q Okay. So that was the last time you saw
28 him that day?

29 A Yes.

ODOM - DIRECT

1 Q Now, I want to make sure that I've got
2 this right. It was at about 4:45 he was sitting on
3 his porch; is that right?

4 A Yes, sir.

5 Q And about somewhere around 7:30, he's
6 walking real fast back to his house from somewhere?

7 A Yes, sir.

8 Q Did you see him leave his house any more
9 that day?

10 A Yes. When he went in at 7:30, I saw him
11 when he left. He went back in the same direction,
12 but I don't know exactly what time. But I know the
13 same time when he went in, he wasn't that long
14 because I was still outside hanging out clothes when
15 he came back out the house.

16 Q And you stated that he lived with who
17 there?

18 A Connie Moore.

19 Q Was there any kind of relationship that
20 you know of between them?

21 A In between who?

22 Q Connie More and the Defendant Curtis
23 Flowers?

24 A They was girlfriend and boyfriend.

25 BY MR. EVANS: Your Honor, I'll tender
26 this witness.

27 CROSS-EXAMINATION

28 BY MR. CARTER:

29 Q Good morning, Ms. Hallmon.

ODOM - CROSS

1 **A** Good morning.

2 **Q** Didn't Mr. Flowers' parents live behind
3 where he and Connie lived?

4 **A** Not exactly behind him. They live on the
5 street over, over from Powell Street.

6 **Q** To get to his parents' house, you can walk
7 behind -- right back behind using that same path you
8 saw him walking; is that correct?

9 **A** Yes.

10 **Q** And you had seen him coming from that path
11 and coming to the back of his house many times
12 before; is that correct?

13 **A** No, I hadn't. No, at that particular
14 time. I ain't, no. I haven't.

15 **Q** Your testimony is that you had never seen
16 Mr. Flowers running or going up that hill from that
17 direction?

18 **A** Oh, yeah. I done seen him before.
19 Before -- you talking about before all this
20 happened?

21 **Q** Before that day, you had seen him going
22 that same direction many times; is that correct?

23 **A** Not many times because I wasn't paying
24 attention that much. Not many times now.

25 **Q** But --

26 **A** On different occasions, I have seen him
27 come from that way.

28 **Q** Well, if it's not many, how many times
29 have you seen him coming?

ODOM - CROSS

1 **A** Well, I wasn't counting. I can't answer
2 that.

3 **Q** All right. Now, was it more than once?

4 **A** Yes, it was more than once, yes.

5 **Q** Was it more than five?

6 **A** I told you, I can't answer that. I don't
7 know how many times it was.

8 **Q** I'm not trying to fuss with you.

9 **A** I'm not fussing.

10 **Q** You said many times, and I'm just trying
11 to get -- or you said you couldn't say it was many?

12 **A** I didn't say that. No, I didn't. I said
13 I don't know how many times. I wasn't counting. I
14 don't see him all the time come from there. It's
15 just that I saw him come from that way before.

16 **Q** Okay. More than once?

17 **A** Yes, sir.

18 **Q** And you do know that his parents live in
19 that direction or somewhat in that direction?

20 **A** Yes, sir.

21 **Q** Now, you was close friend with
22 Mr. Flowers; right?

23 **A** Yes.

24 **Q** How close were you?

25 **A** We was real close.

26 **Q** What's his date of birth?

27 **A** My date of birth?

28 **Q** Mr. Flowers.

29 **A** I don't know his date of birth.

ODOM - CROSS

1 Q You said you was real close.

2 A That don't mean I know his date of birth.
3 I could be real close to you and not know your date
4 of birth.

5 Q Did you ever go to any party, birthday
6 party for Mr. Flowers?

7 A No, I wasn't the going-out type.

8 Q Did he ever come to any birthday party for
9 you?

10 A No.

11 Q Did y'all hang out together?

12 A No.

13 Q Yet he was your close friend, huh?

14 A I was close friends to Connie. By me
15 being close to Connie, I know Mr. Flowers. I've
16 known Mr. Flowers before I knew her.

17 Q You still maintain you're close friends
18 with him?

19 A No.

20 Q Thank you. Now, haven't you testified in
21 other proceedings that you also saw Mr. Flowers on
22 July 16th, 1996, around noontime?

23 A Around noon?

24 Q Around 11:30, somewhere in there?

25 A I can't remember. I don't remember that.
26 I know the two times that I do know for sure that I
27 remembered him.

28 Q Okay. But if you testified to that at
29 some other period of time, then it has to be true

ODOM - CROSS

1 because you wouldn't have said it if it wasn't true;
2 is that correct?

3 **A** Say it again?

4 **BY MR. EVANS:** Your Honor, he can ask the
5 witness questions, but he can't argue with her.
6 I'll object to that.

7 **BY THE COURT:** I'll overrule the
8 objection.

9 **BY MR. CARTER:**

10 **Q** Did you understand the question as I asked
11 it?

12 **A** No, ask it again.

13 **Q** Have you testified at another hearing that
14 you also saw Mr. Flowers at another time, around
15 11:30 to maybe noontime?

16 **A** I don't know. I could have.

17 **Q** So did you see him at another time on that
18 day?

19 **A** Didn't I just say I don't remember? I
20 don't remember that time.

21 **Q** Okay. But if the court record shows --

22 **BY MR. EVANS:** Your Honor, she has
23 answered that question twice.

24 **BY THE COURT:** Well, he can certainly
25 follow it up.

26 **BY MR. EVANS:** Okay.

27 **BY MR. CARTER:**

28 **Q** So if testimony from another trial showed
29 that you said --

ODOM - CROSS

1 **A** If it shows that I said it, I said it.

2 **Q** Okay. Now, do you remember talking to

3 Ms. Liz Van Horn?

4 **A** Yes, I remember talking to her.

5 **Q** How many times did you talk to her --

6 **A** I don't remember.

7 **Q** -- about this incident? Did you give her

8 a statement about what you knew about this case?

9 **A** I'm sure that whoever interviewed me back
10 then, I'm sure I gave them a statement.

11 **Q** Do you know who interviewed you back then?

12 **A** Do what now?

13 **Q** Do you know who interviewed you back then?

14 **A** Yeah, I was interviewed -- I was
15 interviewed by two or three back then.

16 **Q** Okay. Tell us who they were.

17 **A** I was interviewed by Mr. Johnson and
18 Ms. Van Horn.

19 **Q** Are they the only two?

20 **A** As I can remember.

21 **Q** And when did this occur?

22 **A** I'm not for sure, but I know it wasn't
23 right off. It could have been a month.

24 **Q** Okay. What kind of shirt did Mr. Flowers
25 have on around 4:50 when you saw him?

26 **A** Around 4:50? I seen him between 4:45 and
27 it could have been later.

28 **Q** Okay, 4:45.

29 **A** He had on a white shirt with some writing.

ODOM - CROSS

1 I don't know if it was writing or some designs on
2 it.

3 Q What color was the designs?

4 A I'm not for sure. They could have been
5 black.

6 Q Okay. Now, you testified that -- now,
7 Curtis didn't speak to you that morning and he
8 usually does and that bothered you; right?

9 A Yes.

10 Q In fact, it bothered you so much that you
11 stopped your walking and went inside your house; is
12 that correct?

13 A No. I didn't just stop right there in the
14 road. I just went on home. I was right there at my
15 house anyway, so I just went on home.

16 Q Just went on home.

17 A Yes.

18 Q And your home is next door to Mr. Flowers?

19 A Yes.

20 Q Now, Mr. Flowers is a very close friend of
21 yours, and it was pretty obvious you thought that
22 there was something wrong with him because he didn't
23 speak to you. But did you go over and speak to him
24 and try to find out what was wrong with him and --

25 A No, I did not.

26 Q -- offer him some kind of help?

27 A No, I did not.

28 Q Yet he's your friend, your close friend?
29 Now, when you saw him come into the house that

ODOM - CROSS

1 morning about 7:30, I believe, did you testify then
2 that you were washing -- or hanging clothes?

3 **A** No. I said my wash cycle just had
4 finished. I said my wash cycle. I was getting them
5 out. When I was -- I had started hanging out -- I
6 went out after I seen him and he already was in his
7 house. That's when I went out my door and started
8 hanging out my clothes.

9 **Q** Okay. So at the time you saw him coming
10 back into the house about 7:30, what were you doing?

11 **A** That's what I was doing. I was right
12 there standing by my stove at my door. I could see
13 right out to their back door of the apartment
14 complex. And I was -- when the washing machine
15 stopped, I was getting ready to get my clothes out
16 then, but I saw him as I went -- well, my door was
17 open. It was summertime. Before I had seen him
18 then, then it wasn't -- my washer stopped. That's
19 when I went there and got my clothes and went out.
20 That's when I seen him when he left the house.

21 **Q** How do you know what time it was?

22 **A** Because I got a clock right there over my
23 stove. And this was a small load, small load of
24 clothes. And it was a white load. It was a small
25 load and that cycle right there, I know what time --
26 you know, the cycle. And I got a clock right there
27 by my stove so it was a short cycle.

28 **Q** Okay. You saw Mr. Flowers, and you looked
29 at the clock?

ODOM - CROSS

1 **A** No. When I -- wait, now.

2 **Q** Go ahead.

3 **A** Okay. I saw -- when I was standing in my
4 door, I saw him come into the house. And I got a
5 clock right there by my stove and I looked -- you
6 know, I glanced over at my clock. My washing
7 machine was almost getting ready to stop so that's
8 why I knew I was getting ready to go outside.
9 That's why my door was open.

10 **Q** And how can you know he stayed in the
11 house about 20 minutes? How did you determine that?

12 **A** Because as I -- when I came back in my
13 house -- when I came back in the house, now, my
14 clock was like -- it was like 7:50 or something like
15 that. It was like 7:50 or 7:51. I'm not for sure
16 on the time. I'm not for sure. But it didn't take
17 me that long to hang out them few clothes. Like I
18 told you, it was a small load. So that's why I saw
19 him as he was leaving back out of that house. I
20 know it wasn't that long. It wasn't 30 minutes or
21 an hour or nothing like that.

22 **Q** And that is your best estimate? Is that
23 what you're telling me?

24 **A** Uh-huh.

25 **Q** Did you have a job at the time?

26 **A** No, I didn't.

27 **Q** And do you remember when you got one?

28 **A** No.

29 **Q** Who was living with you at the time?

ODOM - CROSS

1 **A** Carl Sullivan.

2 **Q** Any children?

3 **A** Yes.

4 **Q** How many?

5 **A** Three.

6 **Q** Now, what time did you leave home that
7 day?

8 **A** What time did I leave?

9 **Q** Right.

10 **A** I'm not for sure.

11 **Q** Did you leave that day?

12 **A** Yeah, I probably did. I don't -- I'm not
13 for sure about that either.

14 **Q** Who else did you see that morning as you
15 jogged?

16 **A** I didn't jog. I was walking.

17 **Q** I'm sorry. As you walked. Well, I don't
18 want to put words in your mouth. I'm really not
19 trying to do that. If it seems that way, I'm really
20 not. So you were walking that morning. Who else
21 did you see as you were there? Anybody else in the
22 neighborhood?

23 **A** No, I didn't see nobody.

24 **Q** Okay. And what was the route you took --
25 your walking route?

26 **A** Well, okay. The route I took. I go out
27 of my front door, make a left and go to -- I think
28 that's Cemetery Lane. I think that is. Back then.
29 I don't know. I think it's Cemetery Lane. Let's

ODOM - CROSS

1 see. I think that's it. I don't know for sure.

2 Q I'll take your best guess, go ahead.

3 A Okay. Then I go on down and then I make a
4 left onto Powell, come back around. It wasn't no
5 long, long walk, you know. It was a short walk for
6 me -- for me to -- for my exercise. Then I come
7 back up the hill. That's McNutt, I turn on McNutt.

8 Q Now, was it dark? Wasn't it dark back
9 then?

10 A It was beginning to get daylight.

11 Q Were you wearing glasses back then?

12 A Yes.

13 Q Are you nearsighted or farsighted? Do you
14 need glasses for distance or do you need them for
15 close up?

16 A What does it matter?

17 Q Do you mind if I ask the questions?

18 A I need my -- I just say this: I need my
19 glasses at all times.

20 Q So does that mean you're --

21 A I'm farsighted and nearsighted.

22 Q You're farsighted and -- okay. Were you
23 wearing them that morning?

24 A Yes, I was.

25 Q Now, did you see Mr. Flowers after dinner
26 that day?

27 A Didn't I just tell you I'm not for sure?
28 If I said it at another trial, I said it. I'm not
29 for sure.

ODOM - CROSS

1 Q Dinner time. I'm talking like 4:00 or
2 5:00.

3 A Oh, no. No. I don't remember -- unh-unh.

4 Q I'm not trying to argue with you,
5 Ms. Hallmon. I don't want you to think that.

6 Now, when you met with Mr. Johnson
7 and gave Mr. Johnson a statement, isn't it a fact
8 that Mr. Johnson talked with you some period of time
9 before he turned the recorder on?

10 A No, no.

11 Q Did he --

12 A Talked with me? What you mean, talked
13 with me?

14 Q Have a conversation with you.

15 A No, we didn't have -- about?

16 Q Whatever y'all had it about.

17 A No.

18 Q So --

19 A No, he just asked me when -- he just asked
20 me, you know, did I know -- did I know that, you
21 know, the person and my name and, you know, how
22 close I'd been. And then he said -- well, you know,
23 then he turned it on. That was all he asked me.

24 Q So he did talk with you a little bit
25 before he turned the tape recorder on?

26 A Just asked me my name.

27 Q He just asked you your name? I thought
28 you said earlier that he asked you more than your
29 name?

ODOM - CROSS

1 **A** Well, my name and did I know -- that right
2 there, did I know Mr. Flowers.

3 **Q** Okay. Now Ms. Van Horn was at this
4 hearing, is that correct, or was she? Who was
5 there?

6 **A** I can't remember who was there. I just
7 know I did give a statement. I can't remember who
8 was there.

9 **Q** Yet you can remember all this stuff about
10 Mr. Flowers?

11 **A** Yes, I can remember.

12 **Q** Okay. Now, Ms. Connie Moore had some
13 children; is that correct?

14 **A** Yes.

15 **Q** And how many did she have? Do you
16 remember?

17 **A** Yes.

18 **Q** How many?

19 **A** She had four.

20 **Q** What are their names?

21 **A** Marcus, Lamarcus, Brittany and Marissa.

22 **Q** And did you have some special relationship
23 with one of them?

24 **A** The baby.

25 **Q** What was that relationship?

26 **A** I was her godmother.

27 **Q** And when was the last time you seen them?

28 **A** I don't come home hardly.

29 **Q** When was the last time you seen them?

ODOM - CROSS

1 **A** It's been a while.

2 **Q** How long?

3 **A** It's been some years. It's been -- it's
4 been more than five years.

5 **Q** Now, on the day that the terrible incident
6 happened down at Tardy's Furniture Store, how many
7 children did you see at Connie Moore's house that
8 day?

9 **A** Say that again, sir.

10 **Q** On the day that the bad incident happened
11 down there at Tardy's, how many children -- how many
12 of Connie's children was actually at her house that
13 day?

14 **A** Well, I can't -- it had to -- I guess all
15 of them was there.

16 **Q** Okay. One moment.

17 Now, didn't you testify at some point
18 that you bought your children some Fila Grant Hills?

19 **A** I sure did.

20 **Q** Okay. Which children?

21 **A** Shaviras and Kevin.

22 **Q** How much did you pay for them?

23 **A** It was between 75 and -- I'm not for sure
24 how much it was, but I know it wasn't 100. It was
25 between 75 and 85.

26 **Q** Okay. Is that what you testified to
27 earlier? Is that the same thing you testified to
28 earlier, ma'am?

29 **A** I'm sure, yes.

ODOM - CROSS

1 Q Now, did you have -- did you have a phone
2 back at that time -- telephone?

3 A A phone?

4 Q Did you have a telephone in your house?

5 A Yes.

6 Q Not a cell phone, but a telephone. Was
7 the telephone in your name?

8 A Do what, now?

9 Q Was the telephone in your name?

10 A I can't remember. But one time while I
11 was there, my phone was in my mom's name and my
12 name. I'm not for sure which one of our -- which
13 one of our names it was at that particular time.

14 Q Has your mom ever lived there?

15 A No.

16 Q Don't you have a brother named Odell
17 Hallmon?

18 A Yes, I do.

19 Q And where is he?

20 A He's incarcerated.

21 Q Now, when you talked to John Johnson, did
22 you tell John Johnson that you were -- you believed
23 the person that you saw on the porch was Curtis or
24 you're 100 percent sure this person you saw
25 was Curtis?

26 A I said I was 100 percent sure that was
27 Curtis. I didn't say nothing about I believe.

28 Q Okay. So -- okay. Now, did you testify
29 at some point that all Curtis Flowers wore was Fila

ODOM - CROSS

1 Grant Hill shoes?

2 A No, I did not. No, I did not.

3 Q What else did he wear then?

4 A I said I've seen him wear, I'm going to
5 say, Sunday shoes or church shoes. I've seen him
6 wear church shoes.

7 Q Did you ever see him wear any other tennis
8 shoes?

9 A I wasn't paying no attention.

10 Q Well, I mean, if you -- so you were paying
11 attention when you saw him wearing Grant Hill Fila
12 shoes and you were paying attention when you saw him
13 with some church dress shoes, but all other times
14 you were not paying attention?

15 A No.

16 Q Okay. And do you deny telling John
17 Johnson that all Curtis wears is Fila Grant Hill
18 shoes?

19 A No.

20 Q You didn't tell John that; is that what
21 you're saying?

22 A No. I said that I know he have some.
23 That's what prompted me to buy my kids some. I
24 didn't tell him that's all he wear was Fila Grant
25 Hill tennis shoes.

26 Q Okay. And just so the record will be
27 clear and I can be clear for later, you never saw
28 Mr. Flowers with any tennis shoes other than Grant
29 Hill Fila tennis shoes?

ODOM - CROSS

1 **A** No. I don't be paying his feet that much
2 attention. The only reason why I knew that they was
3 Fila Grant Hill tennis shoes because how he kept
4 them all bright and the designs and stuff on them,
5 and I bought my kids some so that's why I knew that.
6 I don't be watching that man's feet every time I be
7 seeing him.

8 **Q** All right. Now, you testified, I think it
9 was the sixth time; is that correct?

10 **A** How many ever times I testified to.

11 **Q** And you testified quite a few times. And
12 did you testify in every trial that you had
13 purchased your kids some Grant Hill Fila shoes?

14 **A** Yes.

15 **Q** And you're sure of that?

16 **A** Yeah, I'm positive.

17 **Q** Thank you. How long were you neighbors
18 with Curtis and Connie?

19 **A** I was neighbors with Connie -- I don't
20 know how many years it was, but I know it was more
21 than a year.

22 **Q** More than a year?

23 **A** But he wasn't there all the time.

24 **Q** Now, can you tell us when the first time
25 you saw Mr. Flowers wearing Grant Hill Fila shoes?

26 **A** When they came out, they was very popular,
27 whatever year it was. They was very popular.

28 **Q** And -- but, wouldn't you agree with me
29 that popular tennis shoes come out all the time?

ODOM - CROSS

1 **A** Do what, now?

2 **Q** Popular tennis shoes comes out regularly;
3 would you agree with that? Maybe not Grant Hill
4 shoes. They might be Nike Air or --

5 **A** Yeah.

6 **Q** So -- so you don't remember about when the
7 first time you've seen him with some -- allegedly
8 saw him with some Grant Hill Fila shoes?

9 **A** Say it again.

10 **Q** How long before the thing down at Tardy's
11 had you seen him wearing Grant Hill Fila shoes?

12 **A** I had seen him before with them on. I had
13 seen him wear those, them tennis shoes before then.

14 **Q** I know what you're saying, but listen to
15 me. And my question is -- and I'm apologize if I'm
16 confusing you -- before the incident at Tardy's, how
17 long had you been seeing Mr. Flowers wearing Grant
18 Hill Fila shoes?

19 **A** I can't answer that question.

20 **Q** Okay. Had it been several months?

21 **A** I just said I can't answer that question.

22 **Q** Okay. Now, these Grant Hill Fila shoes
23 that -- I'm sorry. Do you know how many pair you
24 say you bought? Was it two pair?

25 **A** Yes.

26 **Q** Now, did you ever show Mr. Johnson or
27 Ms. Van Horn or anybody the pair of shoes that you
28 bought for your kids?

29 **A** No. Didn't nobody ask.

ODOM - CROSS

1 **Q** They didn't ask? Now, you told them you
2 had bought some, and they didn't think and you
3 didn't think it was necessary or important to --

4 **A** If they would have asked, I would have
5 showed them. Didn't nobody ask.

6 **Q** Okay. And how much was your rent back
7 then, Ms. Hallmon? Do you remember?

8 **A** My what?

9 **Q** Your rent.

10 **A** How much was it back then?

11 **Q** Yes, ma'am.

12 **A** It was low income apartment.

13 **Q** How much were you paying?

14 **BY MR. HILL:** Your Honor, I know this is
15 cross-examination, but cross-examination has
16 got to be relevant to the issues at hand. And
17 I don't how much her rent was and all that is
18 relevant to anything this --

19 **BY MR. CARTER:** She's saying she didn't
20 have a job, Your Honor. And she's saying she
21 went and bought some expensive tennis shoes.
22 So I just want to know how much her rent was.

23 **BY THE COURT:** How much her rent was is
24 not relevant.

25 **BY MR. CARTER:** It might be. Your Honor,
26 it has some relevance as to whether she could
27 pay it and whether she could actually buy the
28 tennis shoes.

29 **BY THE COURT:** Well, ask her that. But

ODOM - CROSS

1 how much her rent is is not relevant.

2 **BY MR. CARTER:**

3 **Q** You didn't have a job back then,
4 Ms. Hallmon. Is that what -- from your earlier
5 testimony?

6 **A** That's what I said.

7 **Q** Now, Ms. Hallmon, on the day that you
8 talked to Liz Van Horn and John Johnson on
9 August 7th, 1996, did you also tell them on that day
10 that you had bought some Grant Hill Fila tennis
11 shoes for your children?

12 **A** I -- say that again.

13 **Q** On August the 7th, 1996, when you talked
14 to Liz Van Horn and John Johnson at the Winona
15 Police Department, did you inform them that you had
16 also purchased some Grant Hill Fila tennis shoes for
17 your children?

18 **A** Okay. I remember telling them that, but I
19 don't know exactly which day it was. I gave a
20 testimony on August the 7th, that is true, but I
21 don't remember if I told them then or I told them at
22 another time.

23 **Q** Ms. Hallmon, isn't it a fact that you told
24 the jury in Tupelo, Mississippi, that Curtis Flowers
25 wears Grant Hill Fila shoes about three times a
26 week? Do you remember saying that or did you say
27 that?

28 **A** I don't remember saying that. I don't
29 know if I said that.

ODOM - CROSS

1 **BY MR. CARTER:** One moment, Your Honor.

2 **BY MR. CARTER:**

3 **Q** Ms. Hallmon, weren't you aware that there
4 was a reward out for information concerning a
5 suspect in this particular case?

6 **A** Not at the time. Not at the time when I
7 gave my statement, no.

8 **Q** Were you aware by the time you got to
9 court?

10 **A** Was I what, now? Say that again.

11 **Q** Were you aware of it by the time you
12 testified in Tupelo?

13 **A** Yes, it was all over. Yes.

14 **Q** When did you learn there was a reward?

15 **A** I don't remember when I -- I don't
16 remember that.

17 **Q** Can you --

18 **A** No, I cannot.

19 **Q** You can't what, Ms. Hallmon?

20 **A** I can't remember.

21 **Q** Can you -- can you think about it a second
22 and search your memory and see if you can come up
23 with it?

24 **A** No, I cannot. I can't remember when I
25 found out about the reward. It was all the news and
26 everywhere else. I can't remember that day.

27 **Q** Okay. When you said the news, are you
28 talking about television?

29 **A** News.

ODOM - CROSS

1 Q A newspaper?

2 A Yes.

3 Q What about television?

4 A I don't remember. I don't watch TV that
5 much.

6 Q Did you see any posters on trees or
7 anything like that?

8 A I don't remember, sir.

9 Q Now, you said you saw it in the paper.
10 Now, if the reward was mentioned in the paper on
11 July the 25th, isn't it safe to assume that you saw
12 it or read about it?

13 A No.

14 Q Now, which paper is that that you read,
15 you were reading back then?

16 A Well, back then I wasn't -- my auntie used
17 to deliver the Clarion Ledger and the -- that's what
18 she used to deliver. But then it was like the
19 Winona Times. At that time, I was late hearing
20 about the reward so it was an old paper that I had,
21 that I was reading. I don't remember. I don't
22 remember which date it was or what the paper said,
23 you know, which paper it was or the date. I don't
24 remember that.

25 Q So you don't remember when you found out
26 about the reward?

27 A No, I do not. I really wasn't concerned
28 about it.

29 Q Well, if you don't remember when you

ODOM - CROSS

1 learned about it, how are you so sure that you gave
2 your statement before you learned of it?

3 **A** Because I didn't learn about the reward
4 'til after I gave my statement. I told you I gave
5 my statement in August -- in August, and the
6 reward -- the reward -- I believe the reward was out
7 before then. I didn't know about it until August.

8 **Q** Well, it was out. Thank you.

9 **BY MR. CARTER:** No further questions.

10 **BY THE COURT:** Redirect?

11 **BY MR. EVANS:** Yes, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. EVANS:**

14 **Q** What kind of shoes was Curtis Flowers
15 wearing the day of the murders?

16 **A** Grant Hill Fila shoes.

17 **Q** Does the fact that you were -- didn't have
18 much money at that time have anything to do with
19 your truthfulness?

20 **A** No, sir, because I had a man.

21 **Q** You were going to take care of your
22 children?

23 **A** Yes, I took care of my children,
24 100 percent.

25 **Q** Do you know where Angelica is located?

26 **A** Yes, I do.

27 **Q** What direction is --

28 **BY MRS. STEINER:** I'm going to object.

29 **BY MR. CARTER:** Objection, Your Honor.

ODOM - REDIRECT

1 **BY MRS. STEINER:** That's not in the scope
2 of the cross-examination.

3 **BY MR. EVANS:** Yes, sir, it is. He talked
4 about what was in the direction that he came
5 running from, and it's definitely in the scope
6 of it.

7 **BY MR. CARTER:** Your Honor, the Court will
8 take judicial notice that Angelica is located
9 behind from where Curtis Flowers used to live
10 if the Court --

11 **BY THE COURT:** I don't believe I remember
12 that. I can't -- I honestly don't have a -- I
13 don't know what the area in town is.

14 **BY MR. CARTER:** Your Honor, Mr. Evans says
15 it is, and we say it isn't, and we object.

16 **BY MR. EVANS:** He went into what was in
17 the general direction that he was running from,
18 and I'm entitled to go back into it, Your
19 Honor.

20 **BY MR. CARTER:** Your Honor, the direction
21 Mr. Flowers was running and coming -- not only
22 did I go into it; Mr. Evans had gone into it,
23 the fact that he had come back from behind the
24 apartment where they live. Now, my objection
25 is noted. If you can do what --

26 **BY THE COURT:** Well, I think it's a
27 leading-type question. You --

28 **BY MR. EVANS:** It was not leading asking
29 her if she knows where Angelica is located. It

ODOM - REDIRECT

1 calls for a yes or no answer.

2 BY MR. CARTER: Wait, wait, the answer is
3 not --

4 BY THE COURT: You can ask her what other
5 things were in that particular direction,
6 but --

7 BY MR. CARTER: Your Honor, we trust you
8 to decide what's leading and what is not
9 leading.

10 BY MR. EVANS: May I finish talking before
11 I get interrupted once, Your Honor?

12 BY THE COURT: You may.

13 BY MR. EVANS: A yes or no is not leading
14 unless it suggests an answer.

15 BY THE COURT: I think the best way would
16 be to phrase it what was in a particular
17 direction from --

18 BY MR. EVANS:

19 Q Ms. Hallmon, when you saw this Defendant
20 over here running back towards his house, what all
21 is in that general direction that he was coming from
22 in Winona, Mississippi?

23 BY MR. CARTER: Your Honor, I object
24 unless he can show that she knows what all is
25 back in the direction.

26 BY THE COURT: You can phrase it if she
27 knows.

28 BY MR. EVANS:

29 Q Do you know -- did you live here?

ODOM - REDIRECT

1 **A** Yes.

2 **Q** Do you know what's in that general
3 direction? Do you know where you lived?

4 **A** Yes, sir.

5 **Q** What's over there?

6 **A** There's a lots of stuff over that way.

7 **Q** Name some of it.

8 **A** Okay. You've got Knox Gym. You got
9 different streets. You have more apartments, and
10 you can also go to Angelica that way.

11 **Q** Thank you. You were asked by opposing
12 counsel if you still maintain a friendship with
13 Curtis Flowers. When did y'all's friendship split?

14 **A** When this happened. They just stopped
15 speaking to me. When I first give my testimony and
16 everything, they just stopped speaking to me. I
17 ain't did nothing to nobody. They just stopped
18 speaking. I haven't even heard from them.

19 **Q** And you've been asked about giving a
20 statement and testifying six times in this case.
21 Have you ever said that he had any other shoes on
22 that day other than Fila Grant Hill's?

23 **A** No, not that day I seen him. No, I
24 didn't.

25 **Q** How old were your children back then?

26 **A** Okay. Let me see. I think Shaviras was
27 nine, fixing to turn ten, ten or fixing to turn
28 eleven. Shaviras would be ten or 11, and Kevin -- I
29 think he was like -- he was like -- he might have

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1 been six going on seven or eight. Seven going on
2 eight, something like that.

3 **Q** If you remember, do you remember what size
4 shoes they wore that you purchased?

5 **A** The kids shoes? I don't remember the size
6 but -- I don't remember the size.

7 **Q** But it was kids' shoes?

8 **A** Yes.

9 **Q** You've been asked about the reward. How
10 much reward money have you ever asked for in this
11 case?

12 **A** None.

13 **BY MR. CARTER:** Your Honor, I object to
14 that.

15 **A** What good is that going to do me? None.

16 **BY MR. CARTER:** Object to that. I mean,
17 how can you --

18 **BY MR. EVANS:** Your Honor, they went into
19 this. They asked her about the reward.

20 **BY THE COURT:** I'll overrule the
21 objection.

22 **BY MR. EVANS:**

23 **Q** How much reward money have you ever asked
24 for in this case?

25 **A** None.

26 **BY MR. EVANS:** Nothing further, Your
27 Honor.

28 **BY MR. CARTER:** Your Honor, I'd like to
29 put in the record that I object to that because

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1 there is no way of defending against that
2 question. She could say anything, and there's
3 no way to prove this.

4 **BY MR. EVANS:** Your Honor, this witness is
5 under oath and that's completely improper for
6 him to say --

7 **BY THE COURT:** Gentlemen, please. I don't
8 want you arguing with each other. If you've
9 got any arguments, it can be made to the Court.
10 And this witness has sworn under oath she did
11 not, so it's an appropriate question to ask.
12 It's proper redirect based on the question that
13 was asked in cross-examination. It's in no way
14 an improper question.

15 **BY MR. CARTER:** But, Your Honor, just for
16 the record, the Court does agree that I can --
17 I can make my objection; is that correct?
18 Mr. Evans is out of line to try to stop me from
19 trying to making it. Would that be fair, Your
20 Honor, to state --

21 **BY MR. EVANS:** Your Honor, my comment was
22 to the Court. He's the one who has been
23 commenting to me.

24 **BY THE COURT:** I want you both to listen
25 to what I'm saying right now. If you've got an
26 objection, you make the objection. And,
27 Mr. Evans, when Mr. Carter is through making
28 his objection, you can make a response. But I
29 don't want you talking over each other. The

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1 court reporter can't hear you and take down
2 what's said if you're talking over each other
3 and I can't understand it either. So I'm
4 admonishing you both. If either one of you has
5 an objection, let the other person complete
6 that objection and then you can respond. But
7 don't be arguing with each other. Any argument
8 that's to be made is to be made to this Court
9 and not to each other.

10 **BY MR. CARTER:** Yes, sir.

11 **BY THE COURT:** You understand, too?

12 **BY MR. EVANS:** Yes, sir. I think my --
13 my -- all was to the Court, Your Honor.

14 **BY THE COURT:** Yes, sir. That's enough
15 said, Mr. Evans.

16 **BY MR. EVANS:** I understand.

17 **BY THE COURT:** I don't need to hear
18 anything more. Is she -- are you through with
19 your redirect?

20 **BY MR. EVANS:** Yes, sir.

21 **BY THE COURT:** You may step down.

22 **BY MR. CARTER:** Your Honor, I'm calling
23 her during my case.

24 **BY MR. EVANS:** Your Honor, this witness is
25 from Jackson. She has been up here several
26 days. One reason I put her on today she needs
27 to go back. I would ask that at least she be
28 allowed to go home instead of sitting here
29 through this whole trial. And if they need

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1 her, she can be available.

2 **BY MR. CARTER:** Well, we certainly intend
3 to call her. And that's fine with me. As long
4 as we can get her up here.

5 **BY THE COURT:** If you can give
6 approximately -- and I'm not saying right now,
7 but I'm just saying that you can --

8 **BY MR. CARTER:** Can I get somebody to get
9 her number and stuff?

10 **BY THE COURT:** Yeah. You can get that out
11 in the hall.

12 (To the witness) And you may step down,
13 and you will have to come back if they call and
14 tell you on a particular day where they might
15 need you again. But you're free to go back to
16 where you live. And if you can assure me that
17 you'll come back if you're notified that you
18 need to be. Do I have that I assurance?

19 **BY THE WITNESS:** Yes, sir.

20 **BY THE COURT:** Okay. That will be fine,
21 then. You can step down.

22 (OFF RECORD)

23 **BY THE COURT:** I was just advising them
24 that she could go out on and talk to
25 Ms. Sullivan to get the information.

26 Who's the next witness?

27 **BY MR. HILL:** Your Honor, Mr. Bill
28 Thornburg would be our next witness.

29 **BY MRS. STEINER:** Your Honor, she is

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1 saying that she is not giving me her number.

2 **BY MR. EVANS:** Your Honor, we would ask
3 that she be allowed to give the Court the
4 number or either we can fax that.

5 **BY THE COURT:** I'll just tell her to come
6 up here and --

7 **BY MR. EVANS:** But I can understand why
8 she does not want certain people wanting her
9 number.

10 **BY MR. CARTER:** Your Honor, I object to
11 that.

12 **BY THE COURT:** That comment is not
13 appropriate, Mr. Evans, and I do not want to
14 hear it.

15 Ladies and gentlemen, you're to disregard
16 that comment.

17 (MS. ODOM ENTERS THE COURTROOM)

18 **BY THE COURT:** Ma'am, if you'll just come
19 in here and state your telephone number and
20 address.

21 **BY THE WITNESS:** Well, I refused to do
22 that.

23 **BY THE COURT:** Well, we've got to have
24 some contact information.

25 **BY THE WITNESS:** Well, I can give to it
26 the sheriff's department.

27 **BY THE COURT:** You can either stay here
28 for the next several days or you can give the
29 phone number and contact information. I mean,

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1 I'll give you that option of which you choose
2 to do. But if there's a possibility of you
3 being recalled as a witness, you've either got
4 to give your --

5 BY MR. CARTER: Your Honor, she doesn't
6 have to come back. Can we move to strike her
7 testimony instead if she doesn't want to come
8 back?

9 BY THE COURT: No.

10 BY MR. HILL: She said she --

11 BY THE COURT: Did you have her under
12 subpoena?

13 BY MR. EVANS: No, sir.

14 BY MR. CARTER: No, sir.

15 BY MRS. STEINER: But we relied on the
16 State's subpoena.

17 BY THE COURT: And as I say, you -- I
18 don't necessarily say you have to say your
19 phone number and address in open court, but you
20 go over there and give it to the sheriff's
21 department or contact information where you can
22 be reached. And you can get it from the
23 sheriff's department. So if you'll --

24 BY THE WITNESS: Yes, sir, I will do that.

25 BY THE COURT: Okay. That will be fine.

26 BY THE WITNESS: Thank you, sir.

27 BY THE COURT: Tell Mary Lee. Mary Lee?
28 Now we need Bill.

29 (THE WITNESS ENTERS THE COURTROOM)

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1 **BY THE COURT:** I need you to come forward,
2 raise your right hand and take the oath. Do
3 you solemnly swear or affirm the testimony
4 you'll give in this case will be the truth, the
5 whole truth and nothing but the truth, so help
6 you God?

7 **BY THE WITNESS:** I do.

8 **BY THE COURT:** Come around, please, and
9 have a seat. If you will state your name,
10 please.

11 **BY THE WITNESS:** My name is Bill
12 Thornburg.

13 **BY THE COURT:** You may proceed.

14 **BY MR. HILL:** May I have just one minute
15 to do a little organizing, Your Honor?

16 **DIRECT EXAMINATION**

17 **BY MR. HILL:**

18 **Q** Good morning, Mr. Thornburg, how are you
19 doing today?

20 **A** I'm doing good.

21 **Q** Have you ever held an elected -- an
22 official elected position in this county?

23 **A** I have.

24 **Q** Tell the ladies and gentlemen of the jury
25 what that was and when it was, if you recall.

26 **A** I was elected sheriff 2001.

27 **Q** And how long were you sheriff?

28 **A** For eight years -- six years. I'm sorry,
29 six years.

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1 Q And prior to that, Mr. Thornburg, did you
2 have any experience in law enforcement prior to
3 being elected sheriff and serving for six years as
4 sheriff?

5 A I did. I was a deputy sheriff.

6 Q How long were you a deputy sheriff?

7 A Twenty-six years.

8 Q Was that here in Montgomery County, all
9 those 26?

10 A Yes, sir.

11 Q And what was your -- were you working for
12 the sheriff's office as a deputy sheriff in July of
13 1996?

14 A I was.

15 Q And specifically, on July the 16th, 1996,
16 what was your position or rank with the sheriff's
17 office?

18 A I was deputy sheriff. My badge number was
19 S-02.

20 Q Do you remember events that occurred on
21 the morning of July 16th, 1996?

22 A Yes, sir, I do.

23 Q Would you tell the ladies and gentlemen of
24 the jury if you got a call sometime midmorning, an
25 emergency call that you responded to on that day and
26 time?

27 A Yes, sir, I did.

28 Q Describe to them what kind of call you
29 got, Sheriff, and how you responded when you got

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1 that call.

2 **A** We was here in the courthouse. I had
3 justice court that morning. And I had -- court was
4 over with and I had gone over to the circuit clerk's
5 office. And I received a phone call that there had
6 been a shooting at Tardy Furniture Company.

7 **Q** What did you do when you got that call?

8 **A** I ran through the courtroom here and out
9 this door to the justice court office, and I went in
10 there and I told James Taylor Williams there had
11 been a shooting at Tardy Furniture Company.

12 **Q** And what -- was Mr. Williams a law
13 enforcement officer?

14 **A** He was.

15 **Q** What kind of law enforcement job did he
16 have?

17 **A** He was a Mississippi State Trooper.

18 **Q** And after you told him that there was a
19 shooting at Tardy's, what did you do?

20 **A** We both ran out and got in our patrol cars
21 and went to Tardy Furniture Company.

22 **Q** How long do you think it took you to get
23 over there when you left the courthouse?

24 **A** I'd say no more than two to three minutes.

25 **Q** Now, I take that it you did respond -- you
26 did go directly to Tardy's; is that right?

27 **A** Yes, sir.

28 **Q** And the place that you've testified about
29 that's Tardy Furniture Company, tell us in what

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1 city, what county and what state that's in, please.

2 A It's in Winona, the State of Mississippi
3 and Montgomery County.

4 Q Sheriff, if you will, tell us what you
5 saw. Take it from the outside. What did you see
6 when you got there? Anything in particular that you
7 saw? Did you park in front of the store or beside
8 it or what? What you saw when you got there.

9 A I parked in front of the store, got out of
10 my patrol car and went to the door. And I remember
11 seeing two officers. I don't remember who one of
12 them was, but Chief Hargrove was there.

13 Q He was one of them, Chief Hargrove?

14 A Chief Hargrove.

15 Q Was one of the officers you saw?

16 A Yes, sir.

17 Q Okay. And what did you do upon seeing
18 Chief Hargrove? Can you tell us what you did when
19 you got to where Chief Hargrove was?

20 A I went inside the store and proceeded
21 toward the back. There was a counter back there
22 where the -- about the middle of the store where
23 they conducted business. I went back there, and I
24 saw three bodies on the floor.

25 Q Had the ambulance people already come and
26 gone before you got there?

27 A They had picked up one, yes, sir.

28 Q And do you know who it was they picked up?

29 A Derrick Stewart.

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1 **Q** Did you notice anything as you were
2 approaching the scene where Mr. Stewart -- or let's
3 say when you were approaching, I take it you saw the
4 three victims. Did you know them? Did you know the
5 three victims?

6 **A** Yes, sir.

7 **Q** Did you know Ms. Carmen Rigby?

8 **A** Yes, sir, I did.

9 **Q** Did you approach or walk toward where she
10 was?

11 **A** Not -- no, I did not.

12 **Q** Did you notice anything as you got --
13 approaching the area in the store where the bodies
14 were, did you see any -- what I'm trying to get at,
15 Mr. Thornburg, is whether or not you noticed
16 anything that you thought might be of evidentiary
17 value there when you got inside the store?

18 **A** Yes, sir. There was a huge pile of blood
19 in the floor there.

20 **Q** Okay. Was there any article of clothing
21 around that huge pile of blood?

22 **BY MR. CARTER:** Object to leading.

23 **BY THE COURT:** Go ahead.

24 **BY MR. HILL:**

25 **Q** What, if anything, beside the blood did
26 you notice? Anything else around that blood?

27 **A** There was some shoe prints in it.

28 **Q** Okay. Now, I guess what I'm trying to get
29 at is, did you see those before you walked up to

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1 where they were?

2 A No, sir. I couldn't see them.

3 Q Well, how close did you get to them before
4 you saw them? Maybe that would be a better way to
5 put it.

6 A I would say probably close from here to --
7 me to you.

8 Q Okay. What I'm saying is: You could see
9 them before you got up to exactly where they were on
10 the floor?

11 A Yes, sir.

12 Q Okay. What else did you see, if anything,
13 around the scene where I believe you said there were
14 three victims there?

15 A Yes, sir.

16 Q And I asked you if you knew who they were.
17 Did you -- could you tell us who those three victims
18 were, if you knew them or if you learned who they
19 were?

20 A Yes, sir. There was Carmen Rigby, was
21 there close to the counter. Robert Golden, he was
22 down toward the other end of the counter. And
23 Ms. Tardy was back from the counter, kind of headed
24 toward her office.

25 Q In the area -- and I'm just saying around.
26 I know that's a -- Ms. Tardy was a little more
27 distantly removed from Ms. Rigby and Mr. Golden.
28 Did you see any evidence on the floor beside the
29 foot tracks that you talked about?

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1 **A** Yes, sir. I saw some hulls, projectile
2 hulls.

3 **Q** Okay. When you say a projectile hull,
4 wouldn't that be the same thing as a cartridge
5 casing?

6 **A** Yes, sir.

7 **Q** And when you saw that, did you -- were you
8 able to examine it more than just seeing it on the
9 floor?

10 **A** Yes, sir. I picked one up with my ball
11 point pen and looked at it.

12 **Q** Describe how you did that. You say you
13 picked it up with a pen. Tell us what you --

14 **A** I took it out of my pocket, reached down,
15 squatted down and stuck the pen in the end of the
16 hull and picked it up.

17 **Q** What was the purpose of you doing that,
18 Sheriff?

19 **A** I wanted to see what caliber weapon was
20 used.

21 **Q** Was there any -- was there any printing or
22 labeling on the head stamp of --

23 **BY MR. CARTER:** Judge, I object to the
24 leading. I been letting him lead, but can he
25 just stop leading?

26 **BY MR. HILL:**

27 **Q** Well, Mr. Thornburg, were you able to read
28 any writing on the base of the bullet?

29 **A** Yes, sir.

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1 Q What was that writing that you read?

2 A It was a .380 caliber.

3 Q Okay. Let's talk about your -- what kind
4 of shoes you had on just for a minute. Do you
5 remember what kind of shoes you were wearing?

6 A Yes, sir.

7 Q Tell us, please.

8 A I had on a pair of western boots, most
9 people call cowboy boots.

10 Q Okay. And do you remember what kind of
11 sole they had, what the bottom of them -- the sole
12 was?

13 A Yes, sir. It had a slick sole on them.

14 Q Did you step in any blood while you were
15 there?

16 A No, sir.

17 Q What, if anything, can you tell -- share
18 with the ladies and gentlemen of the jury about when
19 you saw those bloody foot tracks that you said, can
20 you give them any idea of what they were close to or
21 where they were located, anything like that?

22 A Well, it was in the blood and it appeared
23 to me to be a -- a gym shoe, tennis shoe track.

24 Q Okay. And did you see any of the
25 responding officers there that were wearing tennis
26 shoes or gym shoes?

27 A No, sir.

28 Q Did you get another call or request for
29 assistance while you were at the store?

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1 **A** Yes, sir, I did.

2 **Q** How long had you been there? And I'm not
3 asking you to be exactly precise as to how many
4 minutes, but what general reference can you give us
5 as to how long you'd been at the store before you
6 got the second call?

7 **A** I'm not sure, but I would say probably
8 ten, ten to 15 minutes.

9 **Q** Okay. And what was the nature of that
10 second call?

11 **A** They called and said that there'd been a
12 break-in at Angelica, a car broken into.

13 **Q** An auto burglary there at Angelica?

14 **A** Yes, sir.

15 **Q** And what did you do in response to that
16 call?

17 **A** I went and got in my patrol car and drove
18 to Angelica.

19 **Q** What did you do upon arriving at Angelica?

20 **A** I went in the front office and inquired to
21 the lady in there in the office about it, and she
22 didn't know anything about it. So she went to the
23 back and inquired with somebody -- I don't know. I
24 didn't go back with her, but she came back and --

25 **BY MR. CARTER:** Well, I object to him
26 testifying to, Your Honor, since he didn't go
27 back and question her.

28 **BY MR. HILL:**

29 **Q** Did you ascertain any information as to

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1 the nature of the call that you got from the office
2 manager?

3 A I did.

4 Q Did you find out who had issued that
5 complaint or made that request for law enforcement
6 to come out there?

7 A I did. I found out from her.

8 Q All right. And who's -- what was the --
9 was there a car that had been broken into?

10 BY MR. CARTER: Objection. Object to the
11 leading. It's obviously leading.

12 BY THE COURT: He's already said that. I
13 mean, he's already -- he's responded to that
14 because Sheriff Thornburg had already said that
15 there was a call about a car being broken into.

16 BY MR. HILL:

17 Q Whose car was it that had been broken
18 into?

19 A Doyle Simpson.

20 Q And was Mr. -- can you tell us, were you
21 able to speak to Mr. Simpson immediately upon
22 arriving there or did you have to wait?

23 A I had to wait probably ten or 15 minutes
24 before he drove up.

25 Q Okay. So when he got there, did you talk
26 to him?

27 A When he got there, I did. He came inside
28 the office, and I talked with him a few minutes and
29 found out that -- what had been stolen out of his

THORNBURG - DIRECT

1 car.

2 Q What was his complaint?

3 A He said he had a --

4 BY MR. CARTER: I object to what he said.

5 BY MR. HILL:

6 Q Did he have any kind of --

7 BY THE COURT: Wait. I mean, how is this
8 not hearsay what Mr. Simpson told
9 Mr. Thornburg?

10 BY MR. HILL:

11 Q Did he have any kind of report or
12 complaint?

13 A Nothing but a verbal report.

14 Q Okay. And that's what I'm saying. Did
15 you discuss that with him?

16 A I did.

17 Q What did you do after you discussed his
18 complaint with him?

19 A He told me he had a --

20 BY THE COURT: Wait.

21 BY MR. CARTER: Objection, Your Honor.

22 A Okay. I went out to his car, and then I
23 looked at his car. He told me that --

24 BY MR. CARTER: I object, Your Honor.

25 BY MR. HILL:

26 Q You say you went out to the car and looked
27 at it.

28 A Yes, sir.

29 Q Why did you look at his car?

THORNBURG - DIRECT

1 **A** Because it had been burglarized.

2 **Q** And was there anything allegedly stolen
3 out of the car?

4 **A** Yes, sir.

5 **Q** What was that?

6 **A** A .380 pistol.

7 **Q** Now, had you just determined or had you
8 just seen evidence that a .380 pistol had been fired
9 in the store?

10 **A** Yes, sir, I did.

11 **Q** And when you learned that a .380 pistol
12 was reported missing, what did you do then?

13 **A** Well, after that 30 minutes had elapsed --
14 30 or 45 minutes and people had been killed with a
15 .380 pistol and that's what had been stolen out of
16 the car.

17 **Q** Did you call -- did you make any report or
18 ask for investigatory assistance on that?

19 **A** I didn't make a report, no, sir.

20 **Q** What did you do?

21 **A** I went back to the store and told them
22 that the pistol had been stolen was a .380 caliber
23 pistol.

24 **Q** And who did you report that to? That's
25 what I'm getting at?

26 **A** I'm not sure exactly who, but one of the
27 investigators. Probably Jack Matthews or Wayne
28 Miller.

29 **Q** Okay. And who was Jack Matthews and Wayne

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

THORNBURG - DIRECT

1 Miller?

2 **A** They were state investigators with the
3 Mississippi Highway Patrol.

4 **Q** And they -- were they the ones that were
5 working there at the Tardy scene?

6 **A** Yes, sir.

7 **Q** Do you know whether or not that car was --
8 the car that was -- that you saw, did you look --
9 get a chance to look at that car?

10 **A** Yes, sir.

11 **Q** Sheriff, I'm going to show you some
12 exhibits that have already been received. I'm going
13 to show you State's Exhibit No. 99 -- and you can
14 turn around a little bit there if you need to --
15 State's Exhibit No. 99A, 100A and 101A, and I want
16 to ask you if you recognize what those photographs
17 are of.

18 **A** Can I stand up?

19 **Q** Sure, you can stand down. Go ahead.

20 **A** Yes, sir. I recognize them.

21 **Q** Okay. And I want to direct your attention
22 to 99A first. What is that a picture of?

23 **A** That's a picture of Doyle Simpson's car.

24 **Q** Okay. And where was the car at when that
25 picture was taken, if you recall?

26 **A** There in front of Angelica.

27 **Q** Did you notice when you investigated
28 Mr. Simpson's complaint of a burglary and a pistol
29 missing out of his car, did you notice any -- any

THORNBURG - DIRECT

1 peculiarities that you thought noteworthy when you
2 looked at the car?

3 **A** I noticed that when I walked up that the
4 glove compartment had been broken into.

5 **Q** Now, you got a picture there, S-101A, this
6 bottom photograph, can you tell us if you recognize
7 that photograph?

8 **A** Yes, sir.

9 **Q** What is that a picture of?

10 **A** That's a picture of the glove compartment
11 in Doyle Simpson's car.

12 **Q** And I asked you if there was anything that
13 you thought significant on there. Do you see
14 anything that came to your attention when you looked
15 at the car itself and looked at the glove box in the
16 car?

17 **A** Yes, sir. I did see some pry marks where
18 it looked like it had been pried open.

19 **Q** Would you just point those out for the
20 ladies and gentlemen of the jury what you're talking
21 about there, sir?

22 **A** Okay. It's some pry marks right there and
23 right here. It looked like a screwdriver had been
24 used or a tire iron.

25 **Q** To prise open the glove box?

26 **A** Yes, sir.

27 **Q** Okay. All right, Sheriff. Thank you,
28 sir.

29 **BY THE BAILIFF:** Your Honor, could I speak

BENCH CONFERENCE

1 to you for just a moment, please?

2 (BAILIFF APPROACHES COURT FOR AN
3 OFF-THE-RECORD CONFERENCE)

4 **BY THE COURT:** Counsel, if you'll
5 approach.

6 (ALL COUNSEL APPROACHED THE BENCH FOR A
7 CONFERENCE THAT WAS HELD OUTSIDE THE
8 HEARING OF THE JURY, TO-WIT:)

9 **BY THE COURT:** The bailiff was just
10 telling me that jury alternate juror Martin's
11 mother -- got a sister that's in the hospital,
12 and they had just called up here to say that
13 she was getting worse, you know. So, I mean,
14 I -- you know, when we'll recess for lunch,
15 I'll let the bailiff advise her of that. And
16 depending on the circumstances, she may end up
17 having to be excused. I don't know at this
18 point. But I just -- when the bailiff walked
19 in --

20 **BY MR. CARTER:** Who is it?

21 **BY THE COURT:** It's one of the alternate
22 jurors, and I don't know which one. Well, I
23 think it's two females.

24 **BY MR. HILL:** It's Alternate No. 2.

25 **BY THE COURT:** So I don't know, you know,
26 what the condition will be or even which one
27 that is.

28 (BENCH CONFERENCE CONCLUDED)

29 **BY THE COURT:** We'll just recess for lunch

BENCH CONFERENCE

1 now, and we'll be back at one o'clock.

2 (THE FOLLOWING PROCEEDINGS WERE HAD IN
3 OPEN COURT OUTSIDE THE HEARING AND
4 PRESENCE OF THE JURY, TO-WIT:)

5 **BY MR. CARTER:** Your Honor, I can't hear
6 anything til everyone's cleared out so let's
7 just wait.

8 **BY THE COURT:** Okay. I need quiet in the
9 courtroom.

10 **BY THE BAILIFF:** Let's have order in the
11 courtroom.

12 **BY THE COURT:** You wanted to say
13 something, and I just felt like you'd wait
14 until --

15 **BY MR. CARTER:** I just wondered if we
16 could go ahead and let her go immediately.

17 **BY THE COURT:** I don't know what the
18 situation of her sister is.

19 **BY THE BAILIFF:** She doesn't either.
20 Evidently, she's very disturbed because she
21 knows that when they called and said she's
22 getting worse, it scared her to death but --
23 because she -- she knows more than what I do,
24 and she said it's her sister that is disabled
25 so she wants to know can she make a phone call
26 or can -- she wants to make a phone call
27 immediately or either I can make it, you know,
28 for her or whatever needs to be done.

29 **BY THE COURT:** Why don't you make it --

BENCH CONFERENCE

1 she can't, but you can.

2 **BY THE BAILIFF:** She can be beside me;
3 right?

4 **BY THE COURT:** Well, I mean, she can't
5 talk to anybody. But you can make a phone call
6 in her presence. And then if there's, you
7 know, other things -- I mean, if she ends up
8 having to be excused, then she'll just have to
9 be excused. But, I mean, right now, you can --
10 over this recess find out more.

11 **BY THE BAILIFF:** Where can I take her to
12 use the telephone, the sheriff's office?

13 **BY THE COURT:** Or you can go in the
14 judge's chambers back there as soon as I clear
15 out from lunch.

16 **BY THE BAILIFF:** Yes, sir.

17 **BY THE COURT:** There isn't going to be
18 anybody hanging out in the judge's chambers,
19 nobody but me.

20 (THE JURORS KNOCK ON THE DOOR,
21 INDICATING THAT THEY HAVE A QUESTION OR A
22 NOTE)

23 **BY THE COURT:** As I say, we'll now -- you
24 know, I'm fixing to head to lunch. As soon as
25 I'm out of there, y'all can go in there and
26 make a call. You can be the intermediary
27 there, and we'll find out further --

28 **BY THE BAILIFF:** Judge, I was just passed
29 the number that we need to call.

ALTERNATE JUROR IS RELEASED

1 **BY THE COURT:** We'll be back at
2 one o'clock.

3 (FOLLOWING THE LUNCH RECESS,
4 PROCEEDINGS CONTINUED IN OPEN COURT WITH
5 ALL PARTIES PRESENT, OUTSIDE THE HEARING
6 AND PRESENCE OF THE JURY, TO-WIT:)

7 **BY THE COURT:** The Court will come to
8 order. Tell me of this inquiry that was made
9 of this sister of the juror. Can you tell me
10 what we found out?

11 **BY THE BAILIFF:** Yes, sir. She did find
12 out that her sister is not being taken to the
13 hospital, because she's going to be placed with
14 hospice. She's just continuing to get worse.
15 Her sister has been an invalid ever since, I
16 guess, birth or ever since I've known of them I
17 have seen her in a wheelchair. And the cancer
18 is getting worse and Ms. Martin says she just
19 does not feel like she can sit here and give
20 her full attention to the Court with this
21 bearing on her mind as to what could happen and
22 she couldn't get to her sister.

23 **BY THE COURT:** Any objection to allowing
24 Ms. Martin to being excused?

25 **BY MR. CARTER:** No, sir.

26 **BY MR. EVANS:** No, sir.

27 **BY THE COURT:** If you'll bring them out.
28 And I guess before -- somebody at some point in
29 time will make arrangements to get -- I don't

ALTERNATE JUROR IS RELEASED

1 know if Ms. Martin's automobile is here or her
2 belongings or wherever she's staying, but if
3 somebody will check into that.

4 **BY THE BAILIFF:** In fact, her car keys is
5 even up in Grenada so she can't even leave
6 until she gets a ride up there to them.

7 **BY THE COURT:** Well, somebody will have to
8 make a trip up there. But y'all can arrange
9 that with the sheriff after we excuse her.

10 **BY THE BAILIFF:** Yes, sir.

11 **BY THE COURT:** Y'all can bring the jury
12 back in.

13 (THE FOLLOWING PROCEEDINGS WERE HAD IN
14 OPEN COURT WITH THE JURY PRESENT, TO-WIT:)

15 **BY THE COURT:** The Court will come back to
16 order. And, Ms. Martin, I understand your
17 sister's health is rapidly deteriorating, and I
18 understand your desire to leave, and I'm going
19 to excuse you at this time. They did make some
20 arrangements to get you to where your
21 belongings are and all of that, but you're free
22 to step down. One of the bailiffs will go
23 around to the sheriff's office with you, and
24 they can figure out how to provide
25 transportation for you and all of that, but you
26 certainly have the Court's sympathy for the
27 illness of your sister.

28 **BY MS. MARTIN:** Thank you.

29 **BY THE COURT:** If you'll get Mr. Thornburg

THORNBURG - CONTINUED DIRECT

1 back in here. Come back around, have a seat.

2 Mr. Hill, you may continue.

3 BY MR. HILL: Thank you, Your Honor.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. HILL:

6 Q Mr. Thornburg, I think we were discussing
7 after you had found out that Mr. Simpson --
8 Mr. Doyle Simpson's car had been burglarized and he
9 complained of his .380 pistol being stolen, did you
10 communicate that to other investigators working on
11 this case?

12 A Yes, sir, I did.

13 Q And at some point in time after you
14 discussed this with other investigators, did y'all
15 feel a need to go to Doyle Simpson's mother's house?

16 A Yes, sir.

17 Q And can you tell the ladies and gentlemen
18 of the jury what purpose you had in going to
19 Mr. Simpson's house, or his mother's house I should
20 say?

21 A We went out there to look for projectiles,
22 hulls fired from a .380.

23 Q Okay. And why did you -- why did you
24 desire to look for .380 projectiles there?

25 A Well, it -- the weapon that was used in
26 the furniture store was a .380 and the weapon that
27 was stolen out of his car was a .380. That's the
28 reason I was looking for .380 hulls and projectiles.

29 Q Something that was connected to the stolen

THORNBURG - CONTINUED DIRECT

1 pistol?

2 **A** Yes, sir.

3 **Q** Okay. And what did you do -- let's see.
4 Do you recall when it was that you went out to
5 Doyle's mother's house?

6 **A** I believe it was on the 19th day of July.

7 **Q** Okay. And when you got there, what did
8 you do, sir?

9 **A** I went to the back where he had been
10 firing his pistol and went down to a post that had a
11 cut out in it where he'd been shooting bottles and
12 cans and found some bullet holes in the post. Took
13 my pocket knife out, stuck in a hole, felt of a
14 bullet, took my knife and carved it out.

15 **Q** Okay. And how did you know where this
16 post was? Did you have Mr. Simpson with you?

17 **A** Yes, sir.

18 **Q** And he went with you when you went to his
19 mama's house?

20 **A** Yes, sir.

21 **Q** Did he show you where he had been shooting
22 his gun?

23 **A** Yes, sir, he did.

24 **Q** Okay. And so from there, that's where you
25 carved out a bullet; is that right?

26 **A** Yes, sir.

27 **Q** Okay. Mr. Thornburg, I'm going to hand
28 you what's been marked as State's Exhibit No. 82 for
29 identification.

THORNBURG - CONTINUED DIRECT

1 **BY MR. CARTER:** Could I see it first?

2 **BY MR. HILL:** Sure.

3 **BY MR. HILL:**

4 **Q** This is State's Exhibit 82 for
5 identification. Would you take that and look at it,
6 please, sir. After you examine it, would you tell
7 us if you recognize that item.

8 **A** (Witness examining exhibit.)

9 **Q** Do you recognize that item, sir?

10 **A** It looks like a .380 projectile.

11 **Q** Okay. Is there any handwriting on the
12 outside of the envelope on the back of it that you
13 recognize?

14 **A** I see JM B42 on it. Also, I see my
15 initials on here, Bill Thornburg, S02.

16 **Q** Okay. And what's the date on there?

17 **A** 7/19 of '96.

18 **Q** Who put that projectile in that envelope?

19 **A** Jack Matthews.

20 **Q** Okay. And how did Jack Matthews get that
21 projectile?

22 **A** I give it to him.

23 **Q** Okay. And after it was sealed up, is that
24 your handwriting on the exterior with your initials
25 there?

26 **A** Yes, sir.

27 **Q** And is that the bullet that you dug out of
28 the post behind Doyle Simpson's mother's house?

29 **A** Yes, sir, it is.

THORNBURG - CONTINUED DIRECT

1 Q Did you have an occasion -- I'm sorry.
2 After you got that bullet and after you gave it to
3 Officer Matthews, did you discuss with him where you
4 found that bullet?

5 A Yes, sir, I did.

6 Q Did y'all decide to go back out there a
7 second time?

8 A We did.

9 Q I'm going to hand you State's Exhibit 81.

10 BY MR. HILL: Do y'all care to -- defense
11 counsel want to --

12 BY MR. CARTER: Yeah, I need to look at
13 it, yes.

14 BY MR. HILL:

15 Q Mr. Thornburg, I'm going to hand you this.
16 This is a manila envelope labeled State's Exhibit
17 No. 81. Would you just examine the information
18 written on there and see if you can tell us if
19 you're familiar with that exhibit, please, sir.

20 A (Witness examining exhibit.)

21 Q And first of all, I would ask you: Is it
22 labeled with a date on it to indicate what time
23 y'all recovered that?

24 A Yes, sir.

25 Q What is the date written on there?

26 A The 1st day of August, '96.

27 Q Okay. And on the 1st day of August, 1996,
28 did you go back out to Doyle Simpson's house?

29 A Yes, sir.

THORNBURG - CONTINUED DIRECT

1 Q Who, if anybody, went with you that second
2 time?

3 A Jack Matthews was with me, an
4 investigator.

5 Q All right. The highway patrol
6 investigator?

7 A Yes, sir.

8 Q And when y'all -- when you and Officer --
9 pardon me -- when you and Officer Matthews arrived
10 at Doyle's mother's house on the 1st of August of
11 '96, where did you and he go?

12 A We went back to the cedar post behind the
13 house.

14 Q And what did you do when you got to that
15 cedar post again?

16 A We looked for more projectiles.

17 Q How did you go about locating one?

18 A We found some more holes and poked in
19 them. It was an object in there. We took a hatchet
20 and hacked down pretty close and took a knife and
21 carved it on out.

22 Q Were you present -- what is that in that
23 sack there, Sheriff?

24 A In this?

25 Q Yes, sir.

26 A It's a projectile.

27 Q Is that that projectile that you removed
28 from the post on the 1st of August of '96?

29 A Yes, sir.

THORNBURG - CONTINUED DIRECT

1 Q Was it -- are you the one or Mr. Matthews
2 the one that removed it from the wood?

3 A I believe Jack removed it from the wood.

4 Q Okay. Were you present watching him when
5 he did it?

6 A Yes, sir.

7 Q Were you present when he sealed it up in
8 that package there?

9 A Yes, sir.

10 Q And is it still sealed today?

11 A Yes, sir.

12 Q Now, after y'all recovered those two
13 projectiles, did you have occasion to learn where
14 Mr. Flowers had been staying at the time of the
15 murders at Tardy Furniture?

16 A Yes, sir, I did.

17 Q Can you tell the ladies and gentlemen of
18 the jury where Mr. Flowers was staying or with whom
19 he was staying on the 16th of July, '96?

20 A He was staying with Connie Moore at 702 A1
21 North McNutt.

22 Q All right. Did y'all have occasion to go
23 out to Connie Moore's house for any reason?

24 A Yes, sir, I did.

25 Q What were y'all looking for when you went
26 there?

27 A We were looking for Fila tennis shoes.

28 Q And on that occasion, did y'all find any
29 Fila tennis shoes?

THORNBURG - CONTINUED DIRECT

1 A No, sir, I did not.

2 Q Did you find anything that indicated that
3 it had the name Fila tennis shoes on it?

4 A Yes, sir. When I was looking for tennis
5 shoes, I looked in a chest of drawers in a back
6 bedroom, and there was a Fila tennis shoe box in
7 that chest of drawers.

8 Q And did you take -- was there anything in
9 that box?

10 A No, sir.

11 Q Since it was an empty box, did you take it
12 that day?

13 A No, sir, I did not. It was empty, but I
14 did not take it that day.

15 Q And did you report your finding of the
16 empty tennis shoe box to the other investigators?

17 A Yes, sir, I did.

18 Q Did y'all talk about it?

19 A Yes, sir.

20 Q After discussing that, what you' found in
21 Connie's house, did y'all decide to go back and ask
22 for that box?

23 A Yes, sir, I did.

24 Q Do you remember the day or do you remember
25 going back for that box?

26 A Yes, sir. I believe it was about the 14th
27 day of August.

28 Q How did you go about retrieving the box?

29 A I went back over there, and I told Connie

THORNBURG - CONTINUED DIRECT

1 that there was a Fila shoe box in the chest of
2 drawers back there and that I needed to get it.

3 Q Okay. Did she allow you to do that?

4 A I didn't go back. She went back and got
5 it.

6 Q Okay. And on the previous time, did she
7 allow you to look in the house for the shoes on the
8 previous time?

9 A Yes, sir.

10 Q And when you went back for the box, I
11 believe you said she gave it to you?

12 A Yes, sir.

13 Q Would you recognize it if you saw it
14 again?

15 A Yes, sir, I believe I would.

16 BY MR. CARTER: Let me see it.

17 BY MR. HILL: Sure.

18 BY MR. HILL:

19 Q Mr. Thornburg, I'm going to hand to you
20 what's been marked State's Exhibit 79-A for
21 identification and ask if you would, look at that
22 box, please, sir. And I'd like for you just to kind
23 of take a look at it all over and see if you can
24 tell us if you remember that particular box.

25 A Yes, sir.

26 Q Now, how do you know if that's -- how do
27 you recognize that box? Did you mark it in any way?

28 A Yes, sir. It's got my initials on it.

29 Q What all does it say there where you wrote

THORNBURG - CONTINUED DIRECT

1 your initials?

2 **A** It says 14 August, '96, 2:17 p.m. JB and
3 BT, Bill Thornburg.

4 **Q** And who was the other initials?

5 **A** JB.

6 **Q** Okay. And who does that stand for?

7 **A** Jerry Butler.

8 **Q** And who was he?

9 **A** He had been an investigator with the
10 Mississippi Highway Patrol, and he was a -- I
11 believe he was retired at that time.

12 **Q** And he was assisting y'all when he went
13 with you?

14 **A** Yes, sir.

15 **Q** Sheriff, is that the box that you got from
16 Connie Moore's house on that day?

17 **A** Yes, sir.

18 **Q** Now, is that box -- does it have a label
19 on it?

20 **A** Yes, sir, it does.

21 **Q** Does that describe what it originally
22 contained?

23 **A** It's got MS Grant Hill No. 2 mid Fila,
24 red, navy and blue, size ten and a half.

25 **Q** Sheriff, when you first saw that box, did
26 it have anything in it?

27 **A** No, sir, it didn't have anything in it.

28 **BY MR. HILL:** Your Honor, at this time,
29 I'm going to ask that State's Exhibit 79-A, the

THORNBURG - CONTINUED DIRECT

1 shoe box, and State's -- I believe it's 81 and
2 82 -- two projectiles that the sheriff just
3 testified about, I would ask that all three of
4 these items be received into evidence in the
5 case.

6 **BY MR. CARTER:** No objection.

7 **BY THE COURT:** I'll allow them to be
8 admitted.

9 (STATE'S EXHIBITS NO. 79-A, 81 AND 82
10 WERE RECEIVED INTO EVIDENCE.)

11 **BY MR. HILL:** If the Court will indulge me
12 one minute.

13 **BY MR. HILL:**

14 **Q** Sheriff, after y'all got the shoe box and
15 the two projectiles into law enforcement custody, do
16 you know where they went for comparison purposes?

17 **A** They were taken to the crime lab.

18 **Q** Mississippi Crime Lab?

19 **A** Yes, sir.

20 **Q** In what city?

21 **A** Jackson, Mississippi.

22 **BY MR. HILL:** Tender the witness for
23 cross-examination. Thank you.

24 **CROSS-EXAMINATION**

25 **BY MR. CARTER:**

26 **Q** Mr. Thornburg, how do you know that was --
27 how do you know that shoe box was taken to the
28 Mississippi Crime Lab?

29 **A** It's labeled where it was.

THORNBURG - CROSS

1 Q It's labeled?

2 A Yes, sir. Mississippi Crime Lab. That's
3 where we take all our evidence to have it examined.

4 Q So, Sheriff, you believe it was taken to
5 the Mississippi Crime Lab, but you didn't carry it
6 yourself, did you?

7 A I did not take it myself, no, sir.

8 Q Okay. Do you know who took it?

9 A I sure do not.

10 Q Okay. I don't have many questions of you,
11 believe it or not, Mr. Thornburg, but let me ask you
12 a few. Now, I believe you testified that you had
13 been a sheriff for six years and a deputy sheriff, I
14 think, for 26; is that correct?

15 A Yes, sir.

16 Q Now, on the occasion you went to
17 Mr. Simpson's mother's house and you found a
18 projectile on July the 19th, 1996 and I believe you
19 testified August the 1st, '96, if I'm not mistaken?

20 A Yes, sir.

21 Q Did you make a report of doing that?

22 A No, sir.

23 Q Did you take any pictures when you went
24 out there?

25 A Did I take any what?

26 Q Any photographs, any pictures?

27 A No, sir.

28 Q Did you videotape it?

29 A No, sir.

THORNBURG - CROSS

1 Q Did you consider that an important area
2 where you might have been able to find some -- some
3 evidence?

4 A Yes, sir, it was.

5 Q And you found some?

6 A I did.

7 Q Now, who was with you besides -- I might
8 have missed it. It was you the first time --
9 yourself and Doyle Simpson. Did you say somebody
10 else was with you?

11 A The first time?

12 Q First time, yes, sir.

13 A I believe I took the chief of police of
14 Duck Hill with me with a metal detector, Bob Tatum.

15 Q Okay. And was there anyone else that you
16 know of?

17 A Not to my knowledge, no, sir.

18 Q Now, you said this -- you found the -- the
19 hulls on the ground I assume. Where did you find
20 them?

21 A We did. We found a -- I don't know how
22 many but a few hulls.

23 Q On the ground?

24 A Yes, sir, in the grass.

25 Q In the grass?

26 A Yes, sir.

27 Q Then you went back and you found a
28 projectile. Is that what you testified to -- one or
29 several?

THORNBURG - CROSS

1 **A** The first time?

2 **Q** The second time now.

3 **A** The second time, yes, sir. I went back
4 and got another projectile.

5 **Q** You got a projectile the next time?

6 **A** Yes, sir.

7 **Q** Just one?

8 **A** Yes, sir.

9 **Q** And you said you had Mr. Jerry Butler with
10 you that time; right?

11 **A** No, sir.

12 **Q** Wait a minute. Let's see. At what time
13 was Mr. Butler with you, the first time or the
14 second time?

15 **A** Mr. Butler didn't go out to Doyle
16 Simpson's house with me.

17 **Q** Okay. Wait a minute. I apologize for
18 having to ask you, but what did Mr. Butler do?
19 Apparently, I didn't write it down.

20 **A** He went with me to Connie Moore's.

21 **Q** Sir?

22 **A** He went with me to Connie Moore's house.

23 **Q** Okay. I'm sorry. I apologize. Sheriff,
24 let me just ask you: Is there a reason you didn't
25 take any pictures when you went to Doyle Simpson's
26 house?

27 **A** No particular reason, no, sir.

28 **Q** Now, you do agree with me that
29 documentation is really important in a major

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1 homicide investigation?

2 **A** Yes, sir. I would say it's important.
3 But how -- I was working in conjunction with the
4 state investigators, and I report everything I did
5 to them.

6 **Q** Okay. Do you know if they went back and
7 took any pictures at the scene?

8 **A** At which scene?

9 **Q** Do you know if the state investigators --
10 I'm assuming you're talking about Mr. Jack Matthews
11 and Wayne Miller; is that correct?

12 **A** Yes, sir.

13 **Q** Do you know if they followed up and -- or
14 anybody followed up and went back to Doyle Simpson's
15 house and actually took some pictures of the scene
16 where the hull and the projectile was found?

17 **A** I do not know.

18 **Q** Okay. Now, the projectile, you said, was
19 taken out of a -- was it a cedar log or what do you
20 call it?

21 **A** It was a cedar post that was cut out like
22 a crosstie.

23 **Q** Cut out like a crosstie? And now, also,
24 when you got to Angelica that -- not Angelica. When
25 you got to Tardy's that day and you went into Tardy
26 Furniture store, was someone with you when you went
27 in, did you go in by yourself or how did that come
28 about?

29 **A** I went in by myself.

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1 Q Okay. At that point, where was Chief
2 Hargrove? Do you know?

3 A He was just inside the door. I remember
4 seeing him. I saw another policeman but I don't
5 remember who it was.

6 Q And I take it Mr. Matthews and Mr. Miller
7 hadn't gotten there yet; is that fair to say? Is
8 that right?

9 A That's right.

10 Q And how long did you stay at Tardy's
11 before you got the call to go to Angelica?

12 A I'd probably say no more than ten or 15
13 minutes.

14 Q Now, that ten minutes that you were there
15 at Tardy's, what exactly did you do?

16 A I observed the bodies there and the pool
17 of blood, examined the .380 hull that was laying by
18 one of the victims.

19 Q Okay. Did you make a report of your
20 observations at Tardy's?

21 A No, sir, I did not.

22 Q And you went to Angelica's. And if my
23 memory serves me right, you were there a few minutes
24 before -- a while, I'm not sure how long it was
25 before -- I can't even remember his name -- before
26 another officer with the Mississippi Highway Patrol
27 got there; is that correct?

28 A We got down there about the same time.

29 Q Okay. And since I can't remember the

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1 other officer's name, can you tell us who it was?

2 A It was James Taylor Williams.

3 Q And y'all was there, and it was a few
4 minutes later that y'all saw somebody running; is
5 that correct?

6 A Yes, sir.

7 Q And he was running from west -- western
8 part of the parking lot to the eastern part of the
9 parking lot. Is that fair to say?

10 A Yes, sir.

11 Q And he made a left turn and made -- made a
12 left turn and started going north -- is that
13 correct -- around the building?

14 A Yes, sir.

15 Q And who was that person?

16 A Emmett Simpson.

17 Q And what was his physical condition at the
18 time that you saw him?

19 A What was his condition?

20 Q Physical condition, outward appearance?

21 A Well, it was hot and he was running; he
22 was perspiring pretty good.

23 Q Okay. Where did he go?

24 A He went north by the end of the building
25 and turned back west on the north side of the
26 building and run all the way back to the loading
27 dock.

28 Q And you and Mr. Williams, I believe, went
29 down there and talked to him?

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1 **A** Yes, sir.

2 **Q** And he told you that he had been accused
3 of -- he had been accused or his brother thought he
4 had taken his gun; is that correct?

5 **A** Yes, sir.

6 **Q** Or something like that. And how long
7 thereafter did Doyle come up on the scene?

8 **A** I don't really know how long. Probably
9 ten or 15 minutes.

10 **Q** And you also got a chance to talk to
11 Doyle?

12 **A** I did.

13 **Q** And did you make a report of that?

14 **A** No, sir.

15 **Q** Now, did you consider Emmett and Doyle to
16 be possible suspects at that time?

17 **A** Well, I didn't figure he was a suspect,
18 but I thought he broke in his -- he told me that
19 Doyle thought he broke in his car.

20 **Q** Did you or anybody you know make any
21 effort to get Emmett and Doyle to the police
22 department right after that to interview them or
23 anything?

24 **A** I don't know. I didn't.

25 **Q** You didn't? Now, when you went to
26 Ms. Moore's house, she consented to let you search
27 the house, I believe; is that correct?

28 **A** Yes, sir.

29 **Q** And she didn't get in your way or try to

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1 stop you or anything like that, did she?

2 A Do what?

3 Q She didn't try to prevent you or hinder
4 you from searching the house, did she?

5 A No, sir.

6 Q And she didn't resist providing the shoe
7 box, did she?

8 A No, sir.

9 Q Now, correct me if I'm wrong, but I
10 believe -- strike that. How many times did you go
11 into Tardy's -- in and out of Tardy's for that brief
12 period of time you were there, if you recall?

13 A When I was first there?

14 Q Yes, sir. Yes, sir, the first time you
15 went, how long did -- did you come in and out of
16 there?

17 A I went in. And when I left, I went to
18 Angelica. That's the only time I came out of there.

19 Q So you only went in -- went in and came
20 out the first time. Okay. Now, you say you didn't
21 see the shoe prints the first time or -- am I
22 summarizing you right or am I wrong about that?

23 A That's wrong. I seen them when I went in
24 the first time.

25 Q The first time. Now, did somebody have to
26 point it out to you or you found it on your own?

27 A I saw it on my own.

28 Q You was by yourself, I believe you told
29 me?

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1 **A** Yes, sir.

2 **Q** Now, was the area roped off? Did you see
3 like that yellow tape that y'all put it up to rope
4 off the area? Had anybody done it by the time you
5 got there?

6 **A** Had not.

7 **Q** Did anybody ever do it? What time did you
8 go back to Tardy's, if you recall, best estimate?
9 You don't have to be exact.

10 **A** It was in the afternoon. I don't -- I
11 don't know. I was back there, and it was roped off
12 then.

13 **Q** Okay. Do you know who roped it off?

14 **A** I do not.

15 **Q** Now, Sheriff Thornburg, were you asked by
16 any investigator to -- and I mean Investigator
17 either Wayne Miller or Jack Matthews to write a
18 report of what you had witnessed at Doyle Simpson's
19 house or at Angelica or at Tardy's?

20 **A** I didn't ask them to. I don't know
21 whether they did or not.

22 **Q** My question -- I think I might have
23 confused you. I said did anybody ask you to write
24 one regarding what you had witnessed at Doyle's
25 house or Connie's house or Angelica?

26 **A** No, sir.

27 **Q** And which particular person was you
28 reporting to? Who did you consider to be running or
29 leading the operation?

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1 **A** I did most of mine with Jack Matthews.

2 **Q** With Jack Matthews?

3 **A** Yes, sir.

4 **Q** Do you know who had the higher rank, Jack
5 Matthews or Wayne Miller?

6 **A** I do not.

7 **Q** Now, you did finally do a report that
8 covered some of your activity on February the 24th,
9 1997. Do you remember doing that? I'll show it to
10 you if you need me to. You may not even recognize
11 it, but --

12 **BY MR. CARTER:** May I approach the
13 witness, Your Honor?

14 **BY THE COURT:** You may.

15 **BY MR. CARTER:**

16 **Q** Take a look at that and see if you
17 recognize it. And you can look at it. You can read
18 it if you want to.

19 **A** Yes, sir. I remember giving Mr. Johnson a
20 statement.

21 **Q** Okay. Who initiated that? Was it you or
22 Mr. Johnson?

23 **A** What do you mean, initiated it?

24 **Q** Did you go to them and say, "I think it's
25 about time for me to give some kind of statement,"
26 or did they ask you to come and give a statement?

27 **A** I don't remember.

28 **Q** What's the date of it?

29 **A** February the 24th, 1997.

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1 Q Thank you. Do you know if they had a
2 recorder going when you gave your statement?

3 A I don't know. I don't know. He may have.
4 I don't know.

5 Q Now, were you able to find out -- didn't
6 you receive some information about where Mr. Simpson
7 got the gun from?

8 A I -- I heard some talk of it. I -- I
9 don't know who was telling about where it came from.

10 Q Now, when you had this statement up there
11 for that period of time, did you read it?

12 A I didn't read all of it, no, sir.

13 Q Could you read the rest of it and tell me
14 whether you could answer that question for me? See
15 if it will refresh your memory. You can read that
16 last page. Skip the first page.

17 A (Witness reading document.)

18 Q And according the information you
19 received, the gun was obtained from where?

20 A Doyle told me that he had got the gun from
21 a relative in Louisiana, but he didn't know what
22 brand name it was but it was a .380.

23 Q Did you ever learn whether that was the
24 truth or not? Did you ever receive information that
25 that was, in fact, not the truth?

26 A Yes, sir.

27 BY MR. CARTER: No further questions. Oh,
28 one moment, Your Honor.

29 BY MR. CARTER:

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1 Q Sheriff Thornburg, you -- in the process
2 of your involvement in this investigation, you
3 learned that Doyle Simpson's car had been
4 burglarized; is that correct?

5 A Yes, sir.

6 Q Did you prepare a report on that?

7 A I did not.

8 BY MR. CARTER: No further questions, Your
9 Honor.

10 BY THE COURT: Any redirect?

11 BY MR. HILL: Just a couple of questions,
12 Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. HILL:

15 Q Mr. Thornburg, after you -- after you
16 discovered that Mr. Simpson's car had been
17 burglarized and his pistol stolen, did you
18 communicate that to your fellow investigators that
19 same day?

20 A Yes, sir, I did.

21 Q And with regard to Mr. Emmett Simpson, did
22 you follow him to where he stopped running?

23 A Yes, sir.

24 Q And where was it that he stopped?

25 A On the loading dock on the north side of
26 the west end of the building.

27 Q Okay. Is that where he was working?

28 A Yes, sir.

29 Q So he was just running back to his work

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1 station?

2 A Yes, sir.

3 Q Okay. And he didn't leave the premises;
4 he wasn't trying to run away from you, was he?

5 A No, sir.

6 Q And did you question him about why he was
7 running?

8 A I may have. I can't remember.

9 Q It doesn't have to do with what you
10 explained to defense counsel about talking to Doyle,
11 and Doyle talking about that he got the gun?

12 A Yes, sir.

13 BY MR. CARTER: Object to the leading. I
14 don't mind the question but object to leading.

15 BY MR. HILL:

16 Q And did you search any -- did you search
17 Emmett's van?

18 A I did.

19 Q And where was it parked?

20 A It was parked in the front parking lot on
21 the south side of the building.

22 Q Did you find any gun or anything else of
23 interest in the van?

24 A No, sir.

25 Q You never did see Emmett go to the van
26 after he started running, did you?

27 A No, sir.

28 BY MR. HILL: That's all we have for this
29 witness, your Honor.

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1 **BY THE COURT:** You may step down. Who
2 would be the State's next witness?

3 **BY MR. HILL:** Mr. David Balash, Your
4 Honor.

5 **BY MRS. STEINER:** Your Honor, may we
6 approach?

7 **BY THE BAILIFF:** Is he finally excused?
8 He wants to know is he --

9 **BY THE COURT:** All right. May he?

10 **BY MR. CARTER:** He can leave but we intend
11 to call him, but we'll just find him when
12 we need him.

13 (ALL COUNSEL APPROACH THE BENCH FOR A
14 CONFERENCE HELD OUT OF THE HEARING OF THE
15 JURY, TO-WIT:)

16 **BY MRS. STEINER:** Your Honor, Mr. Balash
17 is a witness in the outstanding motion on
18 suppression of evidence, and I didn't know if
19 the State was proposing to elicit any testimony
20 regarding the subject matter of that.

21 **BY MR. EVANS:** Unh-unh, not a bit. He's
22 not an expert.

23 **BY THE COURT:** Talking about the gunshot
24 residue?

25 **BY MRS. STEINER:** Uh-huh.

26 **BY THE COURT:** He's not testifying any at
27 all about --

28 **BY MR. EVANS:** No, sir.

29 **BY MRS. STEINER:** I will ask that he

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1 remain afterwards to be available to testify.

2 BY MR. EVANS: You need to take it up with
3 him. He's got a plane out this evening.

4 BY MRS. STEINER: Well, then I'll need to
5 confer and maybe take some testimony outside
6 the presence of the jury from him about the
7 residue. I mean, I'll put him under a subpoena
8 if I have to. I can go do that right now but
9 we will need him to remain.

10 BY MR. EVANS: This is ridiculous. We've
11 got an out-of-state witness that's been here
12 for three days. They have not attempted to
13 subpoena him and he has -- we had already
14 continued his plane ticket one --

15 BY THE COURT: What is the purpose -- I
16 mean, what are you calling him for?

17 BY MRS. STEINER: He is of the opinion --
18 if the -- he is of the opinion that the gunshot
19 residue evidence that exists here does not
20 support any of the inferences that the State
21 wishes to argue from it.

22 BY MR. EVANS: That is not what he's
23 testified to in the case.

24 BY THE COURT: Well, I'll -- I can hear
25 some outside the presence of the jury, and we
26 can take that up --

27 BY MRS. STEINER: Right.

28 BY THE COURT: -- before he leaves today.

29 BY MR. EVANS: Yes, sir.

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1 **BY MRS. STEINER:** Thank you, Your Honor,
2 and -- thank you.

3 (BENCH CONFERENCE CONCLUDED)

4 **BY THE COURT:** If you will come around
5 please and face the bench and take the oath.
6 Do you solemnly swear or affirm the testimony
7 you'll give in this case will be the truth, the
8 whole truth and nothing but the truth, so help
9 you God?

10 **BY THE WITNESS:** I do.

11 **BY THE COURT:** Come around, please, and
12 have a seat.

13 **BY THE WITNESS:** Thank you, sir.

14 **BY THE COURT:** State your name, please.

15 **BY THE WITNESS:** David E. Balash.

16 **BY THE COURT:** You may proceed.

17 **BY MR. HILL:** Thank you, Your Honor.

18 **DIRECT EXAMINATION**

19 **BY MR. HILL:**

20 **Q** Mr. Balash, I'm going to remind you that
21 that microphone in front of you does not amplify
22 your voice, and if you would, please, try to speak
23 loudly so everyone back as far as I am can hear you.

24 **A** Yes, sir.

25 **Q** Would you tell the ladies and gentlemen of
26 the jury how you're employed, sir?

27 **A** Currently, I'm an independent firearms
28 examiner, forensic science consultant.

29 **Q** And would you share with us what training

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1 and experience, background that qualifies you in
2 your field, please, sir?

3 **A** Well, my training and experience began in
4 September of 1966 when I enlisted in the Michigan
5 State Police. I completed a 13-week recruit school,
6 graduated in December of 1966 and was assigned as a
7 road trooper at the Niles post. I worked for
8 approximately two and half years at the Niles post
9 and was transferred to the Sandesky post in Michigan
10 for an additional two and half years. Beginning in
11 January -- January 2nd, 1972, I was assigned to the
12 forensic science division, specifically the firearms
13 identification, tool marks, bombs and explosives
14 unit of the Michigan State Police Plymouth
15 laboratory. I worked in that unit for the next 20
16 years. It was relocated to the Northville
17 laboratory. I progressed from being a trooper to
18 being a detective lieutenant, and I was in charge of
19 that unit when I retired in 1992.

20 **Q** Have you ever been qualified by any court
21 of law as an expert in firearms identification?

22 **A** Yes, sir, I have.

23 **Q** Would you tell us approximately how many
24 times over the extent of your career you have been
25 so qualified as an expert?

26 **A** At this time, it's in excess of 400
27 occasions.

28 **Q** Can you share with us what states -- the
29 courts and what different states have qualified you,

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1 please, sir?

2 **A** The vast majority of my testimony would
3 have occurred within the state of Michigan. In and
4 around the Detroit metropolitan area, there's five
5 main counties: Wayne, Waskanaugh, Oakland,
6 McClaine, Livingston, Monroe counties. And I've
7 also offered -- and that's for state civil, state
8 criminal, as well as federal courts in those
9 jurisdictions. I've also offered testimony in
10 courts in California, here in Mississippi, Ohio,
11 Indiana, Wisconsin, Oklahoma and Illinois that come
12 to mind.

13 **BY MR. HILL:** Your Honor, at this time, I
14 would tender Mr. David Balash as an expert in
15 firearms and firearms identification.

16 **BY MRS. STEINER:** No objection, Your
17 Honor.

18 **BY THE COURT:** I'll allow him to testify
19 as an expert in that field.

20 **BY MR. HILL:** Thank you, Your Honor.

21 **BY MR. HILL:**

22 **Q** Mr. Balash, as a result of and because of
23 your expertise in your field, were you called upon
24 to come to Mississippi to the Mississippi Crime
25 Laboratory in Jackson and to review and examine some
26 evidence that we had on this case back at that time?

27 **A** It was in -- I believe it was August of
28 1998, yes.

29 **Q** All right, sir. Did you come and examine

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1 some items of evidence on this case back in 1998?

2 A I did, sir.

3 Q All right, sir. And if you were to look
4 at those items of evidence, do you think you'd be
5 able to recognize them again?

6 A Yes, sir, I would.

7 Q And as a result of your examination, did
8 you generate a report and compile information that
9 you might have available on this case?

10 A I did, sir.

11 BY MR. HILL: If the Court will indulge me
12 just a minute, Your Honor. I'm going to move
13 this around the other side of the table.

14 BY MR. HILL:

15 Q Mr. Balash, I'm going to hand you what's
16 been marked as State's Exhibit No. 88 for
17 identification. Would take that and tell us if you
18 recognize that, sir?

19 A State's Exhibit 88 is a white pill box.
20 It has writing on it, case number. It also has my
21 number 621-98 and my initials on it. I do recognize
22 this box, sir.

23 Q Did you examine that piece of evidence?

24 A I did, sir.

25 Q Can you tell us what's in the box?

26 A It's a fired cartridge case of CCI
27 manufacture .380 auto caliber.

28 Q And you -- can you tell us the CCI
29 manufacture, what does that mean?

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1 **A** CCI is a brand. It's a type of
2 ammunition. And it's an aluminum cartridge case.
3 It has a non-reloadable primer. It's made for one
4 time use only. It's silver in color.

5 **Q** So that is a cartridge casing or --

6 **A** It's a fired cartridge case. For your
7 information, if I were to hold up an entire bullet
8 or cartridge, as people would call it, it consists
9 of a bullet at the front, a cartridge case that
10 holds the bullet, there's powder behind the bullet
11 and then there's a primer at the base of the
12 cartridge. That's an entire cartridge. When you
13 separate these out after firing, you have a fired
14 cartridge case, and all that is, is the remnant to
15 one that's been fired in a hand gun or a rifle.

16 **Q** Okay. And did you say what caliber that
17 was, if you were able to tell?

18 **A** This was a .380 auto caliber.

19 **Q** And what was -- what can you tell us about
20 a .380 auto? What kind of firearm would shoot a
21 .380 auto caliber?

22 **A** The .380 auto is almost an exclusive
23 semi-auto pistol. And therefore, that means that
24 the -- the weapon to be fired has to have a
25 cartridge in the chamber. A safety -- if there are
26 safeties -- on the weapon have to be off. And if
27 you pull the trigger, the firing pin will explode
28 the primer of the cartridge that's in the chamber.
29 The gun will fire; the bullet comes out of the

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1 barrel of the firearm. The gas pressure that is
2 releasing will cause the slide or the top part of
3 the firearm to function to the rear. And at the
4 same time, there's a little claw-like device that
5 grabs the fired cartridge case from the chamber,
6 strikes the little projection that's called the
7 ejector, and it expels the fired cartridge case from
8 the gun. When the slide's in its fully rearward
9 position, it will then move back forward under
10 spring tension. And if there's a magazine in the
11 gun with additional cartridges, it will pick up a
12 cartridge from the magazine and reinsert it into the
13 chamber but it will not fire it. It will only fire
14 one time. You have to release pressure on the
15 trigger and redepress the trigger to have it fire a
16 second shot. Even if you hold the trigger fully, it
17 will only fire one shot.

18 Q Is that --

19 A That's a semi-auto.

20 Q I'm sorry. I've heard during my
21 experience of a semiautomatic. Would that be a
22 right designation for this kind of weapon?

23 A Yes, sir, it would.

24 Q I want to hand you now State's Exhibit No.
25 89. Would you look at this item of evidence,
26 please, sir, and tell us -- first of all, same
27 process. Do you recognize it? And if you do, what
28 it is?

29 A Again, this is a white pill box. Again,

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1 it has my laboratory number -- the number is
2 621-98 -- and my initials DEB. It reportedly
3 contains a Remington Peters fired .380 auto caliber
4 cartridge case. I do recognize this item, sir.

5 Q Now, you said that was a .380 auto, I
6 believe you said, Remington Peters?

7 A Correct.

8 Q And with regard to that cartridge case
9 there, is it different from the one that you just
10 mentioned, the CCI?

11 A Yes, it is. The fired cartridge contained
12 within this pill box is made essentially of brass.
13 The fired cartridge in this box is made of aluminum.
14 So this one is a silver color; this one's a copper
15 color.

16 Q Are both of those the same caliber even
17 though they are of different consistency on the
18 case?

19 A They're the same caliber, but different
20 manufacturers. It's Ford and Chevy. They make
21 trucks. One's a Ford, and one's a Chevy. These are
22 .380s. One is a Remington Peters; one is a CCI.

23 Q State's Exhibit No. 90. Tell us about
24 that, if you examined it.

25 A State's Exhibit No. 90, again, is a white
26 pill box. Again, it has my laboratory number,
27 621-98, my initials. Again, it reportedly contains
28 a .380 auto caliber fired cartridge case and this,
29 again, appears -- it's difficult to see but I

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1 believe it says CCI, and it does have NR, which
2 means it's non-reloadable, which is a CCI.

3 Q Exhibit 91?

4 A Exhibit 91, again, is a white pill box,
5 and it bears my laboratory number and initials.
6 Reportedly, it's sealed with frangible tape as are
7 the other three. It, again, reportedly contains a
8 .380 auto caliber CCI, non-reloadable fired
9 cartridge case. I do recognize this one as well,
10 sir.

11 Q Okay. Exhibit 92 -- State's Exhibit 92?

12 A State's Exhibit 92, again, is a white pill
13 box. It, again, has my laboratory number and my
14 initials. And it's difficult to read the lettering
15 under the tape. I'd have to refer to my report as
16 to what it contains, sir.

17 Q Would you do that for us, please.

18 A This was State's Exhibit -- I'm sorry,
19 what was the --

20 Q 92.

21 A 92?

22 Q Yes, sir.

23 A State's Exhibit 92, according to my
24 report, contains a .380 auto caliber Winchester
25 Western fired .380 auto caliber cartridge case.

26 Q Now, you've told us what was in all five
27 of those cartridge cases. Will you tell us whether
28 or not you compared one to the other in these cases?
29 Did you do a comparison? And, if you did, will you

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1 tell us how you did it?

2 **A** I did a comparison. What a comparison
3 amounts to is a firearms examiner -- an instrument
4 that is required to do firearms identification is
5 called a comparison microscope. A comparison
6 microscope is essentially two microscopes that allow
7 you to view two different objects at the same time,
8 and they are connected by a bridge so I can look at
9 what's on the right stage and the left stage
10 simultaneously. What I would do in these, I would
11 begin by looking at all the evidence to see what
12 type of markings were available for me to examine
13 and I would do that normally under a
14 stereomicroscope, which is a single view, strong
15 microscope. And once I determined in this case
16 which one had very good markings, I would then
17 consider that my test or my standard and put it on
18 the right stage. I would then take the next four,
19 whatever ones they were, and begin to compare them
20 against my known standard and either identify, not
21 come to an opinion or eliminate based on what I
22 would see under the comparison microscope.

23 **Q** And what -- what are you looking at? Are
24 you looking for markings on the -- breech markings
25 or striations or exactly what is it that you're
26 looking for when you compare one to another?

27 **A** On a fired cartridge case, that comes from
28 a semi-automatic pistol. There are normally five or
29 six areas that you can positively identify with the

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1 weapon. The first one is the firing pin impression
2 itself where the firing pin comes through the -- the
3 breech of the weapon and strikes the soft primer.
4 You can identify that. When the gun fires, the
5 cartridge case slams back against the breech. Those
6 are breech marks, and those can be individual and
7 identifiable. The semi-auto is now being fired.
8 The cartridge case inside the chamber expands to
9 seal the gases from coming to the rear. But after
10 the bullet is expelled from the barrel and the
11 cartridge case is being dragged out of the chamber
12 by the extractor, you can also have chamber
13 markings. The chamber markings, the firing pin
14 identification markings and the breech markings,
15 along with any ejection marks that strike the weapon
16 under a firing sequence, can all be individual
17 enough to identify that that fired cartridge case
18 was fired in a specific weapon.

19 The other two marks that come to mind
20 that are ready available is the extractor mark and
21 the ejector mark. Those can be identified
22 positively with the weapon. But even if you make
23 that identification, it doesn't mean that that
24 cartridge case was fired in the weapon. And the
25 example is, if I were to put a magazine into a
26 weapon, rack it so that one cartridge goes into the
27 chamber and then pull the slide back, the entire
28 cartridge would be drawn out by the extractor, and
29 it would be expelled by the ejector, and it would

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1 leave those marks there but that cartridge was not
2 fired in the gun. It's a positive identification,
3 but it doesn't mean it was fired in the gun. So the
4 ones that are important to have been fired in the
5 weapon are the primer marks, the breech marks, the
6 chamber marks and, in some small cases, the
7 cartridge case that's being ejected after it's fired
8 will strike a portion of the weapon and damage it
9 enough that -- and sometimes those are reproducible
10 and that only happens during the firing process.
11 Those are the areas that are identifiable.

12 Q Were you able to reach an opinion to a
13 reasonable degree of scientific certainty as to
14 these five cartridge cases?

15 A Yes, sir, I was.

16 Q Would you tell the ladies and gentlemen of
17 the jury what that opinion was, sir?

18 A It was my opinion that all five of these
19 fired cartridge cases were fired in one weapon, and
20 one weapon alone.

21 Q And if we could put that in terms of
22 percentages, how certain are you that that is a
23 fact?

24 A I'm 100 percent absolutely certain. There
25 is no margin -- if I identify them as coming from
26 the gun, that's an absolute identification, 100
27 percent.

28 Q Now, did you -- in addition to the five
29 cartridge cases -- in other words, these hulls that

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1 we have here, you looked at other firearms evidence
2 as well, I believe; is that right?

3 A That is correct, sir.

4 Q I want to show you State's Exhibit No. 81.
5 This is a manila envelope, a small manila envelope
6 labeled State's Exhibit No. 81. What could you tell
7 us about recognizing that particular exhibit?

8 A State's Exhibit 81 is a manila envelope.
9 It bears my initials, my laboratory number, and it
10 reportedly contains one fired projectile. I do
11 recognize this item, sir.

12 Q Did you examine it?

13 A I did.

14 Q Can you tell us what it contains?

15 A It contains a portion of a fired bullet.

16 Q And what can you tell us about that
17 fired -- that portion of the fired bullet there?

18 A May I refer to my report, sir?

19 Q Please do if you need to, sir.

20 A Exhibit 81 is a full metal jacket fired
21 bullet that was received, according to this, from
22 Doyle's house, according to my report.

23 Q All right, sir.

24 A And it's a .380 auto caliber fired bullet.

25 Q All right, sir. I want to show you
26 State's Exhibit No. 82.

27 A State's Exhibit 82 is a white envelope.
28 Again, sealed. It has my laboratory number and my
29 initials. It also contains a fired .380 auto

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1 caliber fired bullet. Again, I believe -- yes, it
2 was received, and it indicates Doyle's house. As a
3 matter of fact, you can see the bullet. It is
4 sitting up in the corner with the tape --

5 Q Right in the little cellophane corner
6 there?

7 A And you can see this one as well. They're
8 both full metal jacketed copper bullets.

9 Q Would you explain to us what a full metal
10 jacket is and will you distinguish that from a
11 total -- didn't you say one of these CCI rounds --
12 well, tell us about full metal and total metal
13 jackets.

14 A These bullets -- one is Remington; one is
15 a Winchester, could be Federal. These are full
16 metal jacketed bullets. What full metal jacketed
17 bullet means is everywhere you can see in the base,
18 all around the nose, back to the base is a solid
19 piece of a copper jacketing. And when you turn the
20 bullet and look at the back end of it, you'll see a
21 gray-like material. That's the lead filler that
22 gives the bullet its weight. So you have the lead
23 being injected into the back end of this particular
24 bullet, so it's copper all that would come into
25 contact with it, whether it's the target or the
26 surface of the gun, and it has an exposed lead base.

27 Q Mr. Balash, as for those two exhibits, 81
28 and 82, were you able to tell us or did you form an
29 opinion to a reasonable degree of scientific

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1 certainty about the weapon that fired those two
2 bullets?

3 A I did.

4 Q Tell us what that opinion is, please, sir.

5 A It is my opinion these two items were
6 fired in the same gun and that gun would have been
7 an .380 auto caliber fired weapon.

8 Q Okay.

9 A And it would display -- these bullets also
10 display rifling specifications of six lands and
11 grooves with a right twist.

12 Q Okay. I want to show you State's Exhibit
13 No. 80, please.

14 A State's Exhibit 80, again, is a white pill
15 box. It has my initials and my laboratory number on
16 it, and it states, "Recovered from mattress at Tardy
17 Furniture, Serta brand."

18 Q Did you examine that?

19 A I did, sir.

20 Q Tell us what's in that white box.

21 A A one -- in this particular box is a fired
22 jacketed .380 auto caliber bullet displaying six
23 lands and grooves with a right twist. It also has
24 damage to the base of it.

25 Q All right. Tell us -- you said that 81
26 and 82, the two bullets from the post at Doyle
27 Simpson's house were fired in the same weapon and
28 they were .380 auto caliber, six lands and grooves
29 with a right twist?

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1 **A** Correct.

2 **Q** Does this mattress bullet, the one that
3 was recovered from the scene at Tardy Furniture,
4 State's Exhibit 80, have the same characteristics
5 that you described in 81 and 82?

6 **A** It does, sir.

7 **Q** And what does that tell us? Class
8 characteristics or class markings, can you tell us
9 what that means?

10 **A** Well, as a firearms examiner, there are
11 many rifling specifications that come on fired
12 bullets. You can have five lands and grooves with a
13 right twist, six lands and grooves with a right
14 twist, six lands and grooves with a left twist,
15 eight lands and grooves with a left twist, eight
16 lands and grooves with a right twist, 12 lands and
17 grooves, ten lands and grooves, 16. Actually, some
18 guns have 22 lands and grooves, and that's -- the
19 only ones that I know of is a right twist. What
20 that tells you that's how many the manufacturer
21 decided to incorporate into the rifling. What a
22 firearms examiner would do when asked to make a
23 comparison would, first of all, the lands and
24 grooves markings would have to be of the same class
25 characteristics. That would mean that when I picked
26 up one bullet, if it's a .380 auto caliber, the next
27 bullet that I wanted to compare also would have to
28 be a .380 auto caliber. If the first bullet had six
29 lands and grooves with a right twist, the other one

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1 had to have six lands and grooves with a right
2 twist. If it had anything other than that, it would
3 simply be eliminated as not having to do with it.
4 Once they both have six lands and grooves, you want
5 to make sure that the lands and grooves width is
6 consistent. In other words, some manufacturers will
7 have six lands and grooves but the groove will be
8 rather wide and the land will be rather narrow. Or
9 the other one may have it just the opposite where
10 the land is very wide and the groove is narrow.
11 These -- you would look at them to see that both the
12 lands and the grooves were consistent in size before
13 you went on to any other examination, and of all
14 these were consistent to this point.

15 Q Okay. Did you compare No. 80, the
16 mattress bullet, to the two bullets that came from
17 the -- Doyle's --

18 BY MRS. STEINER: If the Court please. I
19 believe 80 is for identification only at this
20 point. I don't believe he's testified to the
21 recovery of it at this point.

22 BY MR. HILL: I haven't offered it into
23 evidence.

24 BY MRS. STEINER: I understand you were
25 calling it S-80 as if it were --

26 BY THE COURT: You called it S-80 for --

27 BY MR. HILL: S-80 for identification.

28 BY MR. HILL:

29 Q S-80 for identification: Did you compare

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1 it to the two bullets in 81 and 82?

2 **A** Yes, I did.

3 **Q** What was your findings when you compared
4 it?

5 **A** It was my opinion that the bullet
6 contained with the exhibit -- contained within
7 proposed 80 was, in fact, fired from the same gun
8 that fired State's Exhibits 81 and 82. In other
9 words, all three were fired from the same weapon.

10 **Q** Okay. And is this to the same standard of
11 reasonable standard of scientific certainty? I
12 think you said 100 percent.

13 **A** It has to be 100 percent or I will not
14 offer that opinion. That is correct.

15 **BY MR. HILL:** Your Honor, at this time I
16 would offer State's Exhibit 80 and ask that it
17 be received into evidence.

18 **BY MRS. STEINER:** I'm going to object.
19 There's been no chain of custody. Nobody's
20 testified concerning where S-80 was found or
21 the means by which it was recovered at this
22 point.

23 **BY MR. HILL:** I can reoffer it later.

24 **BY THE COURT:** I think it's prematurely
25 offered into evidence at this time without some
26 chain of custody.

27 **BY MR. HILL:** I will reserve my offer then
28 until the next witness, Your Honor.

29 **BY MR. HILL:**

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1 Q Mr. Balash, I will next hand you State's
2 Exhibit No. 83. Tell us, if you can, what that is,
3 please, sir.

4 A State's Exhibit 83 is -- again, it's a
5 white pill box. It has my laboratory number and my
6 initials on it, and it's a projectile from the
7 floor, I believe it is. May I refer to my report
8 more specifically?

9 Q Yes, sir, please. That's 83.

10 A It's a .380 auto full total metal jacket
11 bullet that has severe damage and ricochet damage,
12 in my opinion, sir.

13 Q Okay. And you said that was a .380 auto
14 caliber?

15 A Yes, sir.

16 Q Does it have the same caliber as well as
17 rifling characteristics as the other three
18 projectiles that you have so far identified?

19 A It does. It -- this one has the same
20 characteristics of six lands and grooves with a
21 right twist.

22 Q Okay. Did you have -- were you able to
23 make an identification on that bullet?

24 A No, sir, I was not.

25 Q What could you tell us from your
26 examination as to how it compares with the other
27 three that you were able to identify?

28 A What I could say about this bullet it's a
29 .380 auto caliber. It has class rifling

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1 specifications of six lands and grooves with a right
2 twist. It could have been fired from the same gun
3 that fired the three previous exhibits, but I could
4 not say that it was absolutely so that means it
5 could also not have been fired from the same gun
6 that fired the previous three fired bullets.

7 Q Okay. Let me ask you whether or not you
8 would have -- could you say whether or not it is
9 consistent with having been fired by the same weapon
10 that fired the three others?

11 A I have that opinion, yes.

12 Q Could you tell what that is?

13 A My opinion is it is consistent in all
14 characteristics, could be and probably was fired
15 from the same weapon that fired the prior three
16 exhibits that I just spoke of.

17 Q State's Exhibit No. 84, Mr. Balash.

18 A State's Exhibit 84 is, again, a white pill
19 box. It has my initials on it. I do recognize this
20 item, sir.

21 Q Tell us what it is.

22 A May I refer again to my report, sir?

23 Q Yes, sir, please.

24 A This, again, also is a fired bullet that
25 was recovered from the love seat. It's in my notes.

26 Q Now, was that part of the crime scene, the
27 love seat?

28 A From my understanding of it, yes.

29 Q And if you would refer back to S-83 in

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1 your notes there and tell us as to whether or not
2 S-83 is reported from your notes that you compiled
3 in making this examination, is it also from the
4 crime scene?

5 A Yes, sir, it is.

6 Q Okay. So 83 and 84 are from the crime
7 scene. What can you tell us about S-84?

8 A S-84 is a .380 auto caliber fired bullet
9 that -- and it has class rifling specifications of
10 six lands and grooves with a right twist. It has
11 severe damage to it. It has ricochet damage to it.
12 But I also have been able to identify this fired
13 bullet with the weapon that fired the previous
14 Exhibits 80 -- which was not yet accepted, I
15 understand -- 81 and 82, so State's Exhibits 81, 82
16 and 84 and proposed 80, in my opinion, were all
17 fired from the same weapon.

18 Q I want to back up just one minute, please,
19 sir, and talk about S-82 again. Let's talk about
20 that right there again, Mr. Balash.

21 A Thank you, sir.

22 Q You mentioned -- I heard you mention it,
23 and I failed to follow up on it. I believe you
24 indicated that projectile as well has some ricochet
25 damage to it; is that right?

26 A That is correct, sir.

27 Q What could you tell us -- what did you
28 observe about ricochet damage to that bullet?

29 A In looking at this particular bullet under

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1 a stereomicroscope, or the lower powered scope that
2 I would look at just one bullet at a time with, I
3 noticed that the base and the area on this had a
4 very flat, smooth, crushed area, which indicated to
5 me that this bullet had struck something very hard
6 and solid, such as steel or concrete or a linoleum
7 over concrete type of situation, and it caused this
8 damage and caused this to be a ricocheted bullet.

9 Q And this S-80, where does your notes
10 indicate that bullet was recovered from?

11 BY MRS. STEINER: I'm going to object to
12 any testimony regarding that as hearsay until
13 we've had more testimony concerning where that
14 was recovered from.

15 BY MR. HILL: I believe this bullet was
16 labeled, and he authenticated that, Your Honor.
17 I think he can --

18 BY THE COURT: He's already testified once
19 to what that label says. And it's -- I mean, I
20 think he's already --

21 BY MRS. STEINER: I think the jury should
22 be instructed at this point this is his record
23 regarding the label and is not offered for the
24 truth of where that was recovered.

25 BY THE COURT: That's correct right now,
26 ladies and gentlemen. That's what his label
27 says. They will have to have some other
28 witness come in and testify that this is, in
29 fact, where the --

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1 **BY MR. HILL:** I didn't ask him where it
2 came from, Your Honor. I said what does the
3 label on it show.

4 **BY THE COURT:** I thought you were talking
5 about the label as it refers to where the
6 location -- where it was --

7 **BY MR. HILL:** I want him to talk about the
8 label that he has recorded in his notes when he
9 made the examination.

10 **BY THE COURT:** And I'm saying -- advising
11 the jury that his label as to where it came
12 from is -- until it's tied up -- it's not
13 offered as truth of the matter that that's
14 where it came from.

15 **BY MR. HILL:** Right. We intend to tie
16 that up and put on a witness to that respect,
17 Your Honor.

18 **BY THE COURT:** Right. And that's what I
19 was trying to clear up.

20 **BY MR. HILL:** Okay. So does that mean I
21 can ask him?

22 **BY THE COURT:** You can, with that
23 admonition to the jury.

24 **BY MR. HILL:** Yes, sir.

25 **BY MR. HILL:**

26 **Q** Mr. Balash, what information was available
27 to you when you examined that bullet at the
28 Mississippi State Crime lab back in 1998, I think
29 you said -- was that box labeled while it was in the

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1 custody of the Mississippi Crime Laboratory as to
2 where that bullet was recovered?

3 A Yes, sir, it was.

4 Q What does it say on the label?

5 A It's labeled, "Mattress, Tardy's
6 Furniture, Serta brand." And that's what is
7 displayed on my report as well.

8 Q Okay. And that was the bullet you just
9 testified about that has the ricochet damage?

10 A That is correct, sir.

11 Q All right. Now we move forward to State's
12 Exhibit No. 85. Would you look at that and tell us
13 if you examined it and what it contains.

14 A State's Exhibit 85, again, has my
15 laboratory number and my initials. It's a white
16 pill box. And it's a fragment of a fired bullet,
17 and it was collected in an area, according to this,
18 near Carmen Rigby.

19 Q Near Carmen Rigby?

20 A Yes, sir.

21 Q And what caliber is it?

22 A It's a portion of a .380 auto caliber
23 fired bullet.

24 Q Were you able to determine that, even
25 though that was a fragment, part of a bullet?

26 A What I determined was that it is
27 consistent with a .380 auto caliber-size bullet
28 itself. To say that it was absolutely a .380 with
29 the damage that was available, I could not say that.

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1 But it is consistent in all regards with what I see
2 as being a .380 auto caliber fired bullet.

3 Q Okay. What about the class
4 characteristics?

5 A May I refer to my report on that, sir?

6 Q Yes, sir, please.

7 A That's 85?

8 Q Yes, sir, 85.

9 A It's consistent on my report with being a
10 portion of that which is consistent with a .380
11 auto, six lands and grooves with a right twist.

12 Q Okay. Do you have an opinion or what
13 could you tell us about whether or not that bullet
14 was fired in the same gun that fired the other
15 three -- four projectiles I think you've now
16 testified to?

17 A I have an opinion on that, sir.

18 Q Tell us what that is, please.

19 A My opinion is that it could have been. It
20 is not enough individual identifiable striated
21 markings on the fragment that remains here to
22 positively identify it with any gun that it came
23 from, but it could have been fired from this gun.
24 But I have no further opinion other than it could
25 have been.

26 Q All right, sir. And S-86?

27 BY THE COURT: Mr. Hill, why don't we take
28 a recess? I don't know if I can read body
29 language or not, but the jury looks like

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1 they're probably ready to stretch and move for
2 a few minutes, so we'll take about a ten-minute
3 recess.

4 **BY MR. HILL:** Thank you, Your Honor.

5 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
6 CONTINUED IN OPEN COURT WITH THE JURY
7 PRESENT, TO-WIT:)

8 **BY THE COURT:** Mr. Balash, you can have a
9 seat.

10 **BY THE WITNESS:** Thank you, Your Honor.

11 **BY MR. HILL:** May I continue, Your Honor?

12 **BY THE COURT:** You may.

13 **CONTINUED DIRECT EXAMINATION**

14 **BY MR. HILL:**

15 **Q** Mr. Balash, I believe that the immediate
16 next exhibit we were going to talk about was State's
17 Exhibit No. 86. Would you take that and examine it?
18 You may need to examine the contents closely. The
19 tube is in the bag.

20 **A** State's Exhibit 86 is a clear plastic bag
21 containing a -- what appears to be a specimen or
22 test tube with writing on it. And I do recall
23 seeing this item at a prior occasion, sir.

24 **Q** Okay. And do you -- can you tell from
25 your notes and the exhibit what that is and is it --
26 the reference as to where it came from?

27 **A** Yes, sir, I can. According to my notes
28 and the records, People's Proposed 86 is a clear
29 plastic bag which contains a plastic tube.

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1 Contained within that plastic tube are two copper
2 jackets and lead fragments, a quantity of paper and
3 fragments of copper and steel. And they're
4 reportedly from the deceased Rigby.

5 Q Ms. Rigby. All right. Did you examine
6 the fragments labeled as having come from Ms. Rigby?

7 A Yes, sir, I did.

8 Q Tell us what that -- give us as good a
9 description as you can of what's in that tube there
10 as far as firearms evidence.

11 A What's contained within here are small
12 fragments of copper jacket and lead material, very
13 small lead material. The lead material would be
14 consistent with core material or the inside of a
15 bullet. The copper jacket is consistent with a
16 bullet jacket material. It has rifling on it. The
17 rifling is six lands and grooves with a right twist.
18 And the fragment that's contained within this
19 plastic tube I have identified as having been fired
20 by the same weapon that fired People's 81, 82,
21 Proposed 80 and 84.

22 Q You can tell that even though it's a
23 fragment?

24 A Even though this is a fragment and a small
25 portion of a jacket, the portion that remained had
26 sufficient individual identifiable characteristics
27 within that fragment itself that compared to the
28 individual fragments within the items 80, 81, 82 and
29 84 that I previously had identified. And by using

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1 those for comparison purposes, I was able to say
2 with 100 percent assurance that this fragment came
3 from the same weapon that fired the prior four fired
4 bullets.

5 Q State's 87. See if you can tell us what
6 that is, please.

7 A Again, People's -- State's Exhibit 87 is a
8 clear plastic bag. It contains a plastic specimen
9 tube. And if I may refer to my report, sir?

10 Q Yes, sir.

11 A It is a portion of a total metal jacket or
12 a full metal jacket fired bullet, quantity of paper,
13 several lead fragments and two small fragments of
14 lead.

15 Q And was that identified as having come
16 from the body of any certain person?

17 A I believe it was Golden, sir.

18 Q What can you tell us in your examination
19 about the characteristics of those fragments?

20 A The small copper jacket fragments within
21 here have rifling on them but not to the extent or
22 the quality that it could allow me to identify them
23 with any of the other fired bullets or material. It
24 could have been fired from the same weapon that
25 fired all the previous fired bullets that I've
26 identified but I cannot say with assurance that it
27 was. It simply could have been.

28 Q Take a look at S-93 and tell us what that
29 is.

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1 **A** S-93 is a white pill box with my
2 laboratory number and initials on it. Contained
3 within it is an entire cartridge of CCI manufacture.
4 I do recognize this, sir.

5 **Q** All right, sir. And is there any
6 noticeable damage to any part of that unfired round?

7 **A** Yes, sir, there is.

8 **Q** Describe that for the jury, please.

9 **A** Contained within this pill box is an
10 entire cartridge, and that means there's a bullet, a
11 cartridge case, the powder in the cartridge case and
12 the primer. It is an unfired live cartridge. But
13 the nose of this cartridge has a noticeable amount
14 of damage to it, and this was found at the scene.

15 **Q** And what -- what opinions could you draw,
16 conclusions could you draw as to the methodology of
17 the damage of the nose of that bullet, it being at
18 the scene with the other firearms evidence?

19 **A** The type of damage done to this, in my
20 opinion, was caused by the improper insertion of
21 this cartridge trying to get it into the chamber of
22 the weapon that was going to fire it, and it struck
23 the back portion of the chamber and caused the
24 weapon to malfunction and/or become inoperative. So
25 if you would imagine that if, we'll say, one
26 cartridge had been fired, the cartridge case was
27 ejected and as this cartridge -- or as the slide
28 moved forward, it picked up a cartridge from the
29 magazine. It was going to insert that cartridge

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1 from the magazine that it has picked up into the
2 rear portion of the barrel, which is called the
3 chamber of this weapon. This cartridge didn't feed
4 correctly, and it struck the back of that and lodged
5 and stopped the mechanism from functioning. So the
6 gun was actually partially open, and it would not
7 function at this point, and the weapon would need to
8 be cleared. In other words, the slide would have to
9 be pulled back; this cartridge would fall out to the
10 ground; as the slide moved forward, it would
11 reinsert a new cartridge. The damage to this
12 fired -- or to this unfired bullet and cartridge
13 combination is consistent with having been caused
14 during the feeding process into the chamber area of
15 a weapon.

16 Q Is that consistent with what we have heard
17 in the common parlance as the weapon jamming when it
18 was being fired and having to be hand cleared?

19 A Yes. It's one of the causes for weapons
20 jamming. There are others, but that is one of them.

21 Q Okay. Now, let's see. Was there any
22 correlation between -- I shouldn't say between. Was
23 there any correlation among all of the items of
24 evidence in these firearms exhibits that you've
25 testified about that you could describe for us, as
26 far as a correlation of the casings and the
27 projectile or part projectile evidence?

28 A Yes, sir, there is.

29 Q Would you explain that for us, please.

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1 **A** Certainly. In this particular case, there
2 are three types of ammunition that are being
3 utilized. Winchester, Remington Peters and CCI.
4 Remington Peters and Winchester bullets are full
5 metal jacketed bullets, which mean they have all
6 copper where you can see them, but on the base of
7 the bullet is an exposed piece of lead.

8 The three CCI fired cartridge cases
9 are a different type of bullet. They're called
10 total metal jacketed bullets. In other words, it's
11 a coating process that coats the entire lead core
12 with a copper material so there is no exposed lead.
13 So you have really two dramatically different types
14 of bullets in this case -- full metal jacketed
15 bullets, total metal jacketed bullets. And what I
16 was looking at in all the evidence here that I had
17 three full or total metal jacketed bullets from the
18 CCI to full metal jacketed bullets from the
19 Winchester and the Remington Peters, and all the
20 evidence of the bullets and the cartridge cases were
21 consistent. In other words, all the fragments were
22 correct. All the bullet types were correct for the
23 number of cartridges and the type of cartridges that
24 were used in this scene. So if somebody were to
25 have fired a gun and used a combination of bullets
26 in that weapon which were CCI, Remington or
27 Winchester and Remington, then another person were
28 to exchange those would have had to know what that
29 combination was and put the same type of fired

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1 cartridge cases in correct quantities at the scene.
2 So all the scene evidence collected, the fired
3 cartridge cases complete with the fired bullet
4 evidence that was collected.

5 Q And when you say it's all consistent,
6 that's all consistent with having been fired in the
7 same weapon, sir?

8 A No. That's consistent from manufacturing
9 type only. That means that there are -- the fired
10 bullets recovered, there's the right number of total
11 metal jacketed bullets and fragments recovered, and
12 the right number of full metal jacketed bullets
13 recovered. It has nothing to do with the type of
14 weapon that they came from.

15 Q I see. All right. Were all of the -- all
16 of the projectile evidence, even those that you did
17 not positively identify, could you tell us whether
18 they were consistent in caliber and rifling
19 specifications?

20 A They were consistent in caliber and what
21 limited rifling you can see. You can get a small
22 enough fragment that it may display a piece of
23 rifling, but even the best examiner wouldn't be able
24 to tell you that it was totally a .380 as opposed to
25 a 9 mm or another caliber. But in looking at the
26 totality of the evidence, all of this evidence is
27 consistent one to the other as being of the same
28 manufacturer and the same rifling types.

29 BY MR. HILL: I think I have no further

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1 questions. Before I end my examination, let me
2 confer with counsel.

3 (OFF THE RECORD)

4 **BY MR. HILL:** Your Honor, at this time, I
5 tender the witness for cross-examination.

6 **CROSS-EXAMINATION**

7 **BY MRS. STEINER:**

8 **Q** Good afternoon, Mr. Balash.

9 **A** Good afternoon, ma'am.

10 **Q** Now, you've been a firearms and tool mark
11 analyst -- is that what your field -- the field
12 you've been qualified as an expert in?

13 **A** Well, I've been qualified as an expert
14 in --

15 **Q** Oh, I mean, is that what you're -- is this
16 what it's called?

17 **A** In this particular case, it's firearms
18 identification, yes, ma'am.

19 **Q** Yes. The -- are there any, you know,
20 certain number of points that have to match on any
21 particular projectile, like in fingerprints where
22 you have a certain number of points that have to
23 match to offer an opinion or is it up to the
24 examiner and his or her experience and training to
25 determine the existence of the match or not?

26 **A** It is up to the examiner. The only place
27 that I am aware you have to have a number of points
28 is latent prints. But not only do they have to have
29 eight and sometimes ten, but they have to be in the

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1 same positions for them to be an identification. In
2 firearms, if I were to take a weapon and fire two
3 bullets and look at it microscopically, I would see
4 differences between the two bullets even though I
5 fired them from the same gun. So it's simply an
6 opinion that I come to, and it's to each individual
7 examiner to formulate at what point it's an
8 identification.

9 Q All right. So it's different from
10 fingerprint matching in that respect?

11 A It is absolutely different, ma'am.

12 Q And the other -- and I'm also -- let me
13 try and straighten this out. You've been talking
14 about 100 percent certainty. That's your opinion.
15 Now, there aren't really any probabilities in
16 firearms identification. You're either 100 percent
17 certain that you rule it out or it matches or you
18 can -- you can't -- you say you cannot make a
19 finding whether it matches or not, is that correct,
20 as a definitive one projectile to one gun; is that
21 correct?

22 A If I understand your question -- and I
23 apologize if I get it wrong -- to me it's either a
24 positive identification, which is 100 percent.

25 Q Right.

26 A There's also an identification that they
27 don't call it an identification. People say could
28 be and probably was or could be, which means it has
29 the same type of rifling, it's the same caliber, but

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1 I don't see enough to say, Well, yes, it was or, No,
2 it wasn't --

3 Q Right.

4 A -- so I can't say or you can eliminate
5 them.

6 Q Right.

7 A So you do have that spectrum.

8 Q Right. So you can 100 percent eliminate,
9 100 percent match and then in the middle, there is
10 probably and simply consistent. Is that what you're
11 saying?

12 A Correct.

13 Q And on those items that you have testified
14 could be, what your finding is it's in that lower of
15 those two; it is consistent as the class
16 characteristics; it could have been fired from this
17 .380, but you can't say more than that; is that
18 correct?

19 A That's absolutely correct.

20 Q And that's the case also with the
21 cartridge casings. Oh, no, I'm sorry. You made a
22 positive identification on them.

23 Now, there are literally tens of
24 thousands of .380 caliber handguns in circulation
25 probably in the southern half of the United States
26 from which the fragments could have been fired; is
27 that correct? The jack -- when you say something is
28 consistent, there are literally tens of thousands
29 such guns from which it could have been fired in

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1 circulation in the United States today?

2 **A** Well, I would disagree with that, and if
3 I'm allowed to, I would expand that.

4 **Q** You may.

5 **A** A .380 auto is not a very hugely popular
6 caliber, so there's not as many of those made, for
7 example, as 9 mm. I doubt that it would be one in
8 ten comparison. But they also have different
9 rifling, so some might be six right, eight right.
10 So even if you made 10,000 .380s, a number of them
11 would be rifled differently. But if you break it
12 down simply to .380s that are six lands and grooves
13 of the same width and variances that these are, I'm
14 sure there are several thousands of those available.

15 **Q** All right. And all you're saying is when
16 you say something is consistent is that it is
17 consistent from any of those several thousand
18 weapons; is that correct?

19 **A** That would also be correct, yes, ma'am.

20 **Q** Now, on the -- the lands and grooves, I
21 think I understand. That's the barrel of the weapon
22 is created by a machine that leaves ridges and
23 valleys on the inside of the barrel; is that
24 correct?

25 **A** May I demonstrate slightly to the jury?

26 **Q** Certainly, please do.

27 **A** If you envision just a hollow pipe, like a
28 copper water pipe, for example, and you put an
29 implement in the copper pipe and the individual

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1 scrapes out a portion of it uniformly, and while
2 they're scraping it out they twist it either right
3 or left and then the machine moves over one sixth of
4 the way and does that again and does it all the way
5 around, now when you look down the pipe, you'll see
6 a spiral cut in the pipe. That's what rifling looks
7 like. And if you can envision that, it would be
8 sort of square on the bottom, comes to a point and
9 down but it's in a circular fashion. That's
10 standard rifling. There is polygonal rifling which
11 is different, but in this case it's standard
12 rifling.

13 Q And that, in the guns in circulation
14 today, is done by whatever factory manufactured the
15 gun that the -- that's a -- I can't remember -- die,
16 a tool that did that?

17 A Yes. There's a number of ways that it can
18 be done. It can be done hammer forged. It can be
19 done by a button or a gang broach. And a gang
20 broach would be a -- if you took a button on your
21 shirt that had six blades to it and then you put 20
22 of those in row with each button being just a hair
23 larger and drew that through one barrel and twisted
24 it, it would cut all the lands and grooves at one
25 time. That's called broach rifling.

26 Q And although these are not -- these are
27 actually -- if you look -- if you are brave enough
28 to point it, if you can look down the barrel of the
29 gun and get light in there, these are actually

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1 visible to the naked eye; is that correct?

2 **A** Yes, they are, ma'am. And I do look down
3 barrels quite often.

4 **Q** I try to avoid it. And, now, when you
5 look at the cartridge cases, to make the hulls -- as
6 I think we may call them down here -- you're not
7 looking at marks that were made by a machine or even
8 marks that are necessarily as visible to the naked
9 eye as -- I mean, they can be, but they are not
10 necessarily as visible to the naked eye as the kind
11 of lands and grooves that you can look down the
12 barrel of the gun and see?

13 **A** Well, I'll guess I'd have to disagree.
14 They are noticeably visible when you look at them,
15 and they're on the breach of a weapon. On a
16 semi-automatic pistol, pull the slide back and look
17 in the small hole where the firing pin comes out,
18 you can see the machine marks that are there.

19 **Q** Those are also machine marks?

20 **A** Yes, they are. They are machine marks.

21 **Q** All right. Now -- and you said there are
22 three kinds. There are breech marks and those come
23 from machine markings on the pistol; is that
24 correct?

25 **A** The breech marks are the impression on the
26 soft primer and the base of the cartridge case when
27 it's being fired, and it slams back against the
28 breech of the weapon. Those are called breech
29 marks. Some firearms examiners called those breech

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1 face markings, but that's because it slams against
2 the face of the breech. Those are interchangeable
3 terms.

4 Q All right. And then the chamber markings
5 are also what the shell -- are placed on the shell
6 by the gun itself; is that correct?

7 A That is correct. If I may explain that.

8 Q Yes, sir.

9 A In a semiautomatic pistol, the chamber and
10 the barrel are integral; they are one piece.
11 There's no space. The only gun that has a space to
12 it is a revolver. So the bullet on a revolver has
13 to -- actually has to physically jump an air space
14 to go into the rifling. On a semiautomatic pistol
15 or rifle, the chamber is the back portion of the
16 barrel and the barrel is directly attached to the
17 chamber so that's all a machine process. And when a
18 cartridge sits in the chamber and is fired, the
19 cartridge case will swell and it does that
20 intentionally to seal the gas pressure from coming
21 straight back and to cause the bullet to go out the
22 end of the barrel. And it's when it's swelling like
23 that in a semiautomatic pistol and that slide moves
24 backward and draws it out under pressure, whatever
25 defects or machine marks might be present in the
26 chamber itself can scratch the cartridge case as
27 it's being withdrawn. Those are chamber marks,
28 ma'am.

29 Q Yes. And then the firing pin impression

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1 is simply the point made on the base of the
2 cartridge where the device that sets the bullet in
3 motion has struck it; is that correct?

4 **A** It goes into the primer on the base of the
5 cartridge, that is correct, yes, ma'am.

6 **Q** Okay. And now, as with the trained
7 firearms examiner's eye, there are -- it's up to the
8 training skill and observation of the examiner to
9 determine whether or not two cartridge casings have
10 similarity as to the firing pin impression, the
11 breech face mark impressions or the chamber
12 markings; is that correct?

13 **A** Yes, ma'am, that is correct.

14 **Q** As with the lands and grooves, there's no
15 number of points that have to mark -- match before
16 they can be deemed positive?

17 **A** That's correct. That's individual to the
18 examiner.

19 **Q** That is individual to the examiner. Now,
20 you also talked about the fact that there was a
21 correlation and a consistency with respect to the
22 totality of this evidence that there were
23 projectiles and fragments recovered that were
24 consistent with one of the -- with the full metal
25 jacket cartridges you found --

26 **A** Yes, ma'am.

27 **Q** -- and there were a sufficient number to
28 match that? And then also there were some
29 projectiles that were recovered that you, as a

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1 firearms examiner, associated with the other kind of
2 cartridges?

3 **A** With the full metal jacket, yes, ma'am.

4 **Q** Yes. Again, that is consistency. There
5 is no way to find a projectile on the floor here and
6 a cartridge casing on the floor here and say this
7 projectile came from this particular cartridge
8 casing; all you can say -- or you can't in this
9 case, say, correlate this casing and this projectile
10 one to another?

11 **A** I personally have never tried to do that
12 for the simple reason that during the firing
13 process, even though this bullet may be marked
14 slightly by the cartridge case as it exits the
15 cartridge case, it immediately goes into the chamber
16 and the barrel and is marked severely by the barrel
17 and whatnot. I have heard and have not under -- I
18 don't believe it personally, but some people have
19 been able to say that they can put a bullet back
20 into a cartridge case. I have never been able to do
21 that.

22 **Q** And you were unable -- and you certainly
23 did not do that in the case; is that correct?

24 **A** I did not try, no, ma'am.

25 **Q** I appreciate that. You do not believe
26 that it is within the standard of your profession
27 that it is something that one can be reasonably
28 certain about to the extent that you were certain
29 about what you have testified to here?

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1 **A** The only way that I would see would be if
2 the cartridge itself prior to being fired were
3 damaged to allow a raised portion of the cartridge
4 case to sufficiently mark the bullet that passed out
5 of it, and even though it went through the rifling
6 of the weapon not to have taken that mark away, but
7 I would think it would be well less than one-tenth
8 of one percent as even a possibility. So I have --
9 I have never looked for it personally, ma'am.

10 **Q** All right. And I assume there are
11 literally millions of rounds of Winchester .380
12 automatic caliber ammunition out there in the world
13 to be fired in those thousands of .380 pistols?

14 **A** Yes, I would agree with that.

15 **Q** And similarly, the CCI ammunition that
16 some of these cartridges represented; is that
17 correct?

18 **A** CCI is a very popular brand, yes.

19 **Q** Very popular. Probably even more -- and
20 then did you say there was another brand?

21 **A** Remington Peters and Winchester and CCI.

22 **Q** Right. And, again, millions of such
23 rounds out there to be fired from these thousands of
24 possible weapons?

25 **A** I think if you include Federal, those are
26 all the -- the most popular brands available.

27 **Q** Okay.

28 **BY MRS. STEINER:** One moment, Your Honor.

29 **BY MRS. STEINER:**

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1 Q And, Mr. Balash, nothing you have -- am I
2 correct, you have given the jury some information
3 about the consistency of certain projectiles and the
4 matching of certain projectiles and certain
5 cartridges to a particular hypothetical gun; is that
6 correct?

7 A Certain -- certain fired cartridge cases,
8 yes, ma'am.

9 Q Yes. All right. Nothing you have
10 testified here today says anything about who fired
11 this hypothetical gun; is that correct?

12 A That is correct, ma'am. I have -- I only
13 have these to look at. No weapons.

14 BY MRS. STEINER: I have nothing further,
15 Your Honor. Your Honor, we will have --

16 BY THE COURT: I'm going to do redirect
17 first.

18 BY MR. HILL: Just a couple of questions.

19 REDIRECT EXAMINATION

20 BY MR. HILL:

21 Q Mr. Balash, defense counsel asked you
22 about a hypothetical gun. Can you look at the
23 casings -- the cartridge casings that you've
24 testified about and tell us how many of those there
25 were?

26 A There were five fired cartridge cases,
27 sir.

28 Q Can you tell us -- and where were they
29 from?

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1 **A** They were all found at the scene of the
2 Tardy Furniture store, according to my notes, sir.

3 **Q** All right. And was it a hypothetical gun,
4 do you think, that fired those five cases?

5 **A** No, sir, it was a very real weapon.

6 **Q** All right, sir. And so you had five
7 cases; how many projectiles from the floor of the
8 scene did you examine?

9 **A** In totality there were five total
10 projectiles including all the fragments that came
11 together the way it -- that I saw it, sir.

12 **Q** Okay. Let's break the five total
13 projectiles and fragments of projectiles down a
14 little bit. How many off the floor of the scene?

15 **A** I'd have to refer to my --

16 **Q** Please do.

17 **A** -- report if it says so, but I may not
18 have said that in there. I would have to refer to a
19 evidence file, because on my report it doesn't refer
20 to where they came from. It may be on the evidence
21 receipt, and I didn't keep it in my report.

22 **Q** Maybe that question was a little bit
23 sketchy there. You identified one projectile as
24 having come from the floor at the love seat at the
25 crime scene?

26 **A** Yes, sir. I -- you had said floor and I
27 know it came from the love seat and the mattress,
28 two of them. You had said floor, and that's why I
29 said I didn't have that as specific information.

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1 Q From the crime scene?

2 A From the crime scene; that is correct.

3 Q Okay. And you had another projectile near
4 one of the victims?

5 A Another projectile and fragments there.

6 Q And was it a hypothetical firearm that
7 fired those as opposed to a real firearm?

8 A No, sir, it was a very real firearm.

9 Q You also examined fragments that came from
10 two very real victims, did you not?

11 A I did, sir.

12 Q Nothing hypothetical about that, was it,
13 sir?

14 A No, sir, it was not.

15 Q I would -- you also testified on
16 cross-examination, Mr. Balash, that there might be
17 thousands of weapons that could fire a .380 auto
18 caliber with six lands and grooves, right twist,
19 but --

20 A Correct.

21 Q And you also testified that as far as
22 ammunition was concerned, there might be many
23 more -- I don't know how you could enumerate numbers
24 of rounds of all the popular ammunition. My
25 question to you is this, sir: When you consider all
26 of the evidence that you have in total, all of the
27 cases, the fragments from the victims, the fragments
28 from the floor, the full projectiles, the post
29 projectiles, can you tell us anything about whether

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1 or not the correlation of those -- all of those
2 pieces of firearms evidence makes it more probable
3 than not that they were, as far as the projectiles
4 and fragments, all fired from the same weapon to the
5 exclusion of all others?

6 **BY MRS. STEINER:** I'm going to object to
7 the form of the question. I believe the
8 witness already testified that he does not deal
9 in probabilities in this kind of tool mark
10 identification, but as those four categories.

11 **BY THE COURT:** I'm sure if that's the
12 case, he is certainly qualified to answer and
13 explain. So if that's the objection, I'll
14 overrule it.

15 **A** In this particular case, all the fired
16 bullets that were recovered from the victims or at
17 the crime scene I either identified positively --
18 I've identified positively four fired bullets and a
19 fragment as coming from one weapon. There is
20 another major portion of a fired bullet that I did
21 not identify and then various other fragments. But
22 in totality, everything is consistent with only one
23 weapon being discharged from all the evidence that I
24 see at this scene.

25 **BY MR. HILL:** Nothing further, Your Honor.

26 **BY THE COURT:** Ladies and gentlemen, if
27 you'll step in the jury room for a few minutes.

28 (THE FOLLOWING PROCEEDINGS WERE HAD IN
29 OPEN COURT OUTSIDE THE HEARING AND

MOTION TO SUPPRESS - JURY OUT

1 PRESENCE OF THE JURY, TO-WIT:)

2 BY THE COURT: You indicated at a bench
3 conference earlier there were some questions
4 you wanted to bring up or discuss or --

5 BY MRS. STEINER: Yes, your Honor. We
6 would -- we have pending a motion to suppress
7 the presentation of any opinions or findings
8 with respect to gunshot residue analysis in
9 this matter and that I wish to examine
10 Mr. Balash about that, to call him as an expert
11 in gunshot residue and ask him a few questions
12 relative to that. And, Your Honor, I need to
13 find a piece of evidence that I'm going to use
14 with him -- a gunshot residue kit.

15 BY MR. HOWIE: Gunshot residue kit?

16 BY MRS. STEINER: Yes. If my head wasn't
17 attached, I would leave it behind somewhere --

18 BY MR. CARTER: You're looking for your
19 notes?

20 BY MRS. STEINER: My notes. The State's
21 attorney has kindly returned my notes to me.

22 BY MR. HILL: I picked it up; I thought it
23 was mine.

24 BY MR. CARTER: We'll return the favor if
25 we get a chance.

26 PROFFER DIRECT EXAMINATION

27 BY MS. STEINER:

28 Q Mr. Balash, have you, in the course of
29 your -- you briefly resumed your professional

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1 history and training. Have you also in this
2 professional history worked for the Michigan State
3 Police and now as a private consultant, I think?

4 **A** Yes.

5 **Q** Been certified and trained to perform
6 analysis for the detection of what is popularly
7 known as gunshot residue in --

8 **A** With a caveat, I'd have to answer that.
9 That there are two types of gunshots residue. First
10 of all, the gunshot -- it contains gun powder and
11 fragments that expel from the barrel of the weapon
12 and are looked at routinely to determine distance of
13 firearm from the shooter is one type of gunshot
14 residue. The other one, that even though they call
15 it gunshot residue, is really gun primer residue.
16 And that's utilizing a scanning electron microscope
17 with a computer attachment to it. I'm very familiar
18 with it and have made tests for it, but I don't run
19 a computer nor do I have a scanning electron
20 microscope.

21 **Q** I understand. I'm trying to talk to you
22 about -- you -- but you are -- you have -- you are
23 trained in -- in interpreting what that computer and
24 microscope have spit out, as it were?

25 **A** That is correct, ma'am. I have testified
26 on both gunshot residue and primer residue in courts
27 of record.

28 **Q** Okay. With respect to primer residue, are
29 you -- in your years with the Michigan State Police,

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1 did you also learn the proper techniques for the
2 collection of samples to determine the presence of
3 gunshot residue on the hands or person of
4 individuals either suspected of having fired a
5 weapon or individuals suspected of being in
6 proximity of a fired weapon?

7 **A** There were two techniques employed. Yes,
8 I was, ma'am.

9 **Q** And what are the two techniques --

10 **A** Well, the original one was -- and it's
11 been out of use for some number of years -- was a
12 swabbing procedure, utilizing Q-tips and plastic
13 specimen tubes. The second one would have involved
14 adhesive stamps -- aluminum stamps as they call
15 them -- and they would pat down certain areas of the
16 anatomy whether it was hands or clothing, forehead,
17 cheek, depending on what they were looking for and
18 what the circumstances were.

19 **Q** All right.

20 **A** And in both of these, the examiner should
21 be protected from contaminating the evidence by
22 having -- wearing gloves.

23 **Q** And is there anything else the examiner
24 should do besides simply wearing gloves?

25 **A** I'm sorry. I didn't follow that, ma'am.

26 **Q** Is there anything else the examiner should
27 do besides simply wearing gloves?

28 **A** Well, you have to handle it. You
29 shouldn't be in an environment that's loaded with

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1 material. For example, it would be very
2 inappropriate if -- even if I were wearing gloves to
3 conduct that examination in a firearms workshop, for
4 example, because the entire environment would be
5 contaminated. So that's why you would certainly
6 have to know where you're at when you're doing this
7 and how it's handled. And there are time
8 constraints. Normally, you wouldn't take this exam
9 if four to six hours has already passed since the
10 event.

11 Q All right. And if the examiner has been
12 at -- if the person actually taking the sample by
13 either of these two methods has been at a crime
14 scene where there has been considerable discharge of
15 weapons and has been handling evidence at that crime
16 scene, is he or she at any greater or lesser -- what
17 kind of environment has he or she been in?

18 A Well, if you've been at a scene where
19 there's a number of shots that have been fired and
20 you're handling material within the scene and your
21 in an unprotected hand -- in other words, you're not
22 wearing gloves, you certainly could pick up
23 contamination.

24 Q And if you -- do they generally just have
25 one collection device, whether it's a Q-tip swab or
26 a -- via a sticky tape?

27 A An aluminum stamp is what it's called.
28 Normally, there are a number of them contained
29 within each kit in the identified areas. For

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1 example, they may want to go for the back of the
2 palm of the hand and the inside of the web. They
3 may want to go to the front of the hand around the
4 wrist area or you could label whatever other area
5 you would choose to.

6 Q Is it advisable to wear the same pair of
7 gloves for -- for all the swabs or is it preferable
8 to reglove for each separate swabbing?

9 A Well, I'm sure, under optimal conditions
10 if you wanted to take one swab from one area and
11 continually reglove. But I -- to be honest with
12 you, once your hands are protected, the only place
13 that you would pick up any material from is if you
14 were taking it from the hands of the suspect would
15 be the hands of that suspect. So you're not
16 bringing in a containment. As long as you are
17 containment free to begin with, I don't see the
18 necessity to change gloves if I do the left hand and
19 then do the right hand.

20 Q All right. But if it's on your clothing
21 for any reason, even gloved, you could pick it up
22 from your clothing. Is that correct?

23 A If that were true, it wouldn't make any
24 difference how many pair of gloves you had on --

25 Q That's true.

26 A -- if you're bringing that contamination
27 with you.

28 Q And if you were doing it in at a gunshot
29 residue rich environment such as firearms

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1 examination lab, again all the gloves in the world
2 wouldn't protect any sampling and swabbing you did
3 from environmental contamination.

4 **BY MR. HILL:** Your Honor, I object. I
5 think that is so speculative that it's almost
6 beyond answer.

7 **BY MS. STEINER:** The witness can answer --

8 **BY THE COURT:** He can answer and explain.
9 I think he's shown that he's fully capable of
10 answering questions.

11 **A** Thank you, your Honor. If you'll leave
12 the word "you" out of that, if a person were to do
13 that, it would certainly be irresponsible. I
14 certainly would not be one to do that in that
15 environment.

16 **Q** And I believe your testimony was that the
17 older technique or the older test kit was the one
18 that used things like Q-tip swabs; is that correct?

19 **A** That is correct.

20 **Q** And the -- I call it sticky tape. Is
21 that --

22 **A** Right. It's essentially -- that's what it
23 is. Double-sided tape.

24 **Q** Right.

25 **BY MS. STEINER:** May I approach the
26 witness, your Honor?

27 **BY THE COURT:** You may.

28 **BY MS. STEINER:**

29 **Q** Mr. Balash, I'm handing you what's been

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1 marked for identification as State's Exhibit 94,
2 which is gunshot residue evidence collection test
3 with a suspect name, Curtis G. Flowers. Can you --
4 tell me, have you looked at this previously?

5 **A** No, ma'am, I have not.

6 **Q** Okay. You have testified -- okay. Can
7 you open that and tell me whether this is the sticky
8 tape or Q-tip style?

9 **A** The evidence was already opened. It's
10 simply the frangible tape has already been broken so
11 it's only sealed with the Scotch tape. Contained
12 within this exhibit is the form for it. And
13 contained within the form are the -- the swab
14 materials that -- the discs. And these disks,
15 there's four of them. These appear to me to be the
16 type that originally contained the sticky discs that
17 would take the newer-type samplings.

18 **BY MS. STEINER:** Your Honor, I think I've
19 gotten the cart ahead of the horse here. I
20 would like to have Mr. Balash recognized as an
21 expert in the techniques of collection and
22 interpretation of primer residue analysis.

23 **BY THE COURT:** What's -- does the State
24 accept him as an expert in that area?

25 **BY MR. EVANS:** Yes, sir.

26 **BY MS. STEINER:** Thank you, your Honor.

27 **BY THE COURT:** He can testify in that
28 regard.

29 **BY MS. STEINER:** All right. And I'm going

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1 to hand you -- all right. Let me have this
2 marked for identification as the next exhibit.
3 This is for purposes of the motion to suppress,
4 and it's for identification only.

5 (DEFENSE EXHIBIT D-11 IS MARKED FOR
6 IDENTIFICATION FOR PURPOSES OF THE MOTION
7 TO SUPPRESS ONLY)

8 **BY THE COURT:** You may proceed.

9 **BY MS. STEINER:**

10 **Q** I'm going to hand you a document on --
11 dated July 30, 1996. It's been marked for
12 identification as D-11 and certain other attached
13 items. And I'm going to ask you to review this
14 document for a moment, and I'll then ask you a few
15 questions about it.

16 **A** I've seen these before.

17 **Q** You have reviewed this actual document?

18 **A** Yes, I have.

19 **Q** And what -- if you could, describe for His
20 Honor what this document is.

21 **A** What the document, Defendant's D-11, I
22 believe?

23 **Q** Yeah.

24 **A** Indicates that a primer residue test was
25 conducted in the Mississippi Crime Lab. And the
26 result of that was that one particle of gunshot
27 residue was positively identified on the sample in
28 Exhibit 43A, which is the back of the right hand of
29 Curtis Flowers.

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1 **Q** All right. Now, I'm asking you if you
2 would review the third page of that, which is the
3 microanalysis section of the gunshot residue
4 examination worksheet. And explain for His Honor
5 what that is and also whether or not from your
6 examination that, in fact, supports that some --
7 summary in the report. Your Honor, would you like a
8 bench copy to follow along with?

9 **BY THE COURT:** I think, for now, I don't
10 need one, but if I get to where I -- do. In
11 fact, I can look over his head pretty well.

12 **A** It does.

13 **BY MS. STEINER:**

14 **Q** Okay. So that is basically a single
15 particle of primer residue -- am I correct? What is
16 the -- did you say that you are familiar with the
17 chemical characteristics of primer residue?

18 **A** Yes, ma'am.

19 **Q** All right. Why don't you describe for His
20 Honor what the chemical characteristics of primer
21 residue are.

22 **A** The primer residue that you are looking
23 for is a -- is lead, barium and antimony. And it's
24 in a spherical shape and is only normally found
25 under the firing of a weapon when those elements are
26 present, and those are circular in nature and
27 usually in the one micron size.

28 **Q** All right. And I'm going to ask you to
29 look at the fourth page of this and see if you can

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1 identify what that purports to be.

2 **A** Well, the bottom is a black photograph. I
3 can't tell much. It says one particle. And the
4 other one is a graph, indicating lead, barium and
5 antimony. But they would have to interpret the --
6 of the report. It's simply a graph indicating all
7 the chemical components within the spectrum that
8 they were running.

9 **Q** All right. Now, is there not, in fact,
10 some research that's been conducted subsequent to
11 July 30, 1996, to indicate that there are, in fact,
12 particles containing of a spherical nature and
13 containing these three elements that can, in some
14 instances, be detected in brake linings of certain
15 German manufactured automobiles?

16 **A** I read the article and my recollection of
17 the article is that -- that the two components were
18 present. I'm not sure that the spherical nature was
19 consistent, but when only two of the particles are
20 present -- and I'm not sure of their size -- but it
21 would not qualify even in that test with being
22 unique in my understanding of it.

23 **Q** This is not unique?

24 **A** This is unique.

25 **Q** All right.

26 **A** The test that you spoke of, in my opinion,
27 did not translate to being unique.

28 **Q** I appreciate that. Let's assume for
29 purposes of further questions that the report which

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1 states that this is a unique gunshot residue
2 particle is correct.

3 **BY MR. EVANS:** Your Honor, I object. He
4 has stated in his opinion it's not. She's put
5 him on as an expert.

6 **BY MS. STEINER:**

7 **Q** All right. All right. You can't
8 actually -- because of the nature of the report on
9 page four, you can't offer your personal opinion as
10 to whether or not a characteristics spherical
11 particle was detected; is that correct?

12 **A** That is correct, ma'am. I cannot see
13 that.

14 **Q** All right. You can read the graph and --
15 and interpret the chemical composition; is that
16 correct?

17 **A** It has the correct chemical combination,
18 but it has to be in the spherical form and the size.
19 And I -- and normally -- the picture that you're
20 trying to show, normally, it would include a graph
21 as far as size as well as a photograph of the actual
22 item itself. And I cannot see that.

23 **Q** Okay. So you can't offer an opinion as to
24 whether this --

25 **A** That is correct.

26 **Q** All right. I'm going to ask you as an
27 expert -- let's assume that this is what they're --
28 this is what the chemists who performed this will
29 testify, it is gunshot residue. I'm saying -- and

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1 so assume -- even assuming that the single particle
2 recovered from the gunshot residue kit labeled
3 Curtis G. Flowers. And I want you further to assume
4 that it was collected by a state policeman who -- at
5 book. I want you further to assume that there was a
6 shooting reported at 10:20 a.m. on the morning of
7 July 16, 1996. I want you to assume that the
8 firearms evidence, which you have discussed earlier
9 here today, was collected from the scene of that
10 shooting by several persons. I want you to assume
11 that the -- that the officer -- well, okay, that one
12 of the officers who was present at that crime scene
13 sometime between 10:20 a.m. and 2:00 p.m. and
14 surveyed -- walked through the crime scene,
15 surveying the crime scene, that he closely -- you
16 know, inspected firearms evidence -- some of the
17 firearms evidence collected, enough to identify it
18 as firearms evidence --

19 **BY MR. EVANS:** Your Honor, there's no
20 evidence of that going to be in this trial.

21 **BY MS. STEINER:** Your Honor,
22 Mr. Matthews --

23 **BY THE COURT:** She's asking a hypothetical
24 right now so --

25 **BY MS. STEINER:** There is a hypothetical
26 based on the --

27 **BY MR. EVANS:** Okay.

28 **BY MS. STEINER:** -- transcript for the
29 gunshot residue collection of the gunshot

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1 residue motion.

2 **BY MS. STEINER:**

3 Q I want you to further assume that he was
4 present at the crime scene and certainly inspected
5 it and may have handled papers on the crime scene.
6 You do not assume that he actually handled the
7 firearms evidence. I want you further to assume
8 that at 2:00 p.m., the individual, Curtis Flowers --
9 well, sorry. I want you to further assume that
10 approximately between 1:00 and 1:30 p.m. that
11 afternoon, the individual who -- from whom this
12 gunshot residue collection kit was taken was picked
13 up from his home in a Mississippi Highway Patrol
14 police vehicle and driven unrestrained to the Winona
15 Police Department and taken into the Winona Police
16 Department interview room customarily used to
17 interview witnesses, suspects, and such like.

18 I want you to further assume that for
19 approximately 30 minutes between 1:30 p.m. and 2:00
20 p.m., the individual from whom this gunshot residue
21 kit was collected was in the room -- the witness
22 interview room -- sitting at some sort of hard
23 surface table having conversations with these
24 officers. I want you to further assume that in the
25 course of that conversation, he handled pieces of
26 paper, a Miranda waiver which he signed with a pen
27 which he used in that same environment. And then I
28 want you to assume that the -- that the officer
29 collected this gunshot residue sample from him,

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1 and -- after having washed his hands once and gloved
2 but wearing the same clothes in which he had been
3 inspecting the crime scene. And then just go ahead
4 and assume that what we have is a single particle of
5 gunshot residue.

6 Would you, as an expert in gunshot
7 residue and analysis yourself, form any opinion or
8 inference regarding whether or not this is probative
9 evidence of the person from whom it was collected
10 being having actually fired a weapon?

11 **A** In my opinion, if a person had 100
12 particles of gun powder or primer residue on their
13 person, it doesn't mean they fired a weapon. If
14 they have no powder particles on their weapon (sic),
15 it doesn't mean they fired a weapon. There's not a
16 test that I am aware of that tells you a person did
17 or did not fire a weapon.

18 It's my opinion that the particle
19 that was found is from a weapon that had been fired.
20 How it got to that is speculative and based on
21 whatever evidence comes to mind. I would form
22 neither an opinion that he did or did not fire a
23 weapon. Specifically, on one item.

24 **Q** All right. And is that consistent with
25 the standards of gunshot residue interpretation as
26 they are now being -- as they now exist, especially
27 in the wake of the 2005 Quantico Virginia Symposium
28 on gunshot residue convened, I believe, by the FBI?

29 **A** Having read that very report this morning,

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1 I would agree with you.

2 Q Thank you. So it is your opinion that
3 there is no probative -- would it -- you have
4 testified in many cases. Is it your opinion that it
5 would be misleading or confusing to a jury trying to
6 determine whether or not the individual from whom
7 this gunshot residue kit was taken --

8 BY MR. EVANS: Your Honor, I think this
9 witness can make a conclusion as an expert but
10 not a legal conclusion.

11 BY THE COURT: I sustain. I mean, I don't
12 think he can make that determination.

13 BY THE WITNESS: Thank you, your Honor.

14 BY MS. STEINER:

15 Q It is your opinion that no inference, one
16 way or the other, can be drawn under the
17 circumstances of the hypothetical regarding whether
18 or not this individual fired a weapon -- the means
19 by which this particle arrived on this individual's
20 hand was this individual's firing a weapon?

21 A I would not offer an opinion on that.

22 BY MS. STEINER: All right. Thank you,
23 your Honor. I have --

24 BY THE COURT: Well, you would offer no
25 opinion concerning what?

26 BY THE WITNESS: I'm sorry, your Honor.
27 It -- I would not form an opinion one way or
28 the other that he did or did not fire a weapon.
29 One particle to me -- depending on the

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1 circumstances, if you had twelve people that
2 were checked and only one had one particle, I
3 think it takes more inference on that person as
4 opposed to the -- the other individuals that
5 did not. But it's still just a part of the
6 investigation the way I see it.

7 **BY MS. STEINER:**

8 **Q** Thank you. And it is also your opinion
9 that -- would you characterize the findings of the
10 2005 Quantico Symposium on gunshot residue as
11 representing the standard of the scientific --
12 forensic science of gunshot residue?

13 **A** I believe it to be, yes.

14 **Q** And you believe that anyone following
15 those findings and conforming with those standards
16 in the field of gunshot residue analysis would
17 similarly -- could not -- could -- similarly could
18 not, consistent with the scientific principles upon
19 which gunshot residue analysis is based, offer a
20 valid opinion one way or the other regarding whether
21 or not that individual had personally fired a
22 weapon.

23 **A** It's my opinion there is no test that
24 tells you absolutely one way or the other that a
25 person did or did not fire a weapon. If this had
26 been collected in a NASA clean room, it would add no
27 more inference or probability that it was or was not
28 firing a weapon. It simply means that the person
29 that had this particle on them was in an environment

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1 that had primer residue available to be deposited on
2 that person.

3 Q All right. And primer residue has, in
4 various scientific studies, been found to exist in
5 police patrol vehicles; is that correct?

6 A Yes.

7 Q And it has been found to exist on tables
8 and surfaces in police station witness and suspect
9 interview rooms; is that correct?

10 A That I'm unfamiliar with.

11 Q All right. And it has -- in fact, it was
12 found to exist in FBI -- state-of-the-art FBI
13 Quantico laboratory, was it not?

14 A I believe it was.

15 Q And in fact, at around the same time that
16 it was found, the FBI in -- laboratory in Quantico,
17 Virginia, elected to cease performing gunshot
18 residue analysis all together because relative to
19 the other resources it has, it was less probative
20 and valuable than other kinds of stuff they wanted
21 to do with that laboratory.

22 A I know they've discontinued. I don't know
23 the timeframe, so I can't answer that.

24 Q All right. They are not presently doing
25 this?

26 A To the best of my knowledge, only private
27 laboratories, with the exception of when they were
28 operating, the Detroit Police Lab. And they are no
29 longer operating.

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1 Q I was going to ask you that. I -- you
2 were actually one of the experts called in to
3 analyze and ultimately resulted in the Detroit Crime
4 Lab being shut down because of problems with
5 contamination and standards. Is that correct?

6 A That is not correct.

7 Q Oh, I'm sorry.

8 A What is correct is I found the initial
9 error that predicated which you have just spoke
10 about.

11 Q All right. And you were -- and as a
12 consequence of what you found about that error, the
13 lab was -- has it been reopened yet?

14 A No.

15 Q Thank you, Mr. Balash. I have nothing
16 further.

17 A You're welcome.

18 Q Pardon me?

19 A I said you're welcome, ma'am.

20 BY MS. STEINER: I have nothing further on
21 the motion to suppress gunshot residue -- oh,
22 they get to cross, I guess.

23 BY MR. EVANS: Yes. Please.

24 CROSS EXAMINATION

25 BY MR. EVANS:

26 Q All right. Mr. Balash, a few questions
27 I'd like to ask. That FBI lab that she asked you
28 about, she didn't ask you about the part where it
29 said the FBI lab stopped analyzing gunshot residue

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1 because of a shift in priorities, not a lack in
2 confidence of the science, did she?

3 A No. They just -- it isn't productive the
4 way I saw it to allocate man hours and resources for
5 a test that is so indeterminate.

6 Q And this article that she referred to says
7 that they had no lack in the confidence of the
8 science, didn't it?

9 A Correct. As a science, I believe it to be
10 correct. It's the application that I have
11 difficulty with.

12 Q There has never been any contest to the
13 fact that the science of -- if you want to call it
14 gunshot residue or gunshot primer residue is a valid
15 science that can be tested; isn't that correct?

16 A I believe it to be correct, yes, sir.

17 Q And there are plenty of peer reviews that
18 show that?

19 A Yes, sir.

20 Q Now, as far as what gunshot residue is,
21 there is only one known source of it. Isn't that
22 correct?

23 A When you say gunshot residue --

24 Q Gunshot primer residue.

25 A Okay. When you say the primer residue,
26 that is correct. It is my understanding it only
27 comes from the firing of a center-fired primed
28 cartridge formed in the pressure of discharging the
29 weapon.

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1 Q It requires lead, barium and antimony. Is
2 that correct?

3 A Correct.

4 Q And it requires a circular appearance?

5 A Correct. And very small size.

6 Q What is the significance of that circular
7 appearance?

8 A It's significant in the fact that it was
9 formed in a high pressure environment.

10 Q Were the cartridge cases that you examined
11 center fired?

12 A Yes, sir, they all were.

13 Q They would have primer residue; is that
14 correct.

15 A Yes, they will.

16 Q Now, you were asked about some
17 hypotheticals. The hypothetical in this case was
18 that it was approximately four hours after the
19 murders when the police picked up this suspect and
20 tested his hands. What would be the significance of
21 the four hours?

22 A As I indicated earlier, normally, you
23 wouldn't run the test after four to six hours
24 because the material is easily removed from skin by
25 simply washing or going through various functions of
26 every day activities, putting your hands in your
27 pockets, et cetera.

28 Q So doing all of that would remove it; it
29 would fall off.

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1 **A** It's a particular matter, unless your
2 hands are excessively sticky or something that would
3 be making it more difficult, possibly more hairy may
4 be a way to keep it longer. But other than that,
5 there's why they usually limit it to between four
6 and six hours.

7 **Q** So after four hours, it was lucky that
8 there was still some on his hands; is that correct?

9 **BY MS. STEINER:** I'm going to object to
10 the form of that question --

11 **BY MR. EVANS:** Your Honor, this is an
12 expert --

13 **BY MS. STEINER:** I think he is -- he has
14 testified that he could make no finding one way
15 or the other about when that gunshot residue
16 arrived --

17 **BY MR. EVANS:** Didn't ask when.

18 **BY MS. STEINER:** You said still.

19 **BY THE COURT:** Well, you said lucky, too.
20 I just don't think -- I'll over -- I'll sustain
21 the objection.

22 **BY MR. EVANS:**

23 **Q** After four hours, it could have all been
24 gone, couldn't it?

25 **A** There is a generally accepted rule that
26 after one hour, almost 90 percent of the material
27 that's normally available dissipates, and it
28 continually progresses. That's why they seldom do
29 the test after four and sometimes they've extended

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1 it to six.

2 Q And there's never been a expert in the
3 field, even though it's a scientifically accepted
4 field, that would say that that is a positive
5 indication that a person fired a gun, is it?

6 A There shouldn't be. That is correct, sir.

7 Q What is it for is to see if a person was
8 in the vicinity of a gun that was being fired as a
9 possibility; is that correct?

10 A Correct. In my opinion, sir.

11 Q And if a person fired a pistol, an
12 automatic pistol, that was right handed, where would
13 you more than likely expect to find gunshot primer
14 residue?

15 A Normally, along the right hand and up the
16 sleeve, because the cloud envelopes. And it's the
17 microscopic particles within that cloud -- much like
18 if you were to blow cigarette smoke, you'd see it
19 billowing. And if your hand is in that area, that's
20 where it would collect.

21 Q Now, I want to you to accept the idea that
22 the testimony in this case is that the primer -- gun
23 primer residue was found in the back v of the right
24 hand. Would that be consistent with having fired a
25 .380 automatic pistol with a right hand within four
26 hours of that time?

27 A I don't think I would use the word
28 consistent. It's possible. Yes.

29 Q All right, sir. Is that where -- or one

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1 of the main places that you would look for it?

2 **A** If I were conducting the test, that would
3 be the first place that I would put the stamp.

4 **Q** All right. And the testing that she
5 referred to about brake linings, there was nothing
6 in there about a circular appearance, was there?

7 **A** Not that I recall, sir.

8 **Q** It was also nothing in there about the
9 size of one micron, was there?

10 **A** No, sir, there was not.

11 **Q** So that is not consistent with gunshot
12 primer residue?

13 **A** In my opinion, what was presented in that
14 study was not. It lacked one of the main
15 ingredients. It didn't indicate the circular
16 pattern nor the size of the particle that they were
17 looking at.

18 **Q** And if an officer were to take gunshot
19 residue from a suspect's hand, it would be proper
20 for him to wash his hands and place gloves on them;
21 is that correct?

22 **A** Prior to, yes, sir, that would be correct.

23 **Q** And this is an investigative tool to
24 attempt to see if there is any evidence there?

25 **A** Yes, it is.

26 **BY MR. EVANS:** One moment, your Honor.

27 **BY MR. EVANS:**

28 **Q** And this would be one circumstance among
29 many others that should be considered to put

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1 together the facts against that person; is that
2 correct?

3 **BY MS. STEINER:** I'm going to object to
4 the form of that question. I think as
5 Mr. Evans probably properly objected before,
6 that maybe the Court's ruling under the
7 evidentiary principles that are in this motion
8 and not for the expert request --

9 **BY MR. EVANS:** You were --

10 **BY THE COURT:** I'll sustain the objection.

11 **BY MR. EVANS:**

12 **Q** You were asked about being an expert on
13 recovery, weren't you?

14 **A** Yes, sir.

15 **Q** And one of the main reasons is that's one
16 extra piece of evidence there, isn't it?

17 **A** That is.

18 **BY MR. EVANS:** That's all we have, Your
19 Honor.

20 **BY MS. STEINER:** Your Honor, I'm sorry.
21 This is -- I guess I get to redirect him;
22 correct? He's my witness now?

23 **BY THE COURT:** Correct.

24 **BY MS. STEINER:** Thank you.

25 **BY THE COURT:** Ms. Steiner, I'm told
26 the -- your client gets a shot every day for
27 insulin and --

28 **BY MS. STEINER:** Your Honor, thank you.

29 **BY THE COURT:** And so --

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1 **BY MS. STEINER:** Your Honor, I just have
2 one more thing to say. This witness --

3 **BY THE COURT:** Well, if you're -- I mean,
4 we can wait a few minutes. It's not quite
5 4:00, but I think they are here.

6 **BY MS. STEINER:** All right. Let me
7 conclude with this witness. I'd like to go
8 ahead and offer into evidence for purposes of
9 the motion to suppress gunshot residue
10 examination and for it -- but to leave for
11 identification and not to be circulated to the
12 jury --

13 **BY THE COURT:** Well, I mean, it's -- it
14 is, already for identification, I think, been
15 marked.

16 **BY MS. STEINER:** It has. I just wanted
17 to --

18 **BY THE COURT:** And I mean --

19 **BY MS. STEINER:** I would like --

20 **BY THE COURT:** -- for purposes of the
21 Court's ruling, it's -- I mean, it's available
22 for consideration.

23 **BY MS. STEINER:** Yes, your Honor. We -- I
24 would -- I would not necessarily offer it into
25 evidence before the jury in any event. And I
26 think I would object if this report were
27 offered before the jury should the State wish
28 to offer it for the truth.

29 **BY MR. EVANS:** I'm afraid I'm lost now. I

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1 don't know what she's asking.

2 **BY MS. STEINER:** I'm saying I only want
3 this marked for identification for purposes
4 of --

5 **BY THE COURT:** It is already.

6 **BY MS. STEINER:** All right. But it is --
7 can be considered by the Court in considering
8 the motion as an exhibit to it. Thank you.

9 **BY THE COURT:** I mean, that was the
10 purpose of doing this exercise.

11 **BY MRS. STEINER:** Okay. Your Honor, I'm
12 about to destroy Mr. Balash's day, but I have a
13 subpoena for him to question him.

14 **BY MR. EVANS:** Your Honor, this is
15 ridiculous.

16 **BY THE COURT:** I think what we can do, if
17 you have the potential for calling him as a
18 witness -- he's from Michigan. You already
19 know his travel plans. You have not bothered
20 to subpoena him earlier. So you can ask
21 questions of him right now. The court reporter
22 can transcribe it, and it can be read next week
23 if you choose to offer that testimony in your
24 case next week.

25 **BY MRS. STEINER:** Thank you.

26 **BY THE COURT:** And I think that would
27 solve his travel problems and it would also
28 serve the purposes you might have.

29 **BY MRS. STEINER:** I was going to suggest

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1 that as an alternative, Your Honor.

2 **BY THE COURT:** So why don't we have
3 Mr. Flowers go get his insulin shot right quick
4 and we can proceed. And the bailiff is asking
5 if the smokers on the jury can walk out with
6 him.

7 **BY MRS. STEINER:** Yes, sir.

8 **BY THE COURT:** I don't need one, but we
9 can just recess.

10 **BY MR. HILL:** Can we approach, Your Honor?

11 (ALL COUNSEL FOR BOTH SIDES APPROACH
12 THE BENCH FOR A CONFERENCE WHILE THE JURY
13 IS OUTSIDE OF THE COURTROOM:)

14 **BY MRS. STEINER:** Your Honor, the first
15 thing I would like to say is ordinarily, if he
16 were dismissed and under a subpoena, I would
17 then attempt to have a conversation with him
18 about the specific questions I would be
19 proposing to ask in front of the jury to
20 prepare him as a witness.

21 **BY THE COURT:** So you're saying you want
22 to interview him for a few minutes?

23 **BY MRS. STEINER:** I would like to
24 interview him now. He's kind of in the middle
25 of an examination. I wouldn't want to do that
26 without the Court's permission.

27 **BY MR. EVANS:** I have no problem with you
28 doing that.

29 **BY MR. EVANS:** Your Honor, just so the

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1 Court will know, if he doesn't leave very
2 shortly, he's going to miss his plane.

3 **BY THE COURT:** Well, I mean, he's under
4 subpoena by her now, and the only -- I'm trying
5 to be the Solomon here. I'm trying to
6 accommodate both sides as much as I can, and
7 that's all I can do.

8 **BY MRS. STEINER:** I've missed that flight
9 to Detroit. I have family in Ann Arbor, and
10 it's dreadful, but it's --

11 **BY THE COURT:** Anyway, if you'll just talk
12 to him right quick.

13 **BY MRS. STEINER:** Thank you.

14 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
15 CONTINUED IN OPEN COURT OUTSIDE THE
16 HEARING AND PRESENCE OF THE JURY, TO-WIT:)

17 **BY THE COURT:** But anyway. Ms. Steiner
18 advised my law clerk that maybe they had
19 reached a -- I mean, there was some kind of
20 agreement -- I mean, an alternative that might
21 be acceptable to everybody.

22 **BY MRS. STEINER:** Yes. He has testified
23 previously. What I wanted to make sure was
24 that his opinion was not changed from that. If
25 he needs to take his flight, I'm very happy to
26 let him go, and we can have the prior
27 testimony --

28 **BY MR. EVANS:** I don't see why we couldn't
29 use his prior testimony. That would be fine

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1 with me.

2 **BY THE COURT:** And actually, I mean, and
3 with, I guess -- kudos to both counsel. I
4 think you've probably not -- in the proffer,
5 there's probably not much more that could have
6 been asked in front of the jury that hadn't
7 already been proffered to the Court. But that
8 testimony or his prior testimony, either one --
9 but now if you want the testimony from today,
10 you're going to have to let me know by the end
11 of the day so the court reporter can have it
12 next week.

13 **BY MRS. STEINER:** Why don't we have the
14 testimony from today? Let me use the '98
15 testimony or the prior testimony.

16 **BY THE COURT:** Okay. That's fine.

17 **BY MRS. STEINER:** All right. And may the
18 witness be excused?

19 **BY THE COURT:** I'm -- they have agreed
20 that your testimony from a previous trial can
21 be read into evidence if they decide they need
22 it, so you're free to go and return home. You
23 get that flight.

24 **BY THE WITNESS:** Thank you.

25 (WITNESS EXCUSED)

26 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
27 CONTINUED IN OPEN COURT OUTSIDE THE
28 HEARING AND PRESENCE OF THE JURY, TO-WIT:)

29 **BY MRS. STEINER:** Your Honor, do you want

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1 the proceed with the motion this afternoon?
2 I'm happy --

3 **BY THE COURT:** I don't know if the
4 State -- well, I don't know if they're going to
5 proffer anybody or not. I mean, I don't know
6 if their proposed expert in this area is even
7 here.

8 **BY MRS. STEINER:** Your Honor, I think for
9 purposes of the Court's ruling on the gunshot
10 residue motion, what I would propose to do is
11 the testimony from Mr. Balash for the defendant
12 and then I would offer into evidence for the
13 Court's consideration the three testimonial
14 exhibits to the motion, which I have an extra
15 copy that we can mark for the Court.

16 **BY THE COURT:** I've got a copy.

17 **BY MRS. STEINER:** Let's mark it for
18 identification for the motion --

19 **BY THE COURT:** I mean, I have looked at
20 it. I mean, I have read it already --

21 **BY MRS. STEINER:** I just was going to
22 offer it.

23 **BY THE COURT:** Yeah, I know. That's fine.
24 I didn't want -- have you have the perception
25 that I hadn't looked at 100 pages of documents.
26 Because it was e-mailed last Sunday afternoon,
27 and I spent Sunday night reading it, and --

28 **BY MRS. STEINER:** I spent Saturday night
29 writing it.

MOTION TO SUPPRESS - JURY OUT

1 **BY THE COURT:** Well, I mean, I -- I just
2 wanted it to be clear that I have already read
3 what you're submitting as an exhibit.

4 **BY MRS. STEINER:** I'd like to affix it for
5 identification as an exhibit to the motion. I
6 believe the State may have another transcript
7 to offer, and I have no objection to that being
8 offered and allowing that to stand as the
9 testimony of their -- the other testimony of
10 their expert, should they choose to do that.

11 **BY THE COURT:** That will be fine if they
12 do. I may have to recess and read some.
13 Anyway, you can have that marked as
14 identification. Apparently, they're already
15 attached to your exhibits so I can state for
16 the record that you -- what you had attached to
17 your motion, I have read it.

18 **BY MRS. STEINER:** I --

19 **BY THE COURT:** But I will allow it to be
20 marked as an exhibit for that motion.

21 (DEFENDANT'S EXHIBIT NO. D-12, PHOTO,
22 WAS MARKED FOR IDENTIFICATION.)

23 **BY MRS. STEINER:** Your Honor, with the
24 testimony of Mr. Balash and the two exhibits
25 marked for identification, the Defendant would
26 rest on the motion to suppress gunshot residue.
27 And I would also like to say I am changing my
28 mind with respect to my announcement that I did
29 not need the transcript of Mr. Balash's

MOTION TO SUPPRESS - JURY OUT

1 testimony in order to prepare in the event the
2 motion for a -- to possibly even present in the
3 event the motion for gunshot residue
4 suppression is not granted. So I would request
5 that a transcript would be prepared and
6 provided at some point prior to the conclusion
7 of the defense case in this matter for purposes
8 of offering it into evidence as to testimony in
9 the event it appears different from the '98
10 testimony.

11 **BY THE COURT:** Okay. I'm going to
12 allow --

13 **BY MR. HILL:** Is that a contingency motion
14 or what is that?

15 **BY MRS. STEINER:** Well, I don't know. I
16 really -- I was examining the witness. I think
17 he said the same thing, and it won't have to be
18 as redacted because obviously the jury can't
19 hear it --

20 **BY MR. EVANS:** My understanding of what
21 we've agreed to, we're going to use his prior
22 testimony in another trial. Now, I don't know
23 if she's changing that or what the deal is, but
24 that was my understanding of the agreement.

25 **BY MRS. STEINER:** That -- Your Honor,
26 that's -- I would like at least to have a draft
27 to review that so I may --

28 **BY MR. EVANS:** He's not going to be here
29 to be questioned about it.

MOTION TO SUPPRESS - JURY OUT

1 **BY THE COURT:** Well, I think Noelle can
2 maybe do that Monday while Tammy is here in
3 Court --

4 **BY MRS. STEINER:** -- to the parties.

5 **BY THE COURT:** -- I think it can be
6 provided. No, it will be provided.

7 **BY MRS. STEINER:** Thank you, Your Honor.

8 **BY THE COURT:** And I -- you wrote a
9 thorough motion, and I don't know if you want
10 to argue points in your motion or just stand --
11 I mean, I think you just said you were standing
12 on the testimony of the witness that just left.

13 **BY MRS. STEINER:** I believe the State had
14 something they wanted to offer now. Or did you
15 want to offer anything into evidence?

16 **BY MR. WHITFIELD:** Yes. I just have a
17 transcript -- it's a transcript, I believe --
18 I'm not sure which trial it is, but it's pages
19 1670 through 1699. We have some markings on
20 this copy. We'd have to get the Court a fresh
21 copy to admit as an exhibit to this hearing.

22 **BY THE COURT:** Well, if you -- I don't
23 know if -- I've got a transcript of the '07
24 trial, and I don't -- I don't have the -- I
25 don't have a transcript of the '08 one, which I
26 presided over because I didn't figure I needed
27 it, but I got a pretty good recall of things.

28 **BY MR. WHITFIELD:** I believe they're
29 basically the same transcripts, Your Honor. In

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1 addition, the State would like to make argument
2 if you're ready.

3 **BY MRS. STEINER:** I didn't -- God forbid I
4 should waive argument, Your Honor. I simply
5 wanted to give the State a chance to perfect
6 its record if it wished to put on any evidence
7 or anything like that.

8 **BY THE COURT:** Well, what -- I mean,
9 they've already -- it was an attachment to
10 their motion. They -- which, I mean, I've
11 already read some previous testimony. But if
12 it's the same one I've already read, then I
13 don't --

14 **BY MR. WHITFIELD:** It could possibly be.
15 One of my motions I got from them was absent of
16 page numbers, and I'm not sure which.

17 **BY THE COURT:** It was what?

18 **BY MR. WHITFIELD:** It didn't have page
19 numbers. One of the sections didn't have page
20 numbers --

21 **BY MRS. STEINER:** Yes. The testimony of
22 Mr. Flowers and Mr. Matthews regarding the -- I
23 think our Exhibit B is the testimony of
24 Mr. Flowers and Mr. Jack Matthews from the
25 motion in 1998 to suppress Mr. Flowers'
26 statements which was attached because it talks
27 about -- in the hypothetical, it talks about
28 the circumstances of his transport to the
29 police station and his presence in the

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1 interview room and the means by which the stuff
2 was collected. And that does not have page
3 numbers on it because when we got that copy of
4 the transcript, it didn't have page numbers on
5 it. But that is -- I put the cover sheet that
6 shows what trial it's from.

7 **BY THE COURT:** I mean, I've got that. But
8 what I was saying is -- I thought the State was
9 going to probably offer some testimony of
10 Matthews. I -- who is -- who are you offering
11 testimony?

12 **BY MR. WHITFIELD:** Andrews.

13 **BY MRS. STEINER:** Andrews.

14 **BY MR. WHITFIELD:** Yes, Your Honor,
15 Mr. Matthews and Mr. Andrews' testimony. I
16 believe it may be all in the defense exhibits
17 if all the pages are there.

18 **BY THE COURT:** I remember Matthews and I
19 remember that name, but for some reason I got
20 to thumb through and see. I mean, I read it,
21 but I don't remember all the names. I can't
22 keep them straight further. Okay. And it was
23 Matthews and Andrews, was that it?

24 **BY MR. WHITFIELD:** Yes, Your Honor.

25 **BY MR. EVANS:** And Wayne Miller's prior
26 testimony also.

27 **BY THE COURT:** Who?

28 **BY MR. EVANS:** Wayne Miller's prior
29 testimony also.

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1 **BY MRS. STEINER:** I don't believe that
2 that is in the motion because Mr. Miller did
3 not participate in the taking of the --

4 **BY MR. EVANS:** It's in what we want
5 because in the Defendant's testimony he claimed
6 that Wayne Miller tried to take the gunshot
7 residue test from him, and it wouldn't work so
8 Jack had to take one. And Captain Miller
9 testified that that was not true; he had never
10 tried to take one. It was always --

11 **BY THE COURT:** Let me just take a little
12 bit and read it.

13 **BY MR. EVANS:** Wayne Miller, Jack Matthews
14 and Joe Andrews.

15 **BY THE COURT:** If it's stuff I've already
16 read from Miller and Matthews -- I mean,
17 Matthews and Andrews.

18 **BY MR. EVANS:** It probably is.

19 **BY THE COURT:** And I'm saying if it is,
20 I'm not going to read it again. I only needed
21 to read it once. But what I haven't read is
22 what you can present to me. You can present
23 all three.

24 **BY MR. EVANS:** Your Honor, the first --
25 the parts -- there are some parts that you have
26 not read that's in what she -- there was a
27 motion on this basic issue that came up in
28 Gulfport. And there was testimony from Jack
29 Matthews down there about the fact this --

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1 disputing the Defendant's testimony. And I
2 think all of that's going to be stuff that the
3 Court's going to have to read --

4 **BY THE COURT:** Then why don't we -- give
5 me what you want me to read. I'll take it with
6 me this weekend, and I'll read it rather than
7 trying to sit here for an hour and read
8 something when we can hear another witness, and
9 I won't delay things by reading it now. I'll
10 read it -- I'll have Sunday afternoon and
11 evening reading again tomorrow.

12 **BY MRS. STEINER:** We have no objection to
13 proceeding that way. And if just whatever's
14 submitted to Your Honor, if it can be marked
15 for identification when we resume on Monday.

16 **BY THE COURT:** That will be fine. So
17 who's your next live witness? You can bring
18 the jury in.

19 (THE FOLLOWING PROCEEDINGS WERE HAD IN
20 OPEN COURT WITH THE JURY PRESENT, TO-WIT:)

21 **BY THE COURT:** Court will come back to
22 order. Mr. Hill, who is your next witness?

23 **BY MR. HILL:** Elaine Goldstein.

24 **BY THE COURT:** I need you to raise your
25 right hand. Do you solemnly swear or affirm
26 that the testimony you give in this case will
27 be the truth, the whole truth and nothing but
28 the truth, so help you God?

29 **BY THE WITNESS:** Yes, sir.

GOLDSTEIN - DIRECT

1 **BY THE COURT:** Have a seat please. You
2 can proceed.

3 **BY MR. HILL:** Thank you, Your Honor.

4 **DIRECT EXAMINATION**

5 **BY MR. HILL:**

6 **Q** Tell the ladies and gentlemen of the jury
7 your name again, please.

8 **A** Elaine Goldstein.

9 **Q** Ms. Goldstein, that microphone that you're
10 leaning up towards, just to let you know, that
11 doesn't amplify your voice.

12 **A** Okay.

13 **Q** That doesn't make you louder, but you do
14 need to speak loud enough for all of these ladies
15 and gentlemen to hear you. You're kind of soft
16 spoken, so speak up if you will.

17 **A** Okay.

18 **Q** Ms. Goldstein, I want to ask you where you
19 lived in July of 1996. Can you tell them -- the
20 ladies and gentlemen that, please?

21 **A** 703B McNutt Drive.

22 **Q** And who was your across-the-street
23 neighbor at that time?

24 **A** Connie Moore and Curtis Flowers.

25 **Q** And how long at that time had you known
26 them?

27 **A** I've been over at that residence for like
28 nine, ten years.

29 **Q** Can you tell us -- you said Curtis Flowers

GOLDSTEIN - DIRECT

1 and Connie Moore; right?

2 A Uh-huh.

3 Q Can you tell us if the Curtis Flowers that
4 you lived across the street from back in 1996 is
5 here in the courtroom today?

6 A Yes, sir.

7 Q Where is he?

8 A (Indicating).

9 BY MR. HILL: Your Honor, may we have the
10 record reflect that Ms. Goldstein has pointed
11 out and identified the Defendant Curtis
12 Flowers.

13 BY THE COURT: I'll let it so reflect.

14 BY MR. HILL:

15 Q Did you -- did you see Mr. Flowers -- do
16 you remember hearing about the murders at the Tardy
17 Furniture store on the morning of July the 16th,
18 1996?

19 A Yes, I do.

20 Q When did you hear about that,
21 Ms. Goldstein?

22 A On my job.

23 Q Was it that same day?

24 A Yes, it was.

25 Q And if you'll just tell us how you heard
26 about it, what was it that brought it to your
27 attention.

28 A Bobo Stewart Auntie Rita, she worked
29 there. And she was running out the building crying,

GOLDSTEIN - DIRECT

1 and we was asking her what had happened. And she
2 said her nephew had got shot at Tardy Furniture.

3 Q Okay. And on that morning, the morning
4 before Bobo's Aunt Rita became upset and told that,
5 did you see the Defendant Curtis Flowers that
6 morning?

7 A Yes, I did.

8 Q Can you tell us where he was and what he
9 was doing when you saw him that morning?

10 A He was across the street on his porch
11 smoking a cigarette.

12 Q Can you tell us what time of the morning
13 it was when you saw him?

14 A Right at 6:30, 6:45.

15 Q Okay. How do you know that -- remember
16 that so long. That's been --

17 A Because that's what time I get ready to go
18 to work, and my ride comes between 6:30 and 6:45.
19 That's what time my ride arrive.

20 Q Okay. Where were you working at?

21 A At Kreuger International, KI.

22 Q KI? And you were getting ready and
23 waiting on your ride --

24 A Yes, sir.

25 Q -- waiting to go to work. Okay. Did you
26 ever -- have you ever heard of or had you ever seen
27 at that time -- that is, on the morning of the July
28 the 16th, 1996, had you ever seen any Fila Grant
29 Hill tennis shoes?

GOLDSTEIN - DIRECT

1 **A** That morning? Or have I ever seen him
2 wearing them --

3 **Q** Were aware at that time of what Fila Grant
4 Hill tennis shoes looked like?

5 **A** Yes, I was.

6 **Q** Do you know anybody that had them at that
7 time or prior to July the 16th, 1996? Do you know
8 of anybody that had a pair of Fila Grant Hill shoes?

9 **A** Yes, I do.

10 **Q** Who was it that you knew that had a pair
11 of Fila Grant --

12 **A** Curtis Flowers.

13 **Q** Okay. And had you ever seen Mr. Flowers
14 wearing on his feet a pair of Fila Grant Hill tennis
15 shoes?

16 **A** Yes, I had.

17 **Q** And when did you see him or how long
18 before that morning had it been that you saw him
19 wearing these shoes?

20 **A** Probably a couple of months before,
21 something like that.

22 **Q** Okay.

23 **A** But I remember seeing him put them on.

24 **Q** Okay. And did you see him on more than
25 one occasion wearing those shoes?

26 **A** Not that I can remember.

27 **Q** And that occasion -- but you saw him
28 before the murders wearing Fila Grant Hill shoes?

29 **A** Yes, I did.

GOLDSTEIN - DIRECT

1 Q Can you describe the shoes?

2 A They was white, red, blue. Mostly white,
3 with red and blue. And on the ankle, the Fila --

4 Q And where was the blue?

5 A Fila sign -- like the high top, on the
6 high top side.

7 Q High top or ankle top?

8 A Ankle top.

9 Q High tops? And was there a -- you said
10 there was a design on them?

11 A A Fila sign.

12 Q And whereabouts is that design, the Fila?

13 A Right on the ankle part.

14 Q Ankle part?

15 A Uh-huh.

16 Q And where was the blue mark on there?

17 Where was that at?

18 A Like comes around the side of the tennis
19 shoe.

20 Q Okay. Around the perimeter?

21 A Like the shoe -- like a perimeter -- like
22 on the shoe, on the side. It's got like a blue.

23 Q All the way around to the toe and up?

24 A On the side, uh-huh.

25 Q Okay.

26 BY MR. HILL: I tender the witness, Your
27 Honor.

28 CROSS-EXAMINATION

29 BY MR. CARTER:

GOLDSTEIN - CROSS

1 **Q** Ms. Goldstein, this surprised me. I
2 wasn't ready for you. Let me ask you this, though:
3 How long had Mr. Flowers been living in -- there at
4 that house with his sister before -- I'm sorry --
5 with his girlfriend Connie before the crimes took
6 place down there at Tardy's?

7 **A** How long he been living across the street?

8 **Q** Right.

9 **A** Oh, I don't remember.

10 **Q** But you could give me a good guess?

11 **A** I'd say about six, seven years.

12 **Q** He's been there about six, seven years?

13 **A** (Nodding).

14 **Q** And you're sure he was living there full
15 time?

16 **A** Yes, I am.

17 **Q** Okay. What other kind of shoe did you see
18 Mr. Flowers wearing?

19 **A** Those were just popular. I just remember
20 the Fila because they was popular back then.

21 **Q** I know, but what type of shoes --

22 **A** I seen him with house shoes on.

23 **Q** Popular shoes come out all the time, won't
24 you agree?

25 **A** Those Grant Hill, they stood out.

26 **Q** They stood out?

27 **A** (Nodding).

28 **Q** And during the eight-year period of time
29 you saw him there, he didn't wear anything else that

GOLDSTEIN - CROSS

1 stood out? Any other tennis shoe that stood out?

2 A No.

3 Q So what else did you see him wearing
4 beside -- what other shoes besides the Grant Hill
5 Fila and house shoes did you ever see him wear?

6 A None.

7 Q And what kind of house shoes was he
8 wearing?

9 A House shoes, men's house shoes.

10 Q And what color were they?

11 A No, I don't know. I just -- I don't know.

12 Q And the time you saw him with the Grant
13 Hill -- how many times did you see him with Grant
14 Hill Fila shoes on?

15 A I can remember I seen him about one time.

16 Q Okay. Where was it that time -- one time
17 you saw him?

18 A At his house across the street.

19 Q Okay. And where were you?

20 A I was at my house.

21 Q Okay. And how far is your house from --
22 (Mr. Carter is walking backwards) stop me when I get
23 about the distance that Mr. Flowers is from your
24 house to --

25 A About right there.

26 Q Okay.

27 A Uh-huh.

28 Q And you were able to look across the
29 street and see?

GOLDSTEIN - CROSS

1 **A** Sitting on my porch or I was standing out
2 in my yard.

3 **Q** And they were Grant Hill Fila?

4 **A** Uh-huh.

5 **Q** And did you ever say anything to him about
6 them?

7 **A** No, I didn't.

8 **Q** And the time you saw him with the Grant
9 Hill Fila shoes, what else did he have on? What
10 kind of pants did he have on?

11 **A** I can't remember.

12 **Q** What kind of shirt did he have on?

13 **A** I can't remember.

14 **Q** What did his hair look like on that day?

15 **A** What his hair looked like?

16 **Q** What kind of haircut did he have?

17 **A** Short, bald.

18 **Q** He was bald back then?

19 **A** (Nodding).

20 **Q** Did he have a mustache?

21 **A** Did Curtis have a mustache?

22 **Q** Yes, at the time that you saw him with the
23 Grant Hill Fila shoes.

24 **A** I don't remember. I don't remember that.

25 **Q** What kind of socks did he have on with the
26 Grant Hill Filas at the time you saw him?

27 **A** I don't remember.

28 **Q** You don't know?

29 **A** No.

GOLDSTEIN - CROSS

1 Q How were the Grant Hill Filas laced at the
2 time you saw him?

3 A I don't remember how they were laced. I
4 just saw the tennis shoes. I know Grant Hill Fila
5 shoes.

6 Q How do you know them?

7 A They was the popular tennis shoes came
8 out.

9 Q Did you have any?

10 A No, I didn't.

11 Q Did you buy any for your children?

12 A No, I didn't.

13 Q Who -- do you know anybody that had any
14 beside Mr. Flowers?

15 A I know a couple of people had Grant Hill.

16 Q Who are they?

17 A You know, people that lived in Duck Hill.
18 You know, like little boys and men.

19 Q What's their names?

20 A In Duck Hill?

21 Q What's their names?

22 A (Shaking head). They was little boys. I
23 don't remember their names, just little kids running
24 around.

25 Q And the -- the ones that the adults wore,
26 is it your testimony that the Grant Hill Filas that
27 the little boys wore were exactly the same as the
28 ones that grown people wore?

29 A I think the grown ones was a little

GOLDSTEIN - CROSS

1 different than the small ones.

2 Q But tell us how they differ?

3 A I just say the grown people's was white
4 all over. It was the design on the smaller tennis
5 shoes that's different from the ones that grown
6 people -- that the grownups wore --

7 Q I'm sorry. Go ahead. I won't stop you.
8 Are you finished?

9 A Yeah, I'm finished.

10 Q What color were the ones you saw
11 Mr. Flowers on?

12 A White.

13 Q Totally white?

14 A Totally white with the red and blue.

15 Q Where was the red?

16 A The red was like in the design on the
17 Fila.

18 Q It's on the side?

19 A The Fila.

20 Q Oh, the red -- I'm sorry. In the sign
21 that says Fila?

22 A It's a little red on the shoe.

23 Q Okay. And where was the blue?

24 A The blue -- it was like mostly blue and
25 white, then red. You could see a lot of -- a
26 little -- the sign on the -- the blue on the shoe,
27 you could see that, and the white mostly and the
28 red.

29 Q So your testimony is that you never got

GOLDSTEIN - CROSS

1 closer than the point at which I walked and you from
2 the witness stand, yet you were able to see all
3 this?

4 **A** I knew -- I know Grant Hill Fila shoes.

5 **Q** Okay. So who else did you see with the
6 Fila besides Mr. Flowers and the two kids that you
7 saw?

8 **A** Not too many people.

9 **Q** Was anybody else --

10 **A** They was expensive.

11 **Q** Was anybody else other than Mr. Flowers
12 and the kids that you recall?

13 **A** (Shaking head).

14 **Q** Now, tell me as close as you can what day
15 was it you saw Mr. Flowers with the Grant Hill Fila
16 shoes on.

17 **A** I can't remember. I don't know.

18 **Q** Was it on a weekend or through the week?

19 **A** I can't remember. But I know I saw him
20 with them on.

21 **BY MR. CARTER:** One moment.

22 **BY MR. CARTER:**

23 **Q** Ms. Goldstein, when did you tell the
24 police that you saw Mr. Flowers with the Grant Hill
25 Fila shoes on?

26 **A** When did I tell them?

27 **Q** Yeah. Who did you notify with the police
28 department?

29 **A** Who did I notify?

GOLDSTEIN - CROSS

1 Q Right.

2 A I didn't notify them; they notified me.
3 They talked to me.

4 Q And how did they wind up coming by to see
5 you? What caused that?

6 A Talking to people who lived close to them,
7 you know, I guess. That's all I could say. The
8 ones that, you know, stayed close around him.

9 Q And who was it that you talked to?

10 A John Johnson.

11 Q And that happened around August 11th,
12 1996?

13 A Well, it be so long, I don't --

14 Q Did you write out a statement?

15 A Did I write out a statement?

16 Q Right.

17 A I don't remember. I probably did. I
18 don't remember. I don't know.

19 Q You said you probably did, but you don't
20 remember?

21 A I don't remember.

22 Q Is that what you're saying?

23 A Uh-huh.

24 BY MR. CARTER: One moment, Your Honor.

25 BY THE COURT: Okay.

26 BY MR. CARTER:

27 Q Now, at the time you talked to the police,
28 do you know if they were taping your statement?

29 A No, I don't.

GOLDSTEIN - CROSS

1 **Q** Now, the morning that these crimes
2 occurred and you saw Curtis sitting on his porch,
3 supposedly, did you see Patricia Hallmon that
4 morning as well?

5 **A** No, I didn't.

6 **Q** Now, you said -- let's see. What time was
7 this here, 6:45? Now, you saw Mr. Flowers around
8 6:30 to 6:45, you said, that morning; is that
9 correct?

10 **A** Yes, sir.

11 **Q** And you can't be real sure if that is
12 exactly what time you saw him?

13 **A** That's the exact time.

14 **Q** Now, you're not saying he had Grant Hill
15 Filas on that morning, are you?

16 **A** Not that I can remember.

17 **Q** Okay. But you saw him on the porch. What
18 did he have on? What was he wearing?

19 **A** I don't remember.

20 **Q** You don't remember what he had on that
21 morning. Okay. So you started out telling us he
22 was wearing Grant Hill Fila's on the day that the
23 people died at Tardy's Furniture; right?

24 **A** Not that I can remember.

25 **Q** And, in fact, you're not even telling us
26 that you had seen him in any -- wearing any Grant
27 Hill Fila's any time close to the time that the
28 killings took place at Tardy's, are you?

29 **A** No, not that I remember.

GOLDSTEIN - CROSS

1 **Q** In fact, you told us that the time you saw
2 him with Grant Hill Fila's was -- did you say
3 probably a couple of months before that?

4 **A** Yeah. Uh-huh.

5 **Q** So you don't even know if he still -- if
6 we are to believe that he had any at any point, you
7 don't know if he still had them anywhere near the
8 time that the killings at the Tardy Furniture took
9 place; is that correct?

10 **A** No, I don't remember.

11 **BY MR. CARTER:** Thank you.

12 **REDIRECT EXAMINATION**

13 **BY MR. HILL:**

14 **Q** Ms. Goldstein, did you know any other
15 grown man, any other adult male besides Curtis
16 Flowers that you saw wearing Grant Hill Fila shoes
17 around your neighborhood? Did you know of any other
18 grown man that had a pair of Grant Hill Fila's --

19 **A** No, I didn't.

20 **Q** -- that stood out?

21 **A** No.

22 **Q** That's the only one?

23 **A** That's it.

24 **BY MR. HILL:** Nothing further, Your Honor.

25 **BY THE COURT:** Ms. Goldstein, you may step
26 down.

27 **BY MR. EVANS:** Katherine Snow.

28 **BY THE COURT:** Raise your right hand and
29 take the oath. Do you solemnly swear or affirm

SNOW - DIRECT

1 that the testimony you give in this case will
2 be the truth, the whole truth and nothing but
3 the truth, so help you God?

4 **BY THE WITNESS:** I do.

5 **BY THE COURT:** Go around, please, and have
6 a seat. For the record, state your name,
7 please.

8 **BY THE WITNESS:** Katherine Snow.

9 **BY THE COURT:** You may proceed.

10 **BY MR. EVANS:** Thank you, Your Honor.

11 **DIRECT EXAMINATION**

12 **BY MR. EVANS:**

13 **Q** Good evening, Ms. Snow.

14 **A** Good evening.

15 **Q** How are you doing today?

16 **A** I'm all right.

17 **Q** I want to direct your attention back to
18 the morning of July the 16th, 1996, the morning of
19 the murders at the Tardy Furniture. Do you remember
20 that morning?

21 **A** I do.

22 **Q** Where were you working at that time?

23 **A** Angelica.

24 **Q** And where is Angelica?

25 **A** It's in Winona down 51. I can't tell you
26 whether it's north, east or whatever.

27 **Q** All right. What is it?

28 **A** It's a garment factory.

29 **Q** Okay. How long had you worked there?

SNOW - DIRECT

1 **A** I started there -- it was like in '91. I
2 think in there.

3 **Q** Speak up a little louder for me, ma'am,
4 because they've got to hear you over there on the
5 back row of that jury box. Just approximately.

6 **A** About ten years.

7 **Q** All right. Did you work -- go to work
8 there that morning -- the morning of the murders?

9 **A** I did.

10 **Q** What time did you go to work?

11 **A** I had to be there at seven.

12 **Q** All right. Was there anything unusual
13 about that morning as far as arriving there?

14 **A** I was late and parked my car on the far
15 end, and I had to be --

16 **BY THE COURT REPORTER:** I'm sorry. Parked
17 your car where?

18 **BY THE WITNESS:** On the end. The very far
19 end.

20 **BY MR. EVANS:**

21 **Q** All right. Speak up. Because everybody
22 needs to hear you; okay?

23 **A** Can I turn the microphone on?

24 **Q** That doesn't amplify it.

25 **A** Okay.

26 **Q** You just need to speak louder.

27 **A** Okay.

28 **Q** You said you were late and you parked your
29 car on the far end?

SNOW - DIRECT

1 **A** On the far end.

2 **Q** How late were you?

3 **A** A few minutes after seven.

4 **Q** All right. What did that cause you to do
5 when you had to park your car on the end?

6 **A** I had -- I went in, and I sewed ten
7 garments, and then I asked my supervisor could I go
8 out to move my car.

9 **Q** Do you know what time you went out to move
10 your car?

11 **A** 7:15.

12 **Q** All right. When you went out to move your
13 car -- well, let me ask you this first: Do you know
14 a person by the name of Doyle Simpson?

15 **A** I do.

16 **Q** And how do you know him?

17 **A** We work together.

18 **Q** Did you know what he drove at that time?

19 **A** A brown car.

20 **Q** Did you see his car when you walked
21 outside to move your car at 7:15?

22 **A** I did.

23 **Q** Where was it parked?

24 **A** He parked on the very first parking spot.

25 **Q** How far away from you?

26 **A** Like there from the door to the parking
27 lot. It's about two cars' distance.

28 **Q** So real close?

29 **A** Real close.

SNOW - DIRECT

1 Q And did you see anybody leaning up against
2 Doyle Simpson's car?

3 A I did.

4 Q Who did you see?

5 A Curtis Flowers.

6 Q Would you look in the courtroom here today
7 and see if you see Curtis Flowers?

8 A I do.

9 Q Would you point to him and identify him,
10 please?

11 A Curtis Flowers.

12 BY MR. EVANS: May the record reflect that
13 she has identified the Defendant Curtis
14 Flowers.

15 BY THE COURT: I'll let it so reflect.

16 BY MR. EVANS:

17 Q How long had you known Curtis Flowers at
18 this time?

19 A I been knowing of him for a good many
20 years, and I had seen him at church singing.

21 Q So you knew -- you knew him; it wasn't a
22 question of just looking at somebody?

23 A I knew him.

24 Q Did you speak to him?

25 A I did.

26 Q Did he speak back?

27 A He did.

28 Q Any question about who was leaning up
29 against the car?

SNOW - DIRECT

1 **A** No doubt in my mind.

2 **Q** Did you go ahead after you saw -- well,
3 let me ask you this: Which side of Doyle's car was
4 he leaning on?

5 **A** Driver's.

6 **Q** After you moved your vehicle, did you
7 still see him?

8 **A** After I moved my vehicle, he was not there
9 when I come back out.

10 **Q** Okay. Now, after you moved your vehicle,
11 did you later find out that anything had happened
12 that morning?

13 **A** I did.

14 **Q** And what things did you find out had
15 happened?

16 **A** See, that morning I had my radio on my
17 ear, and I seen the police and stuff, and I asked
18 what had happened. And they told me somebody stole
19 a car -- a gun out of Doyle car. And I said, "I
20 seen a guy leaning up against Doyle car." Then this
21 lady in front sees me. She hollered out, "Linda,
22 Katherine seen the murder --

23 **BY MR. EVANS:** What --

24 **BY THE COURT:** I didn't even understand
25 what she said.

26 **BY MR. EVANS:**

27 **Q** Slow down a little bit and speak loudly.
28 All right. You found out that somebody had stole
29 Doyle's gun out of his car that morning. And then I

SNOW - DIRECT

1 think you were saying that you had found out that
2 there had been a murder that morning -- or murders?

3 A Yep.

4 Q All right. When you found out that there
5 had been murders that morning and somebody had stole
6 the gun out of Doyle's car, and Curtis had been
7 leaning against Doyle's car, what ran through your
8 mind?

9 A It ran through my mind -- I had doubts --
10 lots of things running through my mind about it.

11 Q All right. Tell me what ran through your
12 mind at that point.

13 A When they said that that gun was stolen
14 out of Doyle's car, I figured it was him.

15 Q Figured it was who?

16 A Curtis.

17 Q That did what?

18 A Stole the gun.

19 Q And did what with it?

20 A The killings.

21 BY MR. CARTER: I can't -- well --

22 BY MR. EVANS:

23 Q Did you tell anybody that day that you saw
24 somebody leaning up against the car?

25 A I told them I seen somebody leaning up
26 against the car.

27 Q Who did you tell first?

28 A Francis Meeks.

29 Q Okay. Did you talk to any officers that

SNOW - DIRECT

1 day?

2 A No more than when y'all came up there at
3 3:25.

4 Q Okay. After you first told some officers,
5 at that point, did you tell the officers that you
6 talked to that this was the person that you saw?

7 A I did not give a name.

8 Q Did you say it was somebody you could
9 identify?

10 A I did.

11 Q Why did you not give Curtis Flowers' name
12 if you knew it?

13 A I was scared.

14 Q What were you scared of?

15 A Scared I was going to go home and find my
16 kids, my family shot.

17 Q Did he know who you were?

18 A He did.

19 Q And he knew you saw him at the car?

20 A He did.

21 Q When did you finally tell the officers who
22 it was?

23 A When they did a -- showed some pictures, a
24 lineup and I pointed him out.

25 Q All right. When they did a picture lineup
26 for you, did you need that picture lineup to know
27 who it was?

28 A I didn't.

29 Q When they first laid that picture lineup

SNOW - DIRECT

1 out, what did you do?

2 A I pointed him straight out.

3 Q You pointed him straight out?

4 A I did.

5 BY MR. EVANS: Your Honor, I tender the
6 witness.

7 CROSS-EXAMINATION

8 BY MR. CARTER:

9 Q Ms. Snow, does Curtis Flowers know your
10 family?

11 A Huh?

12 Q Does he know your family?

13 A Whether he know them personally, he
14 probably know of them. And the type relationship
15 with him, I couldn't tell you.

16 Q And you said a few minutes ago you were
17 scared you were going to go home and find your
18 family dead?

19 A Yes.

20 Q Did he know where you lived?

21 A No, he didn't, that I know of.

22 Q Did he know who your family was.

23 A No, that I know of.

24 Q Okay. You're still worried about the man
25 that doesn't even know your family, doesn't know
26 where your family lived, killing your family. Is
27 that what you're telling us?

28 A I was scared. I was scared for my family.
29 That's natural.

SNOW - CROSS

1 Q And whoever you saw at the car, he was
2 standing at the front of that car, wasn't he?

3 A He was standing at the front side, on the
4 driver's side and I know who I seen on the car.

5 Q And he wasn't even by the door, was he?

6 A No, he was by the side door.

7 Q Up by the front part?

8 A Up by the fender.

9 Q And the glove compartment was on the other
10 side of it?

11 A Yes.

12 Q As a matter of fact, that person you saw
13 wasn't doing anything wrong at the time you saw him?

14 A He wasn't.

15 Q Now, if you're scared of somebody, isn't
16 it the right thing to do is to tell the police so
17 they can from protect you?

18 A I didn't want no part of it.

19 Q Okay. Did you ask the police to protect
20 you and your family because you were worried about
21 them?

22 A No, I didn't.

23 Q And how long did you stay scared? You
24 must be scared right now.

25 A I'm still nervous.

26 Q You're still nervous?

27 A Right.

28 Q What are you nervous about now?

29 A I'm just nervous, period. Because first

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1 of all, if I could go back and do that thing over
2 again, that's one black car that would get hit. I
3 would have left my car. That's why I moved it
4 because of where it was parked.

5 Q You say you're scared now and you're just
6 a nervous scared person, period. Is that what you
7 just said a few minutes ago?

8 A Yeah, I'm nervous and scared. Yes, I am.

9 Q So you're nervous and scared before the
10 killings took place down at Tardy's?

11 A It's depending on what you're saying when
12 you say nervous and scared.

13 Q You tell us what you're talking about.

14 A I was talking about that day, that
15 incident. I was nervous and scared. I've had
16 problems sleeping and everything.

17 Q Okay. But you don't know that -- you
18 certainly hadn't on that day received any proof or
19 even rumors of that from anybody Mr. Flowers was
20 involved in that crime on that particular day;
21 right? You hadn't received any facts from anybody
22 at the police department on that day that
23 Mr. Flowers was involved in the crime; is that
24 correct?

25 A That's correct.

26 Q You just assumed that?

27 A I just know I seen him on the car. And
28 that the gun was stolen, that was the murderer's
29 gun.

SNOW - CROSS

1 Q How long do you -- now, you have seen
2 Mr. Flowers a time or two since then; right?

3 A Right.

4 Q Had y'all ever just had a conversation?

5 A No.

6 Q Do you know if he knew you?

7 A He probably know of me by face wise.

8 Q Okay. And you didn't you have a
9 relationship with his Uncle Doyle?

10 A A work relationship. That's it.

11 Q Y'all never went out together to clubs?

12 A Never.

13 Q You ever been to his house, Doyle's house?

14 A No.

15 Q Now, do you know McNutt Street is where
16 Doyle (sic) and Connie lives?

17 A I'm not familiar with the name of the
18 streets here in Winona.

19 BY MR. CARTER: One moment, Your Honor.

20 BY THE COURT: Sure.

21 BY MR. CARTER:

22 Q Did you know the projects where -- the old
23 projects that Connie and Curtis lived in?

24 A I didn't know where Curtis stayed.

25 Q Did you know where Connie Moore stayed?

26 A I didn't know of Connie Moore.

27 Q Did you know where the old projects were?

28 A I really don't know much about the
29 projects in Winona. The only places I'm familiar

SNOW - CROSS

1 with in Winona is the stores and where I work and
2 the hospital, doctor's office.

3 Q Now, when you went outside to move your
4 car, did you have your radio on your head then?

5 A I didn't.

6 Q Now, when did you tell Doyle you saw
7 somebody at his car?

8 A I couldn't exactly say when. I -- I
9 conversated with Doyle, but I couldn't tell you
10 exactly when.

11 Q Okay. When did you converse with him?

12 A I couldn't exactly tell you whether it was
13 before or after. I couldn't exactly tell you.

14 Q Before or after what?

15 A After the day of or after or whatever. I
16 couldn't tell you when, exactly when.

17 Q So whatever Doyle says is, we can take it
18 as gospel; could you say that?

19 A No. I said I couldn't tell you when.

20 Q Okay. But you talked to Doyle sometime
21 shortly after this occurred; right?

22 A I talk to Doyle day in and day out.

23 Q I'm sorry. What was that?

24 A I talk to Doyle daily at work because he
25 had to come untie my bag where my scraps at.

26 Q Now, did you see Doyle after this crime
27 occurred?

28 A Yes.

29 Q You learned that the crime had occurred

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1 that particular day; is that correct?

2 A That's correct.

3 Q And somebody came -- how -- I heard the
4 story a few minutes ago about Mr. Stewart's aunt
5 getting bad news and was upset about it. About what
6 time did that happen?

7 A Who?

8 Q I guess I'm not --

9 BY MR. EVANS: That's not this witness,
10 Your Honor.

11 BY MR. CARTER: I might be confusing
12 witnesses. I'm sorry. My apologies.

13 BY MR. CARTER:

14 Q What time did you find out about the
15 incident at Tardy's?

16 A It was after nine o'clock. I know that
17 much.

18 Q After 9:00?

19 A Uh-huh. And before lunch.

20 Q And before lunch?

21 A Uh-huh.

22 Q Did you see Doyle Simpson that particular
23 day?

24 A When I seen him, I seen him at the door --
25 at the exit door. When the police and stuff was
26 coming, he was right there.

27 Q Okay. That was about what time?

28 A That would have been somewhere around
29 9:00, before 10:00.

SNOW - CROSS

1 Q Okay. Did you say earlier that
2 somebody -- Mr. Evans and some police came to you,
3 to the job or somewhere around 3:25?

4 A I did.

5 Q Where exactly did this happen, they came
6 to your job?

7 A Came to my job at Angelica.

8 Q Who came?

9 A It was Mr. Doug, John Johnson and some
10 more. I don't know all of them. I was nervous and
11 scared.

12 Q Scared of the police?

13 A It's not something you go through every
14 day. I was nervous about the whole situation,
15 period.

16 Q Okay. Did you give them a statement that
17 day?

18 A I told them, yes, I did.

19 Q Now, you didn't tell them you saw Curtis
20 Flowers, did you?

21 A I didn't give them no name.

22 Q Okay. So let me make sure I understand
23 you. Well, at what point did you know that you saw
24 Curtis Flowers?

25 A When I walked out that door.

26 Q When you saw the person at the car?

27 A I did.

28 Q You saw the person at the car, at a
29 coworker's car that you talk to on a daily basis.

SNOW - CROSS

1 You knew there had been murders down at Tardy's.
2 You were scared somebody was going to kill your
3 family. You saw John Johnson, the ex-chief, and
4 some other officers and you saw my good prosecution
5 buddy here who you know will prosecute, yet you did
6 not tell them you saw Curtis Flowers. Is that your
7 testimony?

8 A Correct.

9 Q Because you were scared?

10 A Correct.

11 Q Did you tell anybody else other than the
12 police that you saw Curtis Flowers? When you went
13 home that day, who did you go see? Who did you see
14 when you got home?

15 A My family.

16 Q Was that your husband?

17 A He came in later.

18 Q Did you tell him you saw Curtis Flowers?

19 A I told him what had happened and that I
20 knew.

21 Q Did you tell him that you saw Curtis
22 Flowers?

23 A I told him who it was.

24 Q I'm sorry. Say again?

25 A I told him who it was.

26 Q What's his name?

27 A My husband?

28 Q Yes.

29 A Leonard Snow.

SNOW - CROSS

1 Q Do you know if he ever talked to the
2 police?

3 A No, he didn't.

4 Q And he didn't encourage you to go to the
5 police and to tell who you saw?

6 A No, he didn't.

7 Q Was he scared too?

8 A That I wouldn't know, but I know he
9 comforted me that night.

10 Q Okay. Now, so you talked to Mr. Johnson
11 on the same day of the incident. Did you see
12 Mr. Jack Matthews at that 3:25 hour as well?

13 A I didn't know all them guys, sir.

14 Q I mean -- excuse me -- how many you saw?

15 A I don't know.

16 Q Did you see Mr. Thornburg?

17 A I can't remember who all was in there. I
18 was nervous, and I was scared.

19 Q Okay. Where did y'all talk?

20 A We was in a little conference room at our
21 job there. That's where we went.

22 Q Did you tell your employer -- your boss
23 who you saw?

24 A No, I didn't. All I said was I seen a
25 man, a guy standing on -- leaning on Doyle's car.
26 That's all I said to anybody during that day.

27 Q So you knew who the person was, you didn't
28 have any doubt, but you didn't tell the police who
29 it was for -- in fact, you didn't tell them who it

SNOW - CROSS

1 was until they showed you some pictures; is that
2 correct?

3 A When they showed me the lineup of
4 pictures, I pointed him out.

5 Q Okay. And you talked to them on at least
6 three occasions before you picked the person out; is
7 that correct?

8 A I don't know how many times it was.

9 Q It was a lot of times, wasn't it?

10 A It was enough.

11 Q Let's see now. They came to your job and
12 talked to you. Where did they talk to you the next
13 time?

14 A I've been to the police station.

15 Q And they talked to you how many times at
16 the police station?

17 A I don't know. But all I know is I was
18 nervous and scared every time they came.

19 Q Nervous and scared every time they came?

20 A Uh-huh.

21 Q Do you know that Mr. Flowers didn't get
22 arrested until that January, six or seven months
23 later?

24 A I don't know when he got arrested. I
25 don't remember.

26 Q And you were not -- were you able to sleep
27 at night knowing that --

28 A I had problems sleeping.

29 Q And you had problems sleeping because the

SNOW - CROSS

1 man you saw at the car wasn't arrested. Is that
2 fair to say?

3 A I was scared because of the fact I was
4 scared for my family. And like I told you, it's
5 nothing I be going through every day.

6 Q Okay.

7 A It's nothing I've ever dealt with before.

8 Q I know. Let me make sure I understand
9 now. You saw a person at a car who you concluded
10 was involved in murders. You didn't -- you were
11 worried about your family getting killed. He wasn't
12 arrested immediately because you didn't tell the
13 police who you saw. And you were so worried about
14 your family, yet you didn't give the name and you
15 allowed this person to not be arrested for several
16 months. Is that what you're telling us?

17 A I didn't want no part of it, that's what
18 I'm telling you.

19 Q What -- what finally happened to make you
20 want a part of it or decide to participate?

21 A Oh, I still don't want a part of it. It's
22 just that I knew that they knew that I knew
23 something. That's why they kept coming at me. So
24 when they did the lineup, I just went on ahead and
25 pointed him out.

26 Q Now, if you knew who the assailant was who
27 committed these terrible crimes, wouldn't you agree
28 with me that he posed a danger not only to you but
29 to the Winona community at large?

SNOW - CROSS

1 **A** I didn't want no part of it.

2 **Q** But you're willing to -- okay.

3 **A** I'm not saying that I was willing. I'm
4 saying I ain't want no part of it. It's not -- when
5 you're put in something that you don't go through
6 daily or deal with it, something like that, it
7 scares you and it scared me.

8 **Q** Wouldn't you agree with me that the
9 citizens of Winona would have been safer with a
10 person who had killed four people being locked up
11 than not being locked up?

12 **A** That remains, I don't know.

13 **Q** What was the description that you -- you
14 gave Doyle Simpson of the person you saw eventually?
15 Now, first of all, now Doyle was suspended, was he
16 not?

17 **A** He was suspended, yes.

18 **Q** So did you give him -- did you talk to
19 Doyle and tell him you saw somebody after he came
20 back from the suspension or before he left?

21 **A** I can't remember exactly when.

22 **Q** You can't remember. Okay. And did you
23 give Doyle a description of the person you saw?

24 **A** Dark skinned, 5'6", black pants, white
25 shirt, bald head.

26 **Q** Dark skin and 5'6"?

27 **A** Uh-huh.

28 **Q** Okay. Is that the same description you
29 gave John Johnson at some point?

SNOW - CROSS

1 **A** If I'm not mistaken, it is.

2 **Q** Okay. And there wouldn't be any reason to
3 give them a different description?

4 **A** No, because I know I seen him.

5 **Q** Okay. Did the person you saw have a --
6 was he wearing a cap?

7 **A** No.

8 **Q** What kind of clothes?

9 **A** Black jeans, white shirt.

10 **Q** Is that what you told --

11 **A** That's what I been saying since day one.

12 **Q** And you -- in your -- and in your
13 statement to John Johnson on the day that he came to
14 Angelica, you're sure you told him that he was
15 wearing those clothes that you just described; is
16 that correct?

17 **A** Correct.

18 **Q** Okay. Now, did you talk to a fellow named
19 Mr. Freelon at some point?

20 **A** I did.

21 **Q** And you -- didn't you tell him that person
22 you saw was muscular?

23 **A** Stocky.

24 **Q** Did you tell him that the person you saw
25 was --

26 **A** I can't remember what I told Mr. Freelon
27 because Mr. Freelon confused me the way he was
28 talking.

29 **Q** And when he confused you --

SNOW - CROSS

1 **A** I knew what I seen and stuff but he was
2 changing what I was saying.

3 **Q** Okay. So when you're confused, do you
4 have a memory problem when you're confused?

5 **A** No, when I'm confused I stop. When
6 somebody trying to confuse me, I stop and let them
7 know what I seen.

8 **Q** Okay. And since he confused you, you
9 don't even know what you told him and you could have
10 told him that. Is that what you're saying?

11 **A** It's been a long time.

12 **Q** I know, I know, I know.

13 **A** From that day on, if I told him anything,
14 I told him exactly what I said. Anything else, that
15 was on him.

16 **Q** Okay. Did anybody ask you to write
17 down -- how -- Ms. Snow, how far did you go in
18 school?

19 **A** I went to college.

20 **Q** Oh, good. Where did you go?

21 **A** Where did I go? Holmes Jr..

22 **Q** Okay. And you can read and write well?

23 **A** Real well.

24 **Q** Okay. Now, did anybody ask you to write
25 down what you saw, such as a description, where you
26 saw the person and what time it was and all this
27 kind of stuff?

28 **A** I don't think so.

29 **Q** You were never asked to do that? And you

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1 certainly could have done it if you had been asked;
2 is that correct?

3 A If I had been asked I could.

4 Q And nobody anticipated -- you certainly
5 didn't expect this case to be going on 14 years, did
6 you?

7 A No.

8 Q I doubt anybody did. And it would have
9 been a good idea to write down stuff because it
10 would have helped your memory. Would you agree with
11 me on that?

12 A Oh, I remember what I seen. It's not --

13 Q Now, I've asked you lots of things that
14 you say you didn't remember now.

15 A I said I remember what I seen. I told you
16 I couldn't remember the dates, the times, you know,
17 but --

18 Q Okay. I mean, I -- you got me -- you
19 speaking of being confused. I'm confused, too. Let
20 me ask you this, see if you can help me with this:
21 If you talked to the police at least three times,
22 before you saw the photo lineup and you knew who the
23 person was all along, why did you need a photo
24 lineup in order to tell them who you saw?

25 A As I said earlier, I don't want no part of
26 it. I didn't want no part of it.

27 Q So are you saying that the photo lineup
28 didn't really have anything to do with you naming
29 Curtis Flowers?

SNOW - CROSS

1 **A** I knew they knew that I knew who it was.
2 At day one they asked me, If you seen the guy again,
3 could you point him out? I said, Yes, I could.

4 **Q** Okay. I understand that. But what I'm
5 trying to find out, are you saying here on the
6 record that you didn't really need the photo lineup?

7 **A** That's what I'm saying. I really didn't.

8 **Q** Okay. Now, this photo lineup that you
9 were shown, how many pictures did you see?

10 **A** I don't know how many pictures in there.
11 I don't know how many was in there. I can't
12 remember how many, but I knew what -- the one.

13 **Q** How many times were you shown a photo
14 lineup?

15 **A** Once.

16 **Q** What did the officer say to you before you
17 engaged in -- well, strike that. Where did the
18 photograph lineup take place?

19 **A** In the building where they always have me
20 come, they would meet at.

21 **Q** Is that the Winona Police Department?

22 **A** It's the one that's -- it was downtown.

23 **Q** Yeah, I don't know where the police
24 department was back then.

25 **A** Okay.

26 **Q** Do you know if it was any part of the
27 Police Department?

28 **A** The police was there, some there, yes.

29 **Q** How did you get there? You drove yourself

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

SNOW - CROSS

1 down there or they come to get you?

2 A No, a police car came and got me.

3 Q Came and got you?

4 A Uh-huh.

5 Q Did they come and get you every time?

6 A Every time.

7 Q Who came and got you?

8 A I don't know all of them names. I know a
9 female most of the time.

10 Q You know Liz Van Horn?

11 A That's who it was.

12 Q Okay. How many people were there when you
13 were shown the photo lineup?

14 A I didn't go in and count all of them.

15 Q Who showed it to you?

16 A I can't remember who showed it. I'm
17 nervous.

18 Q What did they say to you before you looked
19 at the pictures?

20 A They going to show me a photo lineup.

21 Q Anything else?

22 A I can't remember word for word, but I do
23 remember that.

24 Q Well, can you generalize what else they
25 said?

26 A Not really, because I don't want to
27 speculate.

28 Q You don't want to speculate? What did
29 they say to you during that time they were showing

SNOW - CROSS

1 you that photo lineup?

2 **A** When I picked him out? They asked me what
3 was the man. I gave it to him. Then I turned it
4 over, and his name was on the back of it.

5 **Q** His name was on the back of it?

6 **A** (Nodding head).

7 **Q** They showed you a picture that already had
8 Mr. Flowers' name on the back of it; is that
9 correct?

10 **A** (Nodding).

11 **Q** Thank you. Now, were you told the
12 Defendant was in the lineup?

13 **A** No. That's one thing they never did.

14 **Q** Did they tell you he wasn't in it?

15 **A** They didn't tell me nothing or who was in
16 it. They never even led up to him.

17 **Q** Okay. So what did they say to you after
18 the lineup?

19 **A** After the lineup?

20 **Q** Yeah. After you picked Mr. Flowers, what
21 did they say to you?

22 **A** I have no idea what was all said.

23 **Q** Okay. Now, after you did the lineup --
24 after the lineup, after you picked out Mr. Flowers,
25 did you write a statement at that time? Did you
26 write out a statement? Did you --

27 **A** I don't remember writing.

28 **Q** Do you understand what I'm saying?

29 **A** I understand what you're saying.

SNOW - CROSS

1 Q Okay. Did you --

2 A Yes, I did write one. I said I don't
3 remember.

4 Q Do you remember if the police wrote up one
5 on your behalf and had you sign it afterward?

6 A That's been years ago. I have no idea.

7 Q I know. I know it's been a long time. So
8 if there were written records, it would probably
9 help, would you agree? If there was a written
10 record, if a written record had been made at the
11 time, would that help your memory?

12 A No, because I know what I seen that day.
13 It's here. It's in here.

14 Q It's in there?

15 A Yeah.

16 Q But whether or not they said anything
17 after the lineup, you say you don't recall?

18 A I couldn't tell you exactly what was said.

19 Q Well, tell me inexactly what was said.
20 Tell me the best you can.

21 A I can't. I couldn't tell you exactly what
22 was said. Like I said, I don't like to speculate.

23 Q Okay. Now at the time you did the photo
24 lineup, you are aware that a reward was out at that
25 time?

26 A I had heard of it, yes, I had. But at the
27 photo lineup? I couldn't tell you. But no money is
28 worth anybody's life to me.

29 Q All right. And you never said -- let me

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1 be clear on something. Did you know that a reward
2 was offered before you picked Mr. Flowers out of the
3 lineup?

4 **A** Unh-unh.

5 **Q** Yes or no?

6 **A** When the reward come out? I can't tell
7 you when the reward come out.

8 **Q** Well, let me --

9 **A** I got what you're saying --

10 **Q** Well, I'm probably confusing you.

11 **A** No, you didn't. I got what you saying.

12 **Q** Okay. Well --

13 **A** My picking him out had nothing to do with
14 reward money, whether it was before or after the
15 fact.

16 **Q** Okay. You haven't answered my question.

17 **A** Oh, no, you asked me -- you asked me did
18 the reward -- was the reward out before I picked him
19 out of the lineup?

20 **Q** Right. That is what I asked you.

21 **A** That's what you asked me.

22 **Q** Yes, ma'am.

23 **A** And I told you I can't remember exactly
24 when the reward come out, but me picking him out of
25 that lineup had nothing to do with the reward.

26 **Q** So the reward could have --

27 **A** Make up my mind, no.

28 **Q** Let me ask you this -- well, I know -- I
29 know you're innocent, I mean --

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1 **A** As far as money goes, like I said, I never
2 been able to do anything for money or crazy for
3 money. And I would never put a person's life on
4 line for money. So reward money, no.

5 **Q** Now, do you read newspapers?

6 **A** Yes.

7 **Q** Were you reading them back then?

8 **A** I read newspapers every chance I get.

9 **Q** Okay. So --

10 **A** Was I influenced by the reading? No.

11 **Q** But if you had -- if a reward was
12 mentioned in the Winona Times or the Greenwood
13 Commonwealth back then before you picked Mr. Flowers
14 out of the lineup, since you read the newspaper or
15 you're an avid reader of the newspapers, you
16 probably would have seen it. Is that fair to say?

17 **A** That's fair to say. If the reward was
18 offered or even put toward me, I wouldn't take it
19 because it's not me.

20 **Q** Okay. Now, let me be sure -- make the
21 record clear on something. You didn't have any fear
22 of Mr. Johnson -- John Johnson, did you?

23 **A** I was just nervous, period. It didn't
24 matter who it was.

25 **Q** Right. But you weren't afraid of him; you
26 kept talking to him; is that correct?

27 **A** When he kept coming and getting me, yes.

28 **Q** You weren't really afraid of him; is that
29 fair to say?

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1 **A** Talking about -- what you talking about,
2 life threatening, scared or what?

3 **Q** Just scared that he would harm you in some
4 kind of way?

5 **A** I wasn't scared of harm. I was nervous,
6 and I just didn't want no part of it.

7 **Q** And you weren't afraid of Mr. Evans, were
8 you?

9 **A** I wasn't afraid of him, no. I was scared,
10 didn't want no part of the situation, the whole
11 thing.

12 **Q** I understand that. I really do, Ms. Snow.
13 You've said it quite a few times, and I realize it.

14 **A** Yeah. That was my main reason for not
15 giving a name. I didn't want no part of it.

16 **Q** How many pictures were in the lineup with
17 Mr. Flowers?

18 **A** I don't know how many was in there. It
19 was more than him.

20 **Q** Now, haven't you testified before in
21 another hearing that you didn't know who that person
22 was that you saw at the car until you picked the
23 person out of the lineup?

24 **A** I didn't give a name. I just -- I picked
25 him out of the lineup.

26 **Q** So --

27 **A** I never said that I didn't know who he
28 was. I know that they asked me could I point him
29 out again if I seen him. Yes, I could. I did not

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1 give a name. I know who he was, but I did not tell
2 them I knew who he was.

3 Q Okay. So there is no transcript of
4 another hearing where you said you didn't know who
5 the person was until you did the lineup?

6 A I don't know if there's another transcript
7 or what. I don't have no idea.

8 Q Okay. But if you said it, you would
9 remember it; is that correct?

10 A The main thing is that I know what I seen
11 that day and who I seen. And I know when I gave his
12 name, but I -- I know it also had nothing to do with
13 reward money or nobody making me say that was Curtis
14 that day. I also know why I didn't give the name.

15 Q Now, you didn't ask for a lineup with
16 Mr. Flowers' picture; isn't that right? That lineup
17 that you got shown, you didn't request that, did
18 you?

19 A No, I didn't.

20 Q And that was the police idea; right?

21 A That was their doing.

22 BY MR. CARTER: One moment.

23 BY MR. CARTER:

24 Q Now, when you saw John Johnson the first
25 time and Mr. Evans and whoever else came, did you
26 tell them that you was -- you was so afraid that you
27 couldn't tell them who you saw?

28 A I had a key ring with my family on it.
29 And I told them -- they asked me when I gave the

SNOW - CROSS

1 lineup -- when they gave me the lineup and I pointed
2 him out, I remember them asking me why I didn't
3 tell. I laid the picture down. I said I was scared
4 I'd go home and find my kid face down. That's what
5 I told them.

6 Q Okay. And that was the --

7 A I remember that after they showed me the
8 lineup.

9 Q The lineup?

10 A Uh-huh.

11 Q But I probably confused you. But on the
12 day that they came down to your job, did you tell
13 them the story about how afraid you were?

14 A How afraid I was?

15 Q Yes, ma'am.

16 A No, I didn't. Other than probably tell it
17 in my voice and stuff.

18 Q In fact, is it fair to say that the first
19 time you told that you felt comfortable enough to
20 reveal how afraid you were, is it fair to say that
21 occurred at the first trial? Did you tell the
22 Court -- I don't want to confuse you. You saw the
23 police at least three times, I believe it is, before
24 you testified in Tupelo. And what I'm asking is:
25 Did you tell them on any of those prior occasions
26 how afraid you were?

27 A The first time we went to Tupelo, I came
28 up the road that morning because we was leaving
29 early. I told them actually how fast I was driving

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1 because I was that scared.

2 Q Okay. And I believe that was the first
3 time you ever told them how afraid you were; is that
4 correct?

5 A No, it was the second time. The first
6 time I told them was when I laid that picture down
7 and showed them.

8 Q Okay. Thank you. Now, I'm sorry this
9 thing is not over, but do you recall telling or
10 testifying at one trial that the person you saw had
11 on a cap?

12 A I never said he had on a cap.

13 Q You never said that?

14 A I never said that.

15 Q Okay. I'm almost finished. Hold on a
16 second. Now, when you participated in the photo
17 lineup, was it on a videotape? Did you see a -- was
18 it -- was there a camera?

19 A Didn't see one.

20 Q Videotape? You didn't see one?

21 A Unh-unh.

22 BY MR. CARTER: One moment, Your Honor, I
23 think I'm finished.

24 BY THE COURT: Sure.

25 BY MR. CARTER:

26 Q Now, Ms. Snow, did you remember or do you
27 recall talking to a guy named Chokwe Lumumba?

28 A The lawyer Lumumba, whatever his name was.

29 Q Chokwe Lumumba. You might call him that.

SNOW - CROSS

1 That's kind of a hard name.

2 A We got the name right.

3 Q It's an unusual name, so it's hard to get.

4 Do you remember talking to him?

5 A I do.

6 Q Now, let me see. I been to -- I'm almost
7 finished; I ain't got but one or two more.

8 Now, when you were at Angelica that
9 morning to go move your car, what door did you exit
10 or how did you go out there?

11 A It's right there by the parking lot.

12 Q And the parking lot is the part where you
13 got to come up to Applegate to park back there
14 toward Applegate or is it the part --

15 A I come off of 51.

16 Q Is 51 and Applegate the same thing? I
17 think it is.

18 A Highway 51 is what road we turn in on
19 Angelica Drive?

20 Q Right. So there's a big parking lot back
21 there, and I think I saw a door there that's kind of
22 like close to the end. Was there a door close the
23 end?

24 A Right there at the end of the parking lot,
25 the first part of the parking lot?

26 Q Right. Is that the door you came out of?

27 A That's the door I came out of.

28 Q And Doyle's car was parked --

29 A Right there on the front.

SNOW - CROSS

1 Q Okay.

2 A Front part.

3 Q Toward the building or toward the trees
4 back there toward the woods?

5 A The building.

6 Q Toward the building. And where was your
7 car parked?

8 A On the far end where I came in off 51, on
9 the very last one.

10 Q The very last one. And Doyle's -- was
11 your car close to Doyle's?

12 A No, it wasn't.

13 Q I'm just trying to get a picture now.
14 Doyle was the very last one or you were the very
15 last one?

16 A I was the very last one. Doyle was the
17 very first one.

18 Q Does that parking lot go all the way up to
19 where the office is located?

20 A It didn't. The office folk had their own
21 parking lot in front.

22 Q So the parking lot --

23 A Employee parking, the ones that work in
24 the factory, sewing part, they was right there on
25 the side.

26 Q Oh, on the side. Okay. All right. Thank
27 you.

28 BY THE COURT: Any redirect?

29 BY MR. EVANS: Yes, sir, briefly. Your

SNOW - CROSS

1 Honor, there's an exhibit that was marked for
2 identification the other day that I need, and
3 I'm not sure if it's in here or not.

4 **BY MRS. STEINER:** I might be able to help.
5 It's 116.

6 **BY MR. EVANS:** It was marked for
7 identification the other day.

8 (OFF RECORD)

9 **BY MRS. STEINER:** If it wasn't marked for
10 identification in the hearings -- it has been
11 previously in the custody of district
12 attorney's office. I made a motion to have
13 them bring all prior exhibits out.

14 **BY THE COURT:** I don't know what we're
15 talking about.

16 **BY MR. EVANS:** May we approach, Your
17 Honor?

18 (COUNSEL APPROACH BENCH FOR A
19 CONFERENCE HELD OUTSIDE THE HEARING OF THE
20 JURY, TO-WIT:)

21 **BY MR. EVANS:** The other day when they
22 were here, she asked that we bring the original
23 documents of this identification. We did. We
24 turned it over to her so she could use it. She
25 asked that it be kept in the Court file. Now,
26 we can't find it.

27 **BY THE COURT:** Ask the clerk. I suspect
28 if it's been turned over, she's got it.

29 **BY MR. EVANS:** Yes, sir. That's what I'm

SNOW - CROSS

1 looking for. I'd like a real short break to
2 find it.

3 **BY THE COURT:** She's probably got it.

4 (BENCH CONFERENCE CONCLUDES)

5 **BY MR. EVANS:** Your Honor, may I have this
6 exhibit marked for identification?

7 **BY THE COURT:** You may.

8 **BY MRS. STEINER:** No objection, Your
9 Honor.

10 (STATE'S EXHIBIT NO. 116 WAS MARKED FOR
11 IDENTIFICATION.)

12 **BY MR. EVANS:** May I proceed, Your Honor?

13 **BY THE COURT:** You may.

14 **REDIRECT EXAMINATION**

15 **BY MR. EVANS:**

16 **Q** Ms. Snow, I want to hand you Exhibit 116
17 for identification and I'll ask if you can identify
18 what that is.

19 **A** Yes. This is the lineup photo you give
20 me.

21 **Q** Speak up, ma'am.

22 **A** The photo, the lineup.

23 **Q** That's the lineup that you were shown?

24 **A** It is.

25 **BY MR. EVANS:** Your Honor, I'd offer this
26 into evidence.

27 **BY MR. CARTER:** One moment, Your Honor.

28 No objection, Your Honor.

29 **BY THE COURT:** I'll allow it be admitted.

SNOW - REDIRECT

1 (STATE'S EXHIBIT NO. 116 WAS RECEIVED
2 INTO EVIDENCE.)

3 **BY MR. EVANS:**

4 Q Ms. Snow, I want to hand you back Exhibit
5 S-116 and ask if you see the Defendant Curtis
6 Flowers.

7 **BY MRS. STEINER:** I'm going to object to
8 the form and the in-court identification on
9 that. She has already testified that she sees
10 Mr. Flowers here today. She's testified about
11 the lineup. This reenactment of something that
12 happened 16 years ago is totally irrelevant and
13 should be excluded even if relevant under Rule
14 403.

15 **BY MR. EVANS:** Your Honor, I would have
16 agreed and I didn't go into it in my case in
17 chief, but they attacked her on the lineup and
18 I think I'm definitely able to go back and show
19 what she was able to identify and how.

20 **BY THE COURT:** I'll overrule the
21 objection. I think it's highly probative, way
22 more probative than any prejudicial value, and
23 she's -- all she's going to do is identify the
24 photograph that she picked out back a number of
25 years ago. And which photograph are you
26 pointing to?

27 **BY MR. EVANS:** Your Honor, may the witness
28 step down?

29 **BY THE COURT:** You may step down.

SNOW - REDIRECT

1 **BY MR. EVANS:**

2 **Q** Ms. Snow, is this Exhibit 116 the same
3 photo lineup that you were shown?

4 **A** It is.

5 **Q** This is when you finally identified who
6 you saw by the car?

7 **A** It is.

8 **Q** Would you point to the person that you
9 identified?

10 **A** (Indicating).

11 **Q** You have pointed to the bottom left-hand
12 picture; is that correct?

13 **A** Correct.

14 **Q** Did you have any trouble identifying him?

15 **A** I did it just like I did then, no problem.

16 **Q** And as soon as you pointed to him, did you
17 tell them who it was?

18 **A** I did.

19 **Q** You may have a seat.

20 **BY MR. EVANS:** May I pass this to the
21 jury, Your Honor? One moment.

22 **BY THE COURT:** You can hand it to the
23 bailiff.

24 **BY MR. EVANS:** One other question, Your
25 Honor.

26 **BY MR. EVANS:**

27 **Q** After you identified it, were you asked to
28 do anything on the back of that photograph that you
29 identified?

SNOW - REDIRECT

1 **A** Yes, sign my name.

2 **Q** Did you sign your name --

3 **A** I did.

4 **Q** -- to the photograph that you identified?

5 **A** That's it right here.

6 **Q** How many times have you testified in this
7 case?

8 **A** Every trial.

9 **Q** You've identified the Defendant every
10 time; is that correct?

11 **A** Correct.

12 **Q** What, if any, reward money have you ever
13 been paid?

14 **A** Not any.

15 **BY MR. EVANS:** Nothing further, Your
16 Honor.

17 **BY MR. CARTER:** Your Honor, we're going to
18 call her during our trial -- our case.

19 **BY THE COURT:** Will you approach?

20 (ALL COUNSEL APPROACH THE BENCH FOR A
21 CONFERENCE HELD OUT OF THE HEARING OF THE
22 JURY, TO-WIT:)

23 **BY THE COURT:** Now, if you're reserving
24 calling these witnesses just strictly to harass
25 them and cause them to stay around the
26 courthouse, I'm going to take that matter up
27 after the trial. Because I noticed back in
28 2007, you did the very same thing and then you
29 never called any of them back. So if you're

BENCH CONFERENCE

1 doing that strictly for harassment purposes to
2 cause these people the inconvenience of
3 sticking around when you don't have any
4 intention of calling them in your defense,
5 then, as I say, I'm going to take that matter
6 up at the conclusion of the trial. Because if
7 you have no -- and I cannot imagine under any
8 circumstance how this witness would be a
9 witness that you would deem necessary to call
10 in your case in chief because she certainly has
11 not been of any benefit to you yet. So, as I
12 say, if you're doing that strictly to harass
13 them --

14 **BY MR. CARTER:** Your Honor, we have a
15 different opinion, and it's your opinion she's
16 not any benefit to us.

17 **BY THE COURT:** It's not in my opinion.

18 **BY MR. CARTER:** We disagree, first of all,
19 as to whether or not she's been any benefit to
20 me. And, secondly --

21 **BY THE COURT:** No. I said thus far I
22 don't see that she has been very helpful. But
23 nevertheless, you don't call her and you cause
24 these witnesses to have to sit around for no
25 reason other than harassing them, then, as I
26 say -- and it appears that's what happened in
27 2007, the trial I did not participate in. And
28 then in 2008 when I tried it, Mr. DeGruy
29 wouldn't release all his witnesses after they

BENCH CONFERENCE

1 testified. And so, as I say, if there's -- if
2 you're causing them to stay around --

3 **BY MR. CARTER:** Your Honor, the Court
4 doesn't know what our strategy is, what we're
5 planning to do.

6 **BY THE COURT:** Well, I'm just giving you
7 advance notice that --

8 **BY MR. CARTER:** I know it. I'm just -- I
9 just want to state on the record that the Court
10 doesn't know what we plan to do.

11 **BY THE COURT:** That's exactly right; I
12 don't.

13 **BY MR. CARTER:** And I feel like I'm being
14 accused, and I also feel like I'm being accused
15 with the jury sitting there, which --

16 **BY THE COURT:** Well, we're at the bench,
17 and they're not listening because they can't
18 hear because we're talking real low.

19 **BY MR. CARTER:** Okay, good. But let me
20 say this, Your Honor: I'm not doing it for
21 that purpose. I really -- I will admit that I
22 got to get together with my group, and we got
23 to talk about it this weekend exactly how we
24 going to have to use -- how we plan to use
25 them. And I will further tell the Court that
26 if after we meet, we decide there's anybody we
27 don't want or don't need, that we will
28 immediately let the Court know as early as we
29 can, maybe even as early as Monday. But at

BENCH CONFERENCE

1 this point, I certainly can recall them for
2 some legitimate reason based on something that
3 she said today that I can't -- at this point, I
4 don't have what I need to confront her with it.

5 **BY THE COURT:** Well, that's fair enough.
6 As I said -- I've said as long as you had a
7 reasonable basis and I'm satisfied with what
8 you're saying that you will advise as quickly
9 as you know whether if you don't.

10 **BY MR. CARTER:** Even Monday, hopefully.

11 **BY THE COURT:** Okay. That will be fine.

12 (BENCH CONFERENCE CONCLUDED)

13 **BY THE COURT:** (To Witness Katherine Snow)
14 You're free to go for now, but there's a
15 possibility you might be coming back, having to
16 come back as a witness so you're going to have
17 to be available next week if need be.

18 **BY THE WITNESS:** Okay.

19 **BY THE COURT:** But you may step down and
20 go for now.

21 (WITNESS EXCUSED)

22 **BY THE COURT:** Ladies and gentlemen of the
23 jury, I'm going to confer with counsel about a
24 couple of other matters, but we're going to
25 recess for the day and we're going to recess
26 until Monday at nine o'clock.

27 And I'll ask you over this recess, please
28 do not discuss this case with anyone or among
29 yourselves. And I know you are being

COURT INSTRUCTS JURY

1 sequestered, and I don't think there's much
2 chance of any outside influence because I'm
3 sure my bailiffs are doing a very good job.

4 But, again, just, you know, do not even
5 inadvertently turn your head toward the
6 direction of a newspaper or anything like that
7 because you're not to be seeing anything
8 related to this case. And so, as I say, if
9 you'll step in the jury room, they'll be
10 getting your transportation available.

11 (THE FOLLOWING PROCEEDINGS WERE HAD IN
12 OPEN COURT OUTSIDE THE HEARING AND
13 PRESENCE OF THE JURY, TO-WIT:)

14 **BY THE COURT:** (To the bailiffs) I just
15 want to go on the record. We're going to
16 recess the jury until nine o'clock Monday
17 morning. And I know that Sunday is a day of
18 worship for many people, but I'm just advising
19 that y'all can't bring a preacher in and you
20 can't lead worship service or preach to the
21 jury or have anybody else do that. I mean,
22 I -- I think these are things that you know
23 anyway, but it's just certain things that I
24 feel like for the benefit of the record I
25 needed to convey, stress to you and you're to
26 keep all outside influences away from the jury.

27 And like I had said yesterday, if the jury
28 is all in the same room -- not all in the same
29 room, but if they're in a room with one of you

COURT INSTRUCTS JURY

1 bailiffs, they can watch television or things
2 as long as y'all are monitoring what they are
3 doing.

4 **BY MRS. STEINER:** Your Honor, I think the
5 lady bailiff was --

6 **BY THE COURT:** Well, I was going to tell
7 her, too. I was just again wanting to stress
8 that the jury will be sequestered and under
9 your watchful care until Monday morning. I
10 know Sunday is a day of worship for many
11 people, but they can't be taken to church or
12 have somebody come preach to them, and y'all
13 can't lead them in some kind of worship
14 services yourselves either. And, you know, as
15 long as one of you is in a room when a
16 television is on that they're watching, they
17 can watch television or watch a movie or
18 something. They -- and, I mean, they can watch
19 a movie without your presence as long as you
20 review the movie ahead of time and make sure it
21 doesn't have anything in it that in any way
22 pertains to the case.

23 But anyway, I just again felt necessary to
24 stress these things. It's not in any way to
25 the fact that I'm stressing -- it's not in any
26 way to be considered my lack of confidence.
27 It's just always better to go ahead and stress
28 these things. So as soon as y'all can get the
29 transportation ready. Okay.

COURT DISCUSSES MATTERS WITH COUNSEL - JURY OUT

1 Well, I got a -- counsel is going to --
2 I'm going to talk about some matters with them,
3 and then they will be ready to be shown out.

4 BY MR. EVANS: Your Honor, we're going to
5 need the full testimony -- Jack Matthews'
6 testimony, portions or certain parts of it as
7 it's stating how he took the test kit. But we
8 could probably take notice of the testimony
9 that he testified to in the last trial.

10 BY THE COURT: Well, what don't I have
11 that y'all want me to take and look over for
12 the weekend now?

13 BY MR. EVANS: I think other than that,
14 probably just Jack --

15 BY MR. WHITFIELD: Three.

16 BY MR. EVANS: Jack's testimony, and it's
17 going to be basically the same in any of the
18 trials.

19 BY THE COURT: Do I have that?

20 BY MR. WHITFIELD: You should have both of
21 those.

22 BY MR. EVANS: His testimony on how he
23 took the kit.

24 BY THE COURT: Well, I don't have anything
25 from the last trial --

26 BY MR. EVANS: Oh, I thought --

27 BY MR. HOWIE: It's '98.

28 BY MR. EVANS: Okay. All right. It will
29 be in that, too.

COURT DISCUSSES MATTERS WITH COUNSEL - JURY OUT

1 **BY MRS. STEINER:** We have no objection
2 to -- we have no objection to the Court
3 considering the trial testimony of Jack
4 Matthews regarding the taking of the GSR kit
5 from Mr. Flowers at any prior trials.

6 **BY THE COURT:** Okay. Well, I've got --

7 **BY MRS. STEINER:** If you'll just note for
8 record what you --

9 **BY THE COURT:** I will. Now, I'm not sure
10 what the -- I mean, what particular trial these
11 two would be from -- that I was just handed by
12 the prosecution.

13 **BY MR. EVANS:** Do you know what they were
14 from?

15 **BY MRS. STEINER:** You all marked them.

16 **BY MR. HOWIE:** Well, it says five so I
17 think it's from the fifth one.

18 **BY MR. WHITFIELD:** I don't know about the
19 other one.

20 **BY THE COURT:** Well, I assume it's both
21 from the same trial. The fifth trial would be
22 the one I presided over.

23 **BY MRS. STEINER:** It's a different trial,
24 Your Honor.

25 **BY THE COURT:** Well, I guess as long as
26 these two are marked and considered as an
27 exhibit to the motion, they'll be clear. And
28 the one I read will be from '07 as to Jack
29 Matthews.

COURT DISCUSSES MATTERS WITH COUNSEL - JURY OUT

1 **BY MR. WHITFIELD:** Your Honor, can I go
2 and make copies of those?

3 **BY THE COURT:** Well, I thought that was
4 what I was expecting you to do so I would be
5 ready to take it with me when I got ready to go
6 home today.

7 **BY MRS. STEINER:** Your Honor, before he
8 sits down, indeed, I realize that I may not
9 also -- if Your Honor's going to be reviewing
10 the testimony of Jack Matthews from one of the
11 prior -- whichever the prior trial is, the one
12 you took or since you have a transcript of the
13 one before -- I believe that part of the
14 witness' hypothetical is based on the testimony
15 he gave at that trial regarding his presence at
16 the crime scene prior to taking the gunshot
17 residue test. And that we would also ask to be
18 part of the record for the Plaintiff -- for the
19 Defendant on the motion, the movant.

20 **BY THE COURT:** Well, actually, whatever he
21 testified to in '07, I'm going to read.

22 **BY MRS. STEINER:** Thank you.

23 **BY THE COURT:** That's as clear as it gets.

24 **BY MRS. STEINER:** Yes, Your Honor. We
25 would ask the Court for the Defendant, movant
26 here -- I'm used to civil proceedings -- for
27 the movant here, that the prior trial testimony
28 from the 2007 trial of Jack Matthews be taken
29 into account in ruling on this motion.

COURT DISCUSSES MATTERS WITH COUNSEL - JURY OUT

1 **BY THE COURT:** I certainly will. We'll
2 conclude for now, and be back here Monday
3 morning at nine o'clock.

4 (THE COURT RECESSED FOR THE DAY)

5
6
7
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Motions (Defense)

1 (COURT WAS DULY OPENED ON JUNE 14, 2010.)

2 (MR. EVANS, MR. HILL, MR. WHITFIELD, MRS. STEINER, MR.
3 CARTER AND THE DEFENDANT WERE PRESENT. PROCEEDINGS WERE AS
4 FOLLOWS:)

5 THE COURT: As we recessed last -- let me back
6 up, and say I have got a Motion to Exclude Testimony
7 Concerning Gunshot residue.

8 This was -- there were some exhibits that I was
9 asked to read that had been submitted by the State, and I
10 did read those. And I am going to have these two items,
11 because -- for purpose of identification. The defense
12 already has had marked for identification what was
13 submitted to the Court for consideration. And I've got
14 two other items that were submitted to the State -- by
15 the State to the Court that I'm going to have marked for
16 identification so that there will be a record of what the
17 Court considered.

18 And then there was some testimony from the previous
19 trial that was occurred -- that occurred in 2007, that I
20 was asked to review. Copies of that are being made as we
21 speak. So that can be also in the record. Because I
22 want it clear about anything that the Court might have
23 considered in regards to the motion.

24 If you will, hand those to the court reporter and
25 have her mark those two items as identification for
26 purpose of this motion only.

27 And then, you know, probably by the time I have
28 heard arguments from you on the motion, the other two
29 things that I looked at will be available to offer as an

1 exhibit to the motion. But I'm prepared now to hear
2 arguments on the motion.

3 (A TRANSCRIPT OF THE TESTIMONY OF JOE ANDREWS WAS MARKED
4 STATE'S EXHIBIT NUMBER 138 FOR IDENTIFICATION ON THE MOTION TO
5 EXCLUDE TESTIMONY CONCERNING GUNSHOT RESIDUE.)

6 (A TRANSCRIPT OF THE TESTIMONY OF HORACE MILLER WAS
7 MARKED STATE'S EXHIBIT NUMBER 139 FOR IDENTIFICATION ON THE
8 MOTION TO EXCLUDE TESTIMONY CONCERNING GUNSHOT RESIDUE.)

9 THE COURT: Let me also say for the record,
10 these two documents that were just admitted, some of them
11 have some underlining or circling or things like that.
12 Those were not notes made by the Court. Those
13 underlinings or circlings on those documents were on
14 there when they were received by the Court. And I just
15 wanted to make that clear for the record as well.

16 And the other two items, as I say, that are being
17 copies made, were further testimony -- or testimony in
18 the 2007 trial of Joe Andrews and also a few pages of
19 testimony of Jack Matthews from the 2007 trial.

20 Anyway, I am ready to hear argument.

21 Are you ready to proceed on argument of your motion?

22 MRS. STEINER: Yes, Your Honor.

23 THE COURT: You may.

24 MRS. STEINER: Your Honor, I believe our Motion
25 to Exclude the Evidence and Testimony Concerning Gunshot
26 Residue would go to parts of the testimony of Mr. Jack
27 Matthews and Mr. Joe E. Andrews. It would also exclude
28 any testimony we have not in prior trials had, specific
29 testimony about the taking of the gunshot residue test

1 from any of the remaining witnesses on the State's list.
2 But should that be the case or with respect to chain of
3 custody, we would not want any testimony from any person
4 who talks about gunshot residue at all.

5 The motion is -- got two bases. The first is the
6 Daubert Motion under Mississippi Rule of Evidence 702,
7 which admits expert opinion testimony, that would go to
8 Mr. Andrews' testimony, under conditions if the person --
9 if a) will assist the trier of fact to understand the
10 evidence or determine a fact in issue, which would
11 include drawing an inference, the witness is qualified as
12 an expert by knowledge, skill, experience and training.
13 We do not believe -- no, let's put it that way. And then
14 the testimony is based upon sufficient facts or data,
15 it's the product of reliable principles and methods and
16 the witness has applied the principles and methods
17 reliably to the case.

18 I believe the testimony of Mr. Balash yesterday
19 established both that the 2005 symposium held by the FBI
20 in Quantico, Virginia, created what were the reliable
21 standards of the profession of forensic trace evidence,
22 gunshot residue, and also that his professional opinion
23 that gunshot residue -- a single particle of gunshot
24 residue was not -- could not support the inference that a
25 gun was fired, was similarly the position of that
26 scientific, that body, which had established the
27 standards.

28 Therefore, to the extent that the finding of that,
29 that any opinion that there could be an inference of

1 discharge of a firearm, which is laced throughout Mr.
2 Andrews' testimony, both as we submitted it and the State
3 has submitted it, is not supported by scientific -- of
4 the standards of the profession. And therefore, even
5 without going into the circumstances of the collection,
6 any suggestion there is an inference of actually having
7 fired a firearm should therefore be excluded from that
8 testimony.

9 The second basis for our objection is Rule 403.
10 That even if this Court were to determine that the
11 science with respect to inferring what a single gunshot
12 residue particle means were -- it was acceptable for
13 experts to vary within that and offer varying opinions,
14 as Mr. Andrews and Mr. Balash appeared to have with
15 respect to what significance they as an expert give to
16 the detection of a single gunshot residue.

17 We would suggest that -- we would submit that the
18 probative value of this testimony is so weak given how,
19 how weak the science is. And I would also cite to the
20 articles of -- submitted in support of the motion,
21 including the Burke study, which although Mr. Balash
22 wasn't familiar with it, does find gunshot residue
23 particles in police stations and police automobiles, both
24 of which Mr. Flowers were -- was present in preceding
25 this.

26 Whether or not he shook hands with any officers, he
27 was in a police interview room. That is established by
28 the record. And, you know, yes, that could come in as
29 impeachment. We can read testimony from Mr. Balash to

1 contradict Mr. Andrews. But the fact is that expert
2 testimony is particularly in awe and this is simply --
3 the probative value is substantially outweighed. And
4 because it's coming out of experts, I think there is a
5 danger not only of unfair prejudice but affirmatively of
6 misleading the jury as to the importance of this
7 testimony.

8 And therefore, it should be excluded under Rule 403,
9 even the expert opinion, and any testimony regarding the
10 collection concerning the gunshot residue test. And that
11 this is just simply something that should the Supreme
12 Court get this case on appeal, I think the Supreme Court
13 -- there is no counter-veiling expert opinion that the
14 standards are not as Dr. -- as Mr. Balash testified to
15 them.

16 And given that, I think this must be excluded. The
17 expert opinion must be excluded under 702, even if this
18 Court were not to elect to do that, the fact that it is
19 of not a generally accepted in the forensic trace
20 evidence gunshot residue community as a proper inference
21 means that it should be excluded from consideration by
22 the jury by Rule 403.

23 And even in his objections yesterday, the State's
24 clear -- the only purpose the State has, it has argued in
25 every trial in which this has come in, that there is an
26 inference that Mr. Flowers discharged a firearm as a
27 result of this single particle of gunshot residue. That
28 is the only purpose for which this comes in. And I think
29 the Court cannot ignore the body of scientific evidence

1 which agrees that is not an inference which an expert
2 would be prepared to draw or to suggest to anyone else
3 that it could draw.

4 And if the expert can't suggest it, we would submit
5 that the State can't argue it. And if the State can't
6 argue it -- I mean I think the testimony was that this
7 was a useful investigative tool.

8 Polygraph examinations are useful, investigative
9 tools, and they continue to be used by law enforcement,
10 often to good effect. That doesn't make them admissible
11 in court.

12 I think this gunshot residue test is -- was fine.
13 If it kept him as a suspect in the running, that is fine.
14 The investigation may have found it useful, but it does
15 not belong before this jury.

16 MR. WHITFIELD: Your Honor, first, on the
17 *Daubert* issue. Mr. Balash, the testimony you have read
18 from Mr. Andrews all say that gunshot primer residue is
19 valid science. There is only one place in nature or
20 whatever where the elements of antimony, lead and barium,
21 where they are molten together in a spherical morphology,
22 occur and that is from a discharged firearm.

23 The particle, from the testimony you have seen here
24 and from Mr. Balash, is that the identity of the particle
25 was lead, barium and antimony in a one micron spherical
26 shape, which is the unique characteristic of primer,
27 gunshot residue. When asked if that was valid science,
28 Mr. Balash, their expert, said yes, it is. That is the
29 one place it occurred.

1 They tried to say what about brake dust. What about
2 other things? Well, the science and the studies that she
3 cited, the FBI symposium found that yes, particles can be
4 found, especially two of the three, but the only place to
5 have that combination is from a discharged firearm. And
6 the testimony in this case is that was the unique
7 characteristic of primer residue, which found on the back
8 of his hand.

9 He -- Mr. Balash's, I think, argument was that he
10 had a problem with interpretation issues, which are --
11 you can't say definitively that he fired a gun, but you
12 can say that he was in the presence or the environment of
13 gunshot residue, which is what we would show in this
14 case.

15 The defense, through their exhibits, have cited
16 probably the one case in America where gunshot residue
17 was disallowed, which is a district court case in
18 Minnesota. Now, this district court case is completely
19 factually different from this case here in where they had
20 nine suspects that were all brought in from a shooting
21 scene, three in each patrol car. They were all put in a
22 same room. Each one before testing was allowed to go and
23 use a single stall bathroom where each washed their hands
24 in the same sink. They were all unhandcuffed,
25 rehandcuffed and placed in a hallway where prior to the
26 testing, it was observed that their hands were touching.

27 The Court ruled there is so much cross-contamination
28 between the suspects in this matter that it was held not
29 to be reliable in that one instance which is a factual

Motions (Defense)

1 anomaly, which is nothing compared to the case we have
2 here.

3 Mr. Flowers was not handcuffed. He was brought to
4 the station. The testimony of Mr. Miller and Mr.
5 Matthews, Mr. Matthews at Page 2109, Lines 1 through 12,
6 said that he never shook his hand, didn't see anybody
7 else shake his hand. Mr. Miller's testimony was on Page
8 484, Lines 12 through 18, said that he didn't shake his
9 hand, didn't see people shake his hands. There was no
10 cross-contamination issues in this particular case.

11 But based on both experts, our expert and the
12 defense expert, all of them have said that gunshot
13 residue is a valid science. And I would point the Court
14 out, I have a list of cases through our court system
15 where gunshot residue has been allowed in every trial. I
16 have yet to find one where it was not allowed.

17 As to the Rule 403 issue, the Supreme Court has
18 already ruled that on the relevance of gunshot residue in
19 a case that was factually less than ours, in the *Simmons*
20 *versus State* case, 813 So.2d 710, which I have a copy for
21 Your Honor.

22 THE COURT: I have it right here actually.

23 MR. WHITFIELD: That was a particle that was
24 just similar to. It didn't have the, the spherical
25 morphology. So it wasn't a complete, unique
26 characteristic gunshot residue case. And the Supreme
27 Court said that that was fine. And it was not a
28 violation of the rules of evidence and did not unfairly
29 prejudice the defendant in that case going forward.

Motions (Defense)

1 There are some other issues in the defense motion
2 that we would like to address. I believe in Paragraph 23
3 they discussed that this evidence should be suppressed
4 due to the destruction of evidence. I would like to
5 point the Court to *Poole versus State* on this issue.
6 It's 291 So.2d 723. It is not a due process violation if
7 evidence is consumed in the testing process.

8 They have not cited case law to the Court that it
9 would be, except for *Edmonds versus State*. And *Edmonds*
10 *versus State* where they had cited, Your Honor, was where
11 in Tyler Edmonds trial they tried to bring Christy
12 Edmonds, the codefendant, forward and place her on the
13 stand and make her take the Fifth Amendment in front of
14 the jury. Now, that case was reversed. In the
15 subsequent trial she was allowed, but that has nothing to
16 do with gunshot residue and the ability to perform tests.

17 Further, they cite the due process requires them to
18 have the element available for testing by their expert,
19 which *Poole* and its progeny say that that is not a
20 requirement. When the evidence is consumed through the
21 testing process, there is no due process violation.

22 They cited *Polk versus State*, which is a 1992 case
23 under the *Frye* standard dealing with the admittance of
24 DNA evidence and having it under general acceptance
25 standards and *Richardson versus State*, which dealt with
26 whether the State had to furnish an expert for the
27 defendant and pay for an expert for indigent defendant,
28 neither having anything to do with the destruction of
29 evidence through the testing process.

1 Further, when talking about the confrontation
2 clause, they have a footnote to *Crawford versus*
3 *Washington*. As the Court would note, *Crawford versus*
4 *Washington* dealt with the admittance of non-testimonial
5 hearsay statements. That is not the case here. We have
6 the experts that are going to testify.

7 The proper case for this is *Melendes-Diaz versus*
8 *Massachusetts*, which is 129 Supreme Court 2527. In that
9 case the state tried to introduce the testimony of a
10 chemist on the presence of narcotics by introducing her
11 affidavit. And they said that by putting an affidavit on
12 offended the due process clause because in the
13 confrontation clause because they were not allowed to
14 cross-examine the expert.

15 Here we plan to put our expert on the stand, have
16 him available for cross-examination; therefore, due
17 process would not -- and confrontation clause would not
18 be offended in this case.

19 MRS. STEINER: May I respond?

20 THE COURT: You may.

21 MRS. STEINER: Thank you, Your Honor.

22 I agree that *Melendes-Diaz* says experts can't be put
23 on by, by hearsay by the state under the confrontation
24 clause. I also agree that the testimony you have before
25 you does not challenge the chemistry of having detected a
26 single particle of gunshot residue. I believe in the
27 hypothetical I presented to Mr. Balash, in which I did
28 not include having shaken hands with the officers since
29 Mr. Matthews had already denied that that had happened, I

1 specifically said let's assume -- he said he couldn't
2 tell from what he looked at whether or not, in fact, it
3 was a particle gunshot residue. But I asked him to
4 assume that that photograph showed what Mr. Andrews said
5 it showed. But nonetheless, it is the combination of no
6 scientific basis for the inference.

7 And I would say that *Simmons*, which is a 2002 case,
8 was decided prior to the 2005 symposium, which Mr. Balash
9 testified has set the bar for what is reliable,
10 scientific opinion. The mere fact that his testing was
11 done back in 1996 does not make the opinion that has now
12 been debunked as scientific opinion by the body that sets
13 those standards valid in a 2010 courtroom.

14 So I don't believe that there was any expert
15 testimony that the national standards in *Simmons* were
16 such that -- there was no testimony regarding the
17 national standards since the national standards had not
18 been even established until 2005. So I think *Simmons* is
19 not dispositive of this case.

20 Edmonds is, in general, about due process,
21 confrontational, also about expert opinion. I don't
22 think any of the weaknesses of the expert opinion offered
23 in *Edmonds* are present here today. Mr. Balash was
24 qualified as an expert. He offered no opinions outside
25 the core his expertise in gunshot residue. And, in fact,
26 he was exceedingly cautious. He said I can offer no
27 opinion on the chemistry of this. That will have to come
28 from the scientist who did it who may have the original
29 of this photograph.

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1 The problem is that there is no scientific basis for
2 any inference that this is more likely to have come from
3 a fired -- from firing a firearm than from some sort of
4 environmental contact, whether being in the presence or
5 being in a police station. As Mr. Matthews testifies in
6 2007 testimony, he took a Miranda waiver. He handed Mr.,
7 Mr. Flowers a Miranda waiver that he had been handling
8 that was on this table. He used a pen that they don't
9 know the source of the pen. They think it probably
10 wasn't Mr. Flowers. Mr. Flowers testified he didn't have
11 one, I think. And these are all in a police examination
12 room. Which in the Burke study in Chicago there was even
13 more contamination in a police interrogation and
14 examination room than there was in the police vehicles.
15 Although, that study is mostly about vehicles.

16 And under these circumstances, a) there is no
17 science, no reliable method to testify to that or argue
18 to the jury that inference. And there is certainly, even
19 if the Court were to find the science quasi-reliable or
20 within the scope, certainly the possibility of misleading
21 this jury with fundamentally scientifically unreliable
22 testimony concerning what the presence of a single
23 particle of gunshot residue means. Even if this Court
24 were to prevent Mr. Andrews from offering that opinion
25 leaving it there unexplained would be prejudicial. This
26 is like a polygraph - a great investigative tool, but not
27 something the jury needs to learn about.

28 THE COURT: I take it by what you are arguing
29 that you are agreeing that any time you have lead, barium

1 and antimony in the spherical nature - because you said
2 you didn't challenge the chemistry - that you are
3 conceding that that is -- been accepted as, as gunshot
4 residue.

5 MRS. STEINER: I'm accepting that Mr. Andrews
6 has testified, including in the material before this
7 Court, that he did the chemistry and that that is what he
8 found. We have no refutation for that.

9 THE COURT: My view is that the -- there is
10 plenty of scientific data based on, well, both Mr.
11 Andrews and on Mr. Balash that the only time you can ever
12 have the combination of lead, barium, antimony in a
13 spherical shape is if it is gunshot residue. So I am
14 satisfied that the fact that there is gunshot residue is
15 something that has been scientifically accepted and
16 therefore does meet the requirements of Rule 703 -- I'm
17 sorry, 702, and also the *Daubert* standards that have been
18 adopted by our Mississippi Supreme Court from the *Daubert*
19 case in the United States Supreme Court.

20 I have heard no one that's ever -- I mean nothing
21 that I read that I have noted that had been submitted
22 that said that anybody from the State is going to come in
23 and make a statement that Mr. Flowers fired a firearm. I
24 looked back and Mr. Andrews' previous testimony was that
25 it, it would show that he fired a weapon, was in close
26 proximity to somebody that had fired a weapon or -- I
27 mean close proximity to a weapon when it was discharged
28 or that he had handled a weapon or object that had
29 residue on the surface.

1 I've also heard testimony that at best after four
2 hours you cannot expect to see any gunshot residue of any
3 kind. The issue of how the gunshot residue got on his
4 hands in the view of the Court is not a scientific
5 question. The science is there that it is gunshot
6 residue. How it got there is not a scientific question.

7 So again, in my view, there is not a *Daubert* issue
8 whatsoever. But along those lines, and the Court had
9 found the same case the State had, *Simmons versus State*,
10 813 So.2d 710, Mississippi, 2002 case, where even the
11 fact that all three of those elements or -- well, I say
12 all four because it is got spherical in nature also, all
13 three of the chemical components, plus the spherical
14 nature were not present in *Simmons*. And in *Simmons* the
15 Supreme Court allowed that testimony even though it could
16 not be positively shown that, that what was found was
17 even, in fact, gunshot residue.

18 Here from every, every witness there is testimony
19 that it was, in fact, gunshot residue. So I think the
20 facts are much stronger here for allowing it than it was
21 in *Simmons*. And I do not believe there is a 403 problem.
22 I think that it is -- there is probative evidence here.
23 I do not find that the prejudicial effect is so great
24 that it would require the denial of the admission of this
25 evidence under Rule 403.

26 Also, I agree with the State's argument that if
27 evidence is destroyed during the testing process, there
28 is not a due process problem. The only -- I mean from
29 what I understood from what I had read, there was no way

1 to preserve gunshot residue and have it retested.

2 Also, I just -- I guess I feel I should note for the
3 record, as everybody is aware, this case, Flowers versus
4 State, has been in the Supreme Court three different
5 times. In each of those opinions they did cite the
6 presence of gunshot residue. But I'll further note that
7 in the first two cases the Supreme Court was very quick
8 to recognize plain error and issues that were not even
9 presented as argument in front of the trial court. So I
10 have every faith and confidence in the Mississippi
11 Supreme Court. And that faith and confidence in them
12 leads me to the conclusion that if they had had any
13 problems with gunshot residue, they would have recognized
14 that as plain error since they were so quick to recognize
15 other issues as plain error.

16 So for all these reasons the Court is going to deny
17 the Motion to Exclude the Gunshot Residue Testimony.

18 And I do now have copies made of the other two
19 exhibits that I had looked at in reaching the -- in
20 reaching the decision I have. They are being handed to
21 the court reporter who can mark them additionally.

22 MRS. STEINER: Your Honor, may either the Court
23 or court reporter read out the pages, transcript pages,
24 so we have a record of that?

25 THE COURT: Well, I mean it's, it's going to be
26 in evidence -- I mean it is going to be as an exhibit to
27 the -- so you can write it down.

28 If you will, go ahead and mark those two items as
29 well, because they were items the State had asked me to

1 look at that were submitted Saturday afternoon.

2 MRS. STEINER: Your Honor, we have one other
3 matter before the jury returns.

4 THE COURT: Well...

5 (TRANSCRIPT TESTIMONY OF JOE ANDREWS WAS MARKED STATE'S
6 EXHIBIT NUMBER 140 FOR IDENTIFICATION ON THE MOTION TO EXCLUDE
7 TESTIMONY CONCERNING GUNSHOT RESIDUE.)

8 (TRANSCRIPT TESTIMONY OF CATHERINE SNOW WAS MARKED
9 STATE'S EXHIBIT NUMBER 141 FOR IDENTIFICATION ON THE MOTION TO
10 EXCLUDE TESTIMONY CONCERNING GUNSHOT RESIDUE.)

11 MRS. STEINER: If the Court please, I
12 appreciate -- I am not sure why S-141 having to do with
13 the testimony of Miss Snow was relevant.

14 THE COURT: It may have been the wrong pages
15 may have been copied.

16 MRS. STEINER: What the defendant had requested
17 you consider was the entire testimony of Jack Matthews
18 from the previous trial.

19 THE COURT: And I should have looked at this
20 before I -- because the paper clip did not have -- I had
21 just put on a few minutes ago a paperclip where I
22 wanted the pages paper clipped. And apparently, the
23 paper clip got...

24 MRS. STEINER: It appears that S-140D is Mr.
25 Andrews' testimony from the prior trial, which the Court
26 may have found relevant, to which we cannot object.

27 THE COURT: That is what I was asked to look
28 at. Then the other is supposed to be a few pages of Jack
29 Matthews where he is talking about doing the gunshot --

1 MRS. STEINER: I had asked that his entire
2 testimony be considered, because of the environment in
3 which he had been preceding that. I believe I had
4 questioned Mr. Balash about the fact that Mr. Matthews
5 having been present at the crime scene as a potential
6 contaminant. And I did want establish that Mr. Matthews
7 had been present at the crime scene. I can -- when he is
8 called by the State, we could recess and I can establish
9 that fact before he commences his testimony; that is, if
10 the Court would prefer to do it that way.

11 THE COURT: Well, what is -- S-140 was Miss
12 Snow's. And let me get the -- let me get this back and
13 have the right pages copied on...

14 MRS. STEINER: If the Court please, from the
15 point of view --

16 THE COURT: Mr. Matthews' testimony starts --
17 I'm thumbing through and listening.

18 MRS. STEINER: Okay. We would like the entire
19 Matthews testimony.

20 THE COURT: I will. I am trying to get to it.
21 I was just saying that I have not gotten -- here we go.
22 I see now there was something.

23 MR. EVANS: Your Honor, can I have --

24 THE COURT: There was a misplaced paperclip on
25 it out of confusion about how Miss Snow got there.

26 I'm glad Miss Steiner that you looked at that. As I
27 say, there was a misplaced paperclip that had been looked
28 at for a previous motion. And when it was copied, that
29 is what was copied instead of what I had looked at for

1 this particular motion.

2 So when that is brought back, I'll have it numbered
3 as S-141. And the testimony of Miss Snow definitely was
4 not in any way material or relevant to the Court's
5 consideration of the motion.

6 Did you say you had some other motion?

7 MRS. STEINER: Yes, Your Honor. At the
8 conclusion of the day on Saturday, the Court had called
9 the parties to the bench and offered the Court's initial
10 content -- initial belief that the reservation -- we've
11 reserved four witnesses, Mrs. Sullivan Odom, Miss Snow,
12 Mr. Thornburg and Mr. Hargrove, have asked that they
13 return.

14 Is that correct?

15 And the Court had assumed on the basis of review of
16 the trial at which the Court had not sat that this was, I
17 think, harassment and caused Mr. Carter to come forward
18 and offer reasons for retention. At that time Mr. Carter
19 did preserve on the record that he felt that was an
20 attack on him and the Courts having made some assumptions
21 about his motivations. And I agree that by the end, the
22 Court acknowledged that he had offered some good reasons.
23 And we had agreed that we would revisit the reservation
24 of these witnesses.

25 At the point at which we reserved Miss Sullivan
26 Odom, obviously, we had no idea how she was going to
27 react to this. And whatever impeachment value she may
28 have, I think we have decided that she may be finally
29 released.

1 MR. CARTER: Can I speak to that, Your Honor?

2 MRS. STEINER: I --

3 MR. CARTER: Just to be clear.

4 MRS. STEINER: I'm sorry.

5 (MR. CARTER AND MISS STEINER CONFERRED.)

6 MRS. STEINER: I'm sorry, Your Honor.

7 I miscommunicated. All of these witnesses -- we
8 need them to remain here until the conclusion of the
9 State's case. They may be either subject to impeachment
10 or themselves offer impeachment or other information that
11 will be necessary.

12 Your Honor, there -- yeah, I think that -- I think
13 the State is in the end game and so we would -- we can
14 certainly determine whether -- necessity of release of
15 all of these witnesses by the conclusion of the State's
16 case-in-chief, depending on whom they call and don't call
17 and depending on the testimony that is elicited. There
18 has been some inconsistencies in prior testimony, and
19 these witnesses may actually be necessary for
20 impeachment.

21 That having been said, as we assured the Court we
22 would do, the other thing, and I take no relish in doing
23 this again. But we had heretofore filed a motion for the
24 Court to recuse itself. And we had renewed it at one
25 point during the April 20 hearings when the discussion of
26 alleged juror perjury came up. And I think that at this
27 point to preserve our record on that motion, I must in
28 light of the Court's coming to a reservation of witnesses
29 with the assumption that it had been done for an improper

1 purpose is indication that the history of this case and
2 the drama of this case and, and the fact that the Court
3 was personally involved in the arrest of someone, who as
4 it turned out, there has not been a prosecution completed
5 of is affecting this Court, not always.

6 The Court has frequently during voir dire announced
7 its impartiality. And it is -- I'm not saying it has
8 been a pervasive pattern. I am saying to protect my
9 record I have to renew that motion at this time on the
10 basis of that new evidence -- new event.

11 THE COURT: Well, I really don't see the
12 Court's inquiry about why the defense was asking all the
13 State witnesses to hang around has anything to do with
14 Mr. Bibbs being charged with perjury after the first
15 trial. The Supreme Court has already spoken to that. So
16 that is certainly not grounds for recusal.

17 And I did feel it appropriate because the witnesses
18 are up here for days on end at the mercy of the court
19 proceedings. And I did note that in 2007 all of these
20 witnesses were asked to stay around with the statement
21 that they might be called as defense witnesses, when they
22 had never been called in any trial as a defense witness.
23 And then I noted that when Mr. deGruy was handling most
24 of the cross-examination of these witnesses, he excused
25 every one of them.

26 So my inquiry as to whether these were really needed
27 or not because the Court certainly has the duty to make
28 sure that people are discharged as witnesses if there is
29 no reason for them to hang around. After I inquired, you

1 satisfied my request about that. But in that request, it
2 was certainly no evidence of any prejudice the Court has
3 toward Mr. Flowers. It was an inquiry strictly on the
4 convenience of these witnesses to be released and go
5 about their business, rather than having to be around the
6 courthouse for another week if there was no possibility
7 of them being called as witnesses.

8 So the Court certainly does not see that as any
9 grounds for recusal and takes no offense to the fact that
10 you raised it but it is denied.

11 And you can bring the jury in now.

12 (THE JURY ENTERED THE COURTROOM.)

13 Good morning, ladies and gentlemen. We were taking
14 up a matter that needed to be heard outside your presence
15 that was going to have to be heard sometime during the
16 course of the day. So we went ahead and did it rather
17 than interrupt the proceedings later. So we are ready
18 now to resume.

19 Mr. Evans, who would be the State's next witness?

20 MR. EVANS: James Edward Kennedy, Jr.

21 (THE WITNESS ENTERED THE COURTROOM.)

22 THE COURT: Come around, please. Raise your
23 right hand and take the oath.

24 (THE WITNESS APPROACHED THE BENCH.)

25 Do you solemnly swear or affirm the testimony you
26 give in this case will be the truth, the whole truth and
27 nothing but the truth, so help you God?

28 THE WITNESS: I do.

29 THE COURT: Have a seat, please.

1 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

2 THE COURT: State your name for the record,
3 please.

4 THE WITNESS: James Edward Kennedy, Jr.

5 THE COURT: You may proceed.

6 MR. EVANS: Thank you, Your Honor.

7 JAMES EDWARD KENNEDY, JR., Called on behalf of the State,
8 having been duly sworn, was examined and testified as follows:

9 DIRECT EXAMINATION BY MR. EVANS:

10 Q. Mr. Kennedy, I need you to speak loud enough to
11 where everybody back here in the jury can hear you. Okay.

12 A. Yes, sir.

13 Q. Where do you live?

14 A. I lived at 635 South Applegate at the time.

15 Q. 635 South Applegate.

16 A. Yes, sir.

17 Q. And that's where you lived on July 16, 1996 --

18 A. Yes, sir.

19 Q. -- when the murders occurred?

20 A. Yes, sir.

21 Q. Where is that located in relationship to Angelica?

22 A. It's on Highway 51. And you turn off to your left.

23 Q. Okay. On which side of Highway 51 is your house?

24 A. It would be on the left.

25 Q. Okay. The east side?

26 A. Correct.

27 Q. Did you know at that time a person by the name of
28 Curtis Flowers?

29 A. Yes, sir.

1 Q. About how long had you known him?

2 A. I've known him awhile.

3 Q. Would that be years?

4 A. Some years.

5 Q. Okay. Did you have an occasion to see him on the
6 morning of the murders?

7 A. I did.

8 Q. Where did you see him?

9 A. Walking off of 51 and turn on Angelica.

10 Q. All right. After he turned on Angelica, where you
11 lived there, what did he do next?

12 A. I spoke briefly, and he went on back.

13 Q. Did he speak back to you?

14 A. He spoke.

15 Q. About how far apart were y'all when you spoke to
16 each other?

17 A. Wasn't too far.

18 Q. All right. In relationship to this courtroom, can
19 you -- can you tell me about how far? Would it be further or
20 closer than I am to you?

21 A. Farther.

22 Q. About how much further?

23 A. Back up. I will tell you when to stop.

24 Q. All right.

25 (MR. EVANS STARTED TO WALK TOWARDS THE BACK OF THE
26 COURTROOM.)

27 A. About that far.

28 Q. Okay. So y'all were about this far apart --

29 A. Right.

1 Q. -- when y'all were speaking to each other.

2 A. Right.

3 MRS. STEINER: Let the record reflect that Mr.
4 Evans stopped approximately between the second and third
5 rows of the audience benches.

6 THE COURT: I'll let it so reflect.

7 Q. Any question about who he was?

8 A. No, sir.

9 Q. After y'all spoke and he went by you and on
10 Angelica, which direction did he go then?

11 A. I don't -- after he got passed the hedges, I didn't
12 see him no more.

13 Q. All right. That is what I am talking about. As you
14 could see him, which direction was he going from your house?

15 A. Going east.

16 Q. And what was located east of your house?

17 A. Angelicas is down in the parking.

18 Q. About how far from your house?

19 A. I really don't know exactly how far, but I know it's
20 back there.

21 Q. All right. Can you give me an idea as far as
22 football fields?

23 A. Let me see. I guess it would be about 50 yards, I
24 reckon.

25 Q. About 50 yards from your house. What time did you
26 see the defendant, Curtis Flowers, go by your house in the
27 direction of Angelica?

28 A. It was 7:15 that morning.

29 Q. Do you see the person that walked by your house

1 about 7:15 on the east side of Highway 51 walking toward
2 Angelica?

3 A. Yes, sir.

4 Q. Would you point to him and identify him?

5 A. Right there. (Indicated.)

6 MR. EVANS: May the record reflect he has
7 identified the defendant, Your Honor?

8 THE COURT: I'll let it so reflect.

9 MR. EVANS: I'll tender the witness.

10 MRS. STEINER: Your Honor, I need to get
11 something off the evidence table.

12 THE COURT: Go right ahead.

13 CROSS-EXAMINATION BY MRS. STEINER:

14 Q. Good morning.

15 A. Good morning.

16 Q. Mr. Kennedy.

17 A. How are you?

18 Q. We haven't met before. I'm Alison Steiner, one of
19 Mr. Flowers' attorneys.

20 I believe you've testified in several other proceedings
21 in this matter; is that correct?

22 A. That's right.

23 Q. And you spoke with police at the -- I think on
24 September 17, 1996; is that correct?

25 A. That's right.

26 Q. All right. Now, did they come to find you, or did
27 you call them up?

28 A. I went to see him.

29 Q. All right. And so you went up to the police

1 department; is that correct?

2 A. Right.

3 Q. And who did you see up there?

4 A. John Johnson.

5 Q. Was there anybody else there?

6 A. Not at the time.

7 Q. Chief Hargrove was not there.

8 A. He came.

9 Q. All right. So your first conversation that day was
10 just with Mr. Johnson alone; is that correct?

11 A. That's right.

12 Q. All right. And now, that was almost two months
13 after the events at Tardy's; is that correct?

14 A. Two months?

15 Q. Well, now the people died in Tardy's on July 16 of
16 1996.

17 A. I went up there the second day.

18 Q. If, if John Johnson's notes say the first time he
19 saw you was September 17, 1996, could you disagree with that?

20 A. He said he saw me when now?

21 Q. His notes -- and the -- you remember he took a, a --

22 MR. EVANS: Your Honor, I object.

23 Q. -- tape recording statement.

24 MR. EVANS: She can ask him about the
25 statement. But at this point there is no testimony of
26 when John Johnson said he first saw him.

27 MRS. STEINER: All right.

28 THE COURT: Sustained.

29 Q. He turned on a tape recorder that day when he saw

1 you; is that correct?

2 A. That's right.

3 Q. And he taped the words you said.

4 A. That's right.

5 Q. And if his -- if, if on that tape recorder the date
6 is identified as September 17, 1996, you couldn't quarrel with
7 that, could you?

8 A. If it's dating it, I couldn't.

9 Q. Pardon me, sir.

10 A. If it's dating it, I couldn't.

11 Q. All right. And I believe that at that time and in
12 every time you've come before this Court to testify, you've
13 told the police or the Court and -- that Mr. Flowers was
14 wearing white pants and a black sweater. Is that your
15 recollection?

16 A. That's my recollection. Yes.

17 Q. Those were long pants.

18 A. Do what now?

19 Q. Long pants.

20 A. Right.

21 Q. And you didn't even get a chance to see his shoes at
22 all, or you have no recollection of what shoes he was wearing
23 that day.

24 A. No.

25 Q. Now, do you look at the -- do you read and write,
26 sir?

27 A. Do what now?

28 Q. Do you read and write, sir?

29 A. Some what.

1 Q. All right. Do you look at the newspaper *The Winona*
2 *Times* when it comes out?

3 A. No.

4 Q. All right. Did you in your neighborhood ever see
5 posters on the -- on telephone poles and light poles and
6 things like that offering a \$30,000 reward in this case?

7 A. No.

8 Q. You did find out, however, at some point that there
9 was a \$30,000 reward being offered for information in
10 connection with this case; is that correct?

11 A. Later on. Yeah.

12 Q. All right. But you state you did not see -- I'm
13 going to hand --

14 May I approach the witness, Your Honor?

15 THE COURT: You may.

16 Q. Mr. Kennedy, I'm handing you Defendant's -- what's
17 in evidence as Defendant's Exhibit 1.

18 A. Um-hum.

19 Q. Is it your testimony you knew about this information
20 in this poster but you never actually saw it?

21 A. No, I didn't.

22 Q. But you did know there was a \$30,000 reward.

23 A. I heard of it. Yeah.

24 Q. All right. And did you ever hear people talk about
25 it or did you -- how did you learn about it?

26 A. I was at a store, I think.

27 Q. All right.

28 A. I was at a store, and I seen a flier on the wall.

29 Q. And at that store that -- you saw the flier in the

1 store. Is that what you are saying?

2 A. Yeah.

3 Q. All right. And if that flier went up before
4 September 17, you could have seen it before you talked to the
5 police; is that correct?

6 A. No. I didn't see it before.

7 Q. All right. Fair enough. Now, you didn't see Mr.
8 Flowers with any kind of gun in his hand when he walked by,
9 did you?

10 A. No.

11 Q. You didn't even see anything that looked like it
12 might be a gun stashed away anywhere on him, did you?

13 A. We wasn't that close.

14 Q. You couldn't have.

15 A. Right.

16 Q. Until something jogged your memory, you knew they
17 were looking to what Curtis Flowers had been doing that
18 morning. You didn't even think anything about having seen him
19 that morning, nothing unusual; is that correct?

20 A. Say that again.

21 Q. Until something jogged your memory about --

22 A. What do you mean by jogged my memory?

23 Q. All right. Did something -- you went to the police
24 after you learned that Curtis Flowers was a suspect in this
25 matter; is that correct?

26 A. After I heard the peoples was dead.

27 Q. Okay. And by September 17 everybody knew that they
28 were looking for Curtis Flowers, is that correct, or they were
29 interested in Curtis?

1 A. I guess so.

2 Q. All right. Thank you very much.

3 I have nothing further.

4 THE COURT: Any redirect?

5 MRS. STEINER: Oh, just a moment. Just a
6 moment, Your Honor.

7 Q. Do you know if the police ever came to your street
8 and knocked on doors talking to people about anything about
9 this?

10 A. No.

11 Q. You don't know.

12 A. (Shook head.)

13 Q. All right.

14 THE COURT: You were nodding your head and you
15 need to speak so --

16 THE WITNESS: No.

17 Q. You don't know anything about that.

18 A. No.

19 Q. All right. You never saw that.

20 A. No.

21 MRS. STEINER: Thank you, Your Honor. That is
22 all I have.

23 THE COURT: Any redirect?

24 MR. EVANS: Yes, sir.

25 REDIRECT EXAMINATION BY MR. EVANS:

26 Q. Mr. Kennedy.

27 A. Yes, sir.

28 Q. You knew that you had information that police might
29 need and you went to John Johnson.

1 MRS. STEINER: Object to leading.

2 Q. Is that correct?

3 MRS. STEINER: Object to leading, Your Honor.

4 Q. Why did you go to John Johnson and give him this
5 information?

6 A. When I found out that peoples were dead.

7 Q. You have been asked about reward. What, if
8 anything, did reward have to do with you going and telling the
9 truth about what you knew?

10 A. Nothing.

11 Q. Have you ever asked for any reward?

12 A. No.

13 Q. What, if any, reward have you ever been paid for
14 this?

15 A. None.

16 Q. Who did you see walking by headed toward Angelica at
17 7:15 on the morning of the murders?

18 A. Curtis Flowers.

19 MR. EVANS: Nothing further of this witness,
20 Your Honor.

21 THE COURT: You may step down, Mr. Kennedy.
22 Who would be the State's next witness?

23 MRS. STEINER: This witness may be finally
24 excused.

25 THE COURT: Okay. At the next break he can be
26 told that he is free to go.

27 MR. EVANS: Edward Lee McChristian.

28 THE COURT: While they are getting him for
29 direct examination --

1 Well, I will take that up a little bit later. If
2 y'all will approach.

3 (THE WITNESS ENTERED THE COURTROOM.)

4 If you will stay there just a second.

5 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
6 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
7 OUTSIDE THE HEARING OF THE JURY.)

8 THE COURT: The correct document has now been
9 made a copy of, that would be the testimony of Mr.
10 Matthews. I believe it was the 2007 trial that was --
11 that I looked at about, about his presence at the scene
12 of the incident. And I wanted to go ahead and I mean --

13 MRS. STEINER: That's, for the record, Pages
14 268 through 297 --

15 THE COURT: Right.

16 MRS. STEINER: -- of the transcript of the
17 trial in 2007.

18 THE COURT: Right.

19 MRS. STEINER: Thank you.

20 THE COURT: I'll let that be marked as S-141.
21 And what was originally marked as S-141 was not even
22 anything related to this testimony but when I pulled out
23 the -- you know, I handed it. And when it got brought
24 back to me, I realized the paperclip -- there was more
25 than one paperclip in the -- in the transcript. And it
26 was a paperclip of something involving testimony of Miss
27 Snow, which, truthfully, I don't remember why that was
28 ever paper clipped. But I think at a previous time I
29 must have felt it important to be reading. But

1 nevertheless, we do now have the correct portion of the
2 transcript that I read yesterday afternoon and will allow
3 that to be admitted as something that the State on
4 Saturday had asked me to consider when ruling on the
5 motion.

6 MRS. STEINER: Actually, I think it was the
7 defense that asked you to.

8 THE COURT: Well, I'm -- thanks for correcting
9 me. Somebody asked me. I don't know. I just remember
10 being asked to look at it. And who asked is -- you know,
11 it doesn't matter as long as --

12 MR. EVANS: Your Honor, and also, I don't know
13 why the Court had it paper clipped. But one thing that
14 it was probably for is because the defense had objected
15 to with their person that they put on about photo
16 line-ups.

17 THE COURT: That is probably why. I am sure
18 that is why I had previously read Catherine Snow's. I am
19 sure now. That is exactly why it was. I couldn't
20 remember. But anyway, the confusion is over, and we have
21 got the right --

22 MRS. STEINER: And we have reserved our
23 objections to her line-up as a continuing objection.

24 Your Honor, for these bench conferences you are
25 using a Radio Shack transmitter so the court reporter can
26 actually hear them.

27 THE COURT: Correct.

28 MRS. STEINER: I just noticed there is someone
29 in the audience wearing an identical thing for a hearing

Bench Conference

1 aid. I just have no idea if he is picking this up. This
2 is not -- these bench conferences are --

3 THE COURT: As long as the jury is not hearing
4 it, that is my only concern.

5 MRS. STEINER: Thank you, Your Honor.

6 THE COURT: None of them are wearing anything.

7 MRS. STEINER: I appreciate it.

8 THE COURT: It is connected to a wire that runs
9 directly to the court reporter's machine. So I don't
10 think it is a wireless device to begin with.

11 MRS. STEINER: Okay. I didn't know if it was
12 wired or wireless. I didn't know if that was powering it
13 or --

14 THE COURT: No. It runs right on over there.

15 MRS. STEINER: Just needed to clarify that for
16 the record.

17 (THE BENCH CONFERENCE WAS CONCLUDED.)

18 (TRANSCRIPT OF THE TESTIMONY OF JACK MATTHEWS WAS MARKED
19 STATE'S EXHIBIT NUMBER 141 FOR IDENTIFICATION ON THE MOTION TO
20 EXCLUDE TESTIMONY CONCERNING GUNSHOT RESIDUE.)

21 THE COURT: Come around, raise your right hand
22 and take the oath.

23 Do you solemnly swear or affirm the testimony you
24 give will be the truth, the whole truth and nothing but
25 the truth, so help you God?

26 THE WITNESS: I do.

27 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

28 THE COURT: State your name for the benefit of
29 the record.

1 THE WITNESS: Edward Lee McChristian.

2 THE COURT: Mr. McChristian, when you are
3 testifying, you are going to need to talk real loud,
4 because all of those ladies and gentlemen over there on
5 your left are going to have to hear what you are saying.

6 You may proceed, Mr. Evans.

7 EDWARD LEE MCCHRISTIAN, Called on behalf of the State,
8 having been duly sworn, was examined and testified as follows:

9 DIRECT EXAMINATION BY MR. EVANS:

10 Q. Good morning, Mr. McChristian.

11 A. Good morning.

12 Q. Mr. McChristian, I want to direct your attention
13 back to the morning of the murders at Tardy Furniture, July
14 16, 1996. Do you remember that morning?

15 A. Yes, I do.

16 Q. Where did you live at that time?

17 A. 605 Academy Street.

18 Q. 605 Academy Street. Where is that located?

19 A. (No response.)

20 Q. Where is that located?

21 A. South on Academy.

22 Q. South on Academy.

23 A. Right.

24 Q. Is Academy Street on the east or the west side of
25 Highway 51?

26 A. It's on the east side of it.

27 BAILIFF: Your Honor, the jury cannot hear.

28 THE COURT: If you will, speak --

29 Q. Turn, turn this a way and speak a little louder so

1 the jury can hear you. Okay. Just need you to speak real
2 loud. You say that where you were living was on the east side
3 of Highway 51 that morning; is that right?

4 A. Yes, sir.

5 Q. Who was with you that morning at your house?

6 A. Clem Forrest. Bernard Seals. And Hammie.

7 Q. Did y'all have an occasion to see a person that you
8 knew as Curtis Flowers that morning?

9 A. Yes, I did.

10 Q. Did you already know who Curtis Flowers was at that
11 time?

12 A. Yes, I did.

13 Q. Where did you see Curtis Flowers that morning?

14 A. Right in front of my house.

15 Q. Which direction was he walking?

16 A. Going north.

17 Q. Do you remember what time you saw him that morning?

18 A. Between 7:30 and 8:00.

19 Q. And how are you able to remember about what time it
20 was?

21 A. Well, Clem Forrest supposed to be at work at 8:00,
22 and he was still at my house.

23 Q. Did any of you carry on a conversation with him?

24 A. Well, I didn't.

25 Q. Did anybody in your presence carry on a conversation
26 with him?

27 A. I think Clem said a few words to him.

28 Q. About how far apart were you when you saw Curtis
29 Flowers walking north on Academy Street in front of your

1 house?

2 A. It might have been 25 feet.

3 Q. Do you see the person in the courtroom today that
4 you know as Curtis Flowers that was walking north on Academy
5 Street in front of your house the morning of the murders
6 between 7:30 and 8:00?

7 A. Yes, sir.

8 Q. Would you point to him and identify him, please?

9 A. Right there. (Indicated.)

10 MR. EVANS: May the record reflect that he has
11 identified the defendant?

12 THE COURT: I'll let it so reflect.

13 MR. EVANS: Tender the witness.

14 CROSS-EXAMINATION BY MRS. STEINER:

15 Q. Good morning, Mr. McChristian. I'm Alison Steiner.
16 We haven't talked in court before, but I'm one of the lawyers
17 representing Mr. Flowers.

18 Mr. McChristian, when you came in the courthouse this
19 morning, which door did you come in?

20 A. Front.

21 Q. All right. Which direction were you walking -
22 north, south, east or west - when you came in that door?

23 A. South.

24 Q. You were walking south. And which side of the
25 highway is this courthouse on 51?

26 A. West.

27 Q. All right. Now, you testified, I think, that --
28 well, let me ask you this. I don't know that you testified
29 about this. Do you recall being interviewed by the -- by Mr.

1 John Johnson in connection with this case on August 16, 1996?

2 A. Yes.

3 Q. All right. And at that time -- do you remember
4 where you talked to him?

5 A. Down at the police station.

6 Q. All right. And how did you get to the police
7 station that day?

8 A. Police picked me up.

9 Q. All right. Had they -- how did they know to pick
10 you up and give you a lift to the police station?

11 A. I wished I knew.

12 Q. They just came down and found you.

13 A. Right.

14 Q. All right. Did they tell you what it was about?

15 A. Not until I got there.

16 Q. All right. Were you nervous when the police had
17 picked you up?

18 A. Always.

19 Q. Always. So this is August 16. That's about a month
20 after you heard about the murders at Tardy's; is that right?

21 A. Been knowing about the murders. I didn't know who
22 was involved in it.

23 Q. All right. And did they explain to you when they
24 picked you up that they wanted to know if you had seen Curtis
25 Flowers?

26 A. Yes.

27 Q. So they asked you, they want to know if you saw
28 Curtis Flowers.

29 A. Right.

1 Q. All right. They brought up Curtis Flowers. You
2 didn't.

3 A. No.

4 Q. And I believe from the beginning and every time
5 you've talked to the police or had to say, you don't have any
6 recollection of what Mr. Flowers was wearing that day; is that
7 correct?

8 A. Not really. No.

9 Q. Okay. And you said he was about -- and you didn't
10 see -- you didn't make any note about what kind of shoes he
11 was wearing or anything like that?

12 A. No. No.

13 Q. Now, I'm going to ask you -- you said about 25 feet.
14 But let me do this. You were sitting on a -- let me start
15 over. I tend to get wordy. You were sitting on the porch
16 with your friends that you referred to.

17 A. Right.

18 Q. All right. That is up -- on that street the houses
19 sit a little bit back from the road.

20 A. A little bit. Right.

21 Q. And then there is the -- the road is just normal
22 size street; is that correct?

23 A. Right.

24 Q. And the person you saw walking by was walking down
25 the middle of the street.

26 A. Yes. Walking on the side of the street.

27 Q. On the side of the street. Okay. I'm going to just
28 -- was he further away than I am right now at this podium?

29 A. He was a little further than that.

1 Q. All right. I am going to back up and you just tell
2 me when to stop when I get to where he was, how far away.

3 A. My eyes ain't like they was.

4 Q. Oh, you can't even see how far away I am from you.

5 A. Not now. I guessed at it.

6 Q. All right.

7 A. Go back a little further.

8 Q. (Complied.)

9 A. I say about like that.

10 MRS. STEINER: All right. Let the record
11 reflect I stopped at approximately the first row of the
12 chairs in this courtroom, audience chairs.

13 THE COURT: I'll let it so reflect.

14 Q. Did Mr. Flowers -- Mr. Flowers carrying a gun when
15 you saw him?

16 A. I didn't see him carrying nothing.

17 Q. All right. Did you see anything concealed, like a
18 bulge like --

19 A. No.

20 Q. -- you see on t.v. of a gun?

21 A. No.

22 MRS. STEINER: All right. I have nothing
23 further of this witness, Your Honor.

24 REDIRECT EXAMINATION BY MR. EVANS:

25 Q. Wasn't nothing wrong with your eyesight was it?

26 A. Not at that time. No.

27 Q. And the statement that you gave Mr. Johnson, is
28 there anything inconsistent in it? Or is it basically the
29 same thing as you told this jury?

1 A. That's it.

2 MR. EVANS: Nothing further, Your Honor.

3 THE COURT: Now, is he excused by both sides?

4 MR. EVANS: As far as the State is concerned he
5 is.

6 MRS. STEINER: He is excused.

7 THE COURT: Mr. McChristian, you may step down.
8 You are free to go.

9 Who will be your next witness?

10 MR. EVANS: Mary Jeanette Flemming.

11 (THE WITNESS ENTERED THE COURTROOM.)

12 THE COURT: Come forward and raise your right
13 hand and take the oath at this time.

14 (THE WITNESS APPROACHED THE BENCH.)

15 Do you solemnly swear or affirm the testimony you
16 give in this case will be the truth, the whole truth and
17 nothing but the truth so help you God?

18 THE WITNESS: I do.

19 THE COURT: Please have a seat.

20 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

21 THE COURT: For the record, state your name,
22 please.

23 THE WITNESS: Marry Jeanette Fleming.

24 THE COURT: You may proceed.

25 MR. EVANS: Thank you, Your Honor.

26 MARY JEANETTE FLEMING, Called on behalf of the State,
27 having been duly sworn, was examined and testified as follows:

28 DIRECT EXAMINATION BY MR. EVANS:

29 Q. Good morning, Miss Fleming.

1 A. Good morning.

2 Q. How are you doing today?

3 A. All right.

4 Q. I need you to speak loud so that everybody back here
5 can hear you. You just act like I'm hard of hearing and
6 holler at me.

7 Miss Fleming, I want to direct your attention back to the
8 morning of the murders at Tardy Furniture in '96, July 16. Do
9 you remember that morning?

10 A. Yes, sir.

11 Q. Did you have an occasion to go some place that
12 morning?

13 A. I went to Weed Brothers.

14 Q. And where is Weed Brothers located?

15 A. Behind Tardy Furniture.

16 Q. Why did you go to Weed Brothers that morning?

17 A. Take my car down there to have a windshield repair
18 put in it.

19 Q. About what time did you drop your car off?

20 A. It was just like ten minutes till nine when I left
21 from the house. Probably about nine when I, you know, got
22 there.

23 Q. All right. You got there about 9:00.

24 A. Yes, sir.

25 Q. About how long was it before you left?

26 A. I just dropped it off and just got out and started
27 walking back home.

28 Q. Okay.

29 A. Wasn't even minute.

1 Q. Immediately. Pretty close.

2 A. Yes, sir. Immediately.

3 Q. Which direction did you leave from Weed Brothers
4 walking back home?

5 A. I got on Carrollton Avenue. I got on -- and went to
6 Church Street. Then I hit -- went to Campbell Street.

7 Q. Did you have an occasion -- well, let me ask you
8 this. At that time on that day, did you know a person by the
9 name of Curtis Flowers?

10 A. Yes, sir.

11 Q. How did you know him?

12 A. I been knowing him for many years.

13 Q. Did you have an occasion to see him while you were
14 walking home from Weed Brothers that morning?

15 A. Yes, sir, I did.

16 Q. Where did you see him?

17 A. On Campbell Street.

18 Q. Was he walking toward downtown or away from
19 downtown?

20 A. Towards town.

21 Q. Did you have an occasion to speak to him when you
22 met him?

23 A. Yeah. He spoke to me first.

24 Q. What did he say?

25 A. Hi, good looking.

26 Q. Did you speak back to him?

27 A. Yes, I spoke back.

28 Q. How close were y'all when y'all passed?

29 A. Side by side.

1 Q. Just side by side.

2 A. Yes, sir.

3 Q. Do you see that person that you know as Curtis
4 Flowers that you walked side-by-side with on Campbell Street
5 as he was headed toward downtown?

6 A. Yes, sir, I see him.

7 Q. Would you point to him and identify him, please?

8 A. Right there. (Indicated.)

9 MR. EVANS: May the record reflect that she has
10 identified the defendant in this cause?

11 THE COURT: I'll let it so reflect.

12 Q. Which end of Campbell Street were y'all on when you
13 met him?

14 A. On the east side of Campbell Street.

15 Q. Do you know about whose house you were at?

16 A. It's like between Glenn Dale Edwards and Aiden
17 Shields. It wasn't that far from town, you know.

18 Q. Okay.

19 A. You know, a short distance from town.

20 Q. Is this on the east side of Highway 51?

21 A. Yes, sir.

22 Q. Did you have an occasion that morning to see a
23 person by the name of Miss Beneva Henry?

24 A. Yes, sir.

25 Q. And where did you see her?

26 A. At her house.

27 Q. And what was she doing when you saw her?

28 A. Sitting on the porch.

29 Q. Was anyone there with her?

1 A. Sir.

2 Q. Was anyone sitting there with her?

3 A. I don't think so.

4 Q. Did you see -- who did you see first? Who was
5 closest to town - her house or where you saw the defendant?

6 A. Who was closer to town?

7 Q. Right. To downtown. Who did you meet first? Did
8 you see Curtis Flowers or Miss --

9 A. Oh, I seen Curtis first.

10 Q. So where you saw him was between her house and
11 downtown.

12 A. Not between Beneva house. No. It was on down
13 further.

14 Q. Okay. That's what I'm trying to find out. It was
15 down closer to where Tardy Furniture is.

16 A. Yes, sir.

17 MR. EVANS: Your Honor, I tender the witness.

18 THE COURT: Proceed.

19 MRS. STEINER: May I?

20 THE COURT: (Nodded.)

21 CROSS-EXAMINATION BY MRS. STEINER:

22 Q. Good morning, Miss Fleming.

23 A. Good morning.

24 Q. I don't think we have met in court before.

25 A. No, we haven't.

26 Q. I'm Alison Steiner. I am one of the lawyers
27 representing Mr. Flowers.

28 Miss Fleming, I believe your testimony is you dropped
29 your car off at...

1 A. At Weed Brothers.

2 Q. At Weed Brothers.

3 A. Yes. Yes.

4 Q. You left home at ten of nine, was that --

5 A. Yes.

6 Q. And so that -- so that's about between ten of nine
7 and nine is when you dropped your car off at Weed Brothers.

8 A. Yes.

9 Q. Then you walked back home. Where did you live?

10 A. I lived on Freeman Street at the time.

11 Q. All right. And you were coming along. And you left
12 there. You went up Carrollton Street. And then turned on to
13 Campbell Street -- Carrollton Street. Then to Church Street.

14 A. And turned on Campbell Street.

15 Q. Turned on Campbell Street.

16 A. Made a right on Campbell.

17 Q. And that's where you saw Mr. Flowers --

18 A. Yes.

19 Q. -- that morning. About what time would you say that
20 was?

21 A. It probably was like after nine, five after nine.

22 Q. Five after nine.

23 A. Yes.

24 Q. You didn't have to go in and tell them about the
25 car.

26 A. I already had called before I went down there, and
27 they was waiting on me when I got there. And I dropped it
28 off. Some guy was there. You know, he took it for me.

29 Q. Okay.

1 A. So I gave it to him. And I just started walking
2 back home. I already had called before I went.

3 Q. All right.

4 A. Yes. They were waiting on me.

5 Q. And so -- now, when you saw Mr. Flowers you didn't
6 notice the kind of shoes he was wearing, did you?

7 A. No, I didn't notice the shoes.

8 Q. And even as you sit here today, you probably can't
9 remember exactly what he was wearing.

10 A. Yes. I know what he was wearing. I didn't pay no
11 attention to his shoes. I knew what he had on.

12 Q. He had on long pants.

13 A. Yes. He had on long pants.

14 Q. He had on brown pants.

15 A. Yes. They were brown, a white shirt and a jacket,
16 gray jacket.

17 Q. All right. And you've never said he had on black
18 pants.

19 A. I never said black pants. He had brown pants on.

20 Q. All right.

21 A. Brown. B-r-o-w-n. Brown.

22 Q. All right. Do you recall coming and testifying in
23 this matter in Tupelo, Mississippi, at a hearing held up in
24 Tupelo back in 1998?

25 A. Yes, I remember that.

26 Q. Are you telling these ladies and gentlemen that you
27 did not say in that proceeding that he was wearing black?

28 A. His pants was not black.

29 Q. All right. I'm not asking you whether --

1 A. Huh-huh.

2 Q. Your recollection today is --

3 A. His pants was brown.

4 Q. All right. So you misspoke if you told the jury --
5 told --

6 A. I don't really recall that but they was brown.

7 MRS. STEINER: Okay. One moment, Your Honor.

8 Approach the witness?

9 THE COURT: You may.

10 Q. Miss Fleming, do you read and write?

11 A. Can I read and write?

12 Q. Yes, ma'am.

13 A. Yes.

14 Q. All right. I was going to ask you to read
15 something. But if you wanted somebody to assist you, I could
16 read it out if you needed.

17 May I approach, Your Honor?

18 THE COURT: You may.

19 Q. Miss Fleming, I'm handing you a copy of a page
20 numbered 19 -- 694 from a prior preceding in this matter held
21 in Tupelo. And I'm going to ask you, is that your name --

22 A. Yes, that's my name.

23 Q. -- across the top?

24 A. Yes.

25 Q. I'm going to ask you to review and read to yourself
26 starting at Line 15. You see where those lines are on the
27 side of the page.

28 A. Um-hum.

29 Q. Start with Line 15. Question. Okay. And you met

1 Curtis Flowers. That is what that line says. And what's the
2 answer you gave?

3 A. You want me to -- yes.

4 Q. Read it out loud.

5 A. Okay. All right. So you started back walking home.
6 Yes. Okay. And you met Curtis Flowers. Yes, I did. Tell us
7 how he was dressed that morning. He had on some black jeans,
8 white shirt and a light wind breaker jacket.

9 Q. All right. Do you recall ever testifying that the
10 jacket he had on was purple or had purple on it?

11 A. I said it was purple on the shoulders.

12 Q. All right. But today you're pretty sure what you
13 really meant to say then was he had on brown pants.

14 A. Yes. That's what he had on was brown.

15 Q. All right.

16 A. Ask him what he had on.

17 Q. All right. That was 1998, a lot closer to this
18 event.

19 A. It was '96.

20 Q. In '96 is when you said he had on brown pants.

21 A. Yes. When I seen him that morning that is when he
22 had the brown pants on, yes. In '96, when I met him walking
23 that morning his pants was brown.

24 Q. All right. And I believe if you also in the hearing
25 that was held in this matter down in Gulfport said he was
26 wearing black pants, you, you were just mistaken then too?

27 A. I don't even remember saying black. I said brown.
28 They was brown.

29 Q. All right.

1 A. Maybe somebody else made the mistake.

2 Q. You think maybe the court reporter wrote it down
3 wrong.

4 A. Probably did. It, it could happen.

5 Q. All right.

6 Excuse me, Your Honor. I've outfoxed myself with too
7 many...

8 (MISS STEINER PUT A BINDER ON THE TABLE.)

9 Miss Fleming, when you came into the building today which
10 direction -- which door did you come in?

11 A. The door right there.

12 Q. Which direction were you walking when you came in
13 that door?

14 A. I wasn't walking. I drove up here.

15 Q. I'm sorry. You drove up here. You had to get out
16 of your car to walk up the steps.

17 A. Oh, okay.

18 Q. Which direction were you walking?

19 A. I came through the door this way. (Indicated.)

20 Q. Which direction was that - north, south, east, west?

21 A. East, I think.

22 Q. All right. Now, when -- I believe the first time
23 you talked to the police about this was in February of 1997;
24 is that correct?

25 A. I believe so.

26 Q. All right. And you spoke with Mr. Jack Matthews of
27 the highway patrol; is that right?

28 A. I think I did. I, I remember it was Johnny
29 Hargrove, though, I think I spoke to too.

1 Q. You were up at Mr. Johnny Hargrove's office.

2 A. Yes.

3 Q. At the police department.

4 A. Yes.

5 Q. How did you come to go up there?

6 A. He come to McDonalds to pick me up.

7 Q. All right.

8 A. He came to McDonalds and told me to come to the
9 police station.

10 Q. Were you working at McDonalds?

11 A. Yes.

12 Q. And had you called him before he came to pick you
13 up?

14 A. No, I haven't. I didn't know he was coming up
15 there.

16 Q. All right. And when he picked you up, he told you
17 they wanted to know if you had seen Curtis Flowers that day;
18 is that right?

19 A. Yes.

20 Q. They brought up Curtis' name before you ever did.

21 A. Yes.

22 Q. Now, in February of 1997 there had been posters all
23 over town saying that they needed -- that there was a \$30,000
24 reward offered for the information about the Tardy murders; is
25 that correct?

26 A. Yes. I think I seen a poster downtown.

27 MRS. STEINER: All right. May I approach, Your
28 Honor?

29 THE COURT: You may.

1 Q. I'm handing you what another witness has identified
2 as an exhibit in this matter and ask you is that the content
3 of the poster you saw?

4 A. I think so. Yes.

5 Q. All right. So by the time police came to pick you
6 up and asked about Curtis Flowers, you knew they wanted him in
7 connection with the -- they were asking about the Tardy murder
8 case, didn't you?

9 A. Yes, I knew that. But it wasn't about -- it wasn't
10 about the money. Nobody said nothing to me about no money or
11 nothing. Ain't nobody gave me no money or nothing. This is
12 not about money. Money don't phase me.

13 Q. You don't -- you don't ever do anything for money?

14 A. No, I don't. Money don't phase me.

15 Q. All right. But you had seen this poster.

16 A. Yes. I seen it. It was downtown on a pole. Yes, I
17 seen it.

18 MRS. STEINER: Okay. One moment, Your Honor.

19 THE COURT: Sure.

20 Q. Miss Fleming, I don't want to embarrass you. But
21 have you had some illness, some mental illness, depression,
22 that's required for you to hospitalized?

23 A. Yes.

24 Q. All right. And you spent some time in the hospital.

25 A. Um-hum.

26 Q. And you've been treated by a doctor for it.

27 A. Yes.

28 Q. Are you getting any kind of disability --

29 A. Yes.

1 Q. -- for that? What --

2 A. It ain't for that though. It's for -- I had two
3 back surgeries. That is what my disability is for, two back
4 surgeries.

5 Q. Okay.

6 A. It's not for being crazy, because I'm not crazy.
7 It's for two back surgeries.

8 Q. All right. Now, from --

9 A. Yes, I'm getting disability. Two back surgeries.

10 Q. I understand. And the pain from that back -- has
11 that been since the murders at Tardy or was that from before?

12 A. It's been since.

13 Q. All right. And are you getting social security
14 disability?

15 MR. EVANS: Your Honor --

16 A. You know, why, what --

17 MR. EVANS: -- this has nothing to do with this
18 case.

19 A. What, you in my business for like that?

20 MR. EVANS: This --

21 A. That's my money.

22 MR. EVANS: It is just an attempt to harass the
23 witness.

24 A. Don't ask me nothing about my business, nothing like
25 that.

26 THE COURT: Wait. There is an objection.

27 And I sustain the objection. At this point I don't
28 see any relevance in whether she receives a check for her
29 back injury. She is -- I mean you have explored.

1 A. Don't ever come to me like that no more.

2 THE COURT: Ma'am, now, you don't be saying
3 anything more until you are asked another question.

4 MRS. STEINER: May I be heard, Your Honor?

5 She has testified that she never does anything for
6 money. I was just establishing that she did when she --

7 A. It is for my back surgery.

8 THE COURT: You established that.

9 MRS. STEINER: -- applied for money -- applied
10 for disability.

11 A. Ha. Ha.

12 Q. Did you also apply for workers' comp?

13 MR. EVANS: Your Honor, I object. This is
14 getting ridiculous.

15 A. For what? For what? Workers compensation? For
16 what?

17 THE COURT: I, I sustain.

18 Ma'am, listen, when I say --

19 A. I do not work -- apply --

20 THE COURT: Miss Fleming, do not say anything
21 more until I have ruled on this objection, please.

22 MRS. STEINER: Your Honor.

23 A. I am going to object though.

24 THE COURT: Miss Fleming.

25 MR. EVANS: Your Honor, I would like for my
26 objection to be ruled on before opposing counsel just
27 keeps talking.

28 THE COURT: And I sustained. I don't see any
29 relevance if she applied for workers' comp. There is

1 nothing relevant about -- not at all.

2 So you can move on to your next question.

3 MRS. STEINER: Your Honor, I'd like to --

4 THE COURT: I've made my ruling, ma'am. So you
5 can move on.

6 MRS. STEINER: Your Honor, I would like to make
7 a proffer outside the presence of the jury about what the
8 answers to these questions would be.

9 THE COURT: We will take that up after you get
10 through --

11 MRS. STEINER: Thank you.

12 THE COURT: -- with questioning.

13 MRS. STEINER: I have nothing further subject
14 to the proffer, Your Honor.

15 THE COURT: Okay. Mr. Evans, you may proceed.

16 MR. EVANS: Thank you, Your Honor.

17 REDIRECT EXAMINATION BY MR. EVANS:

18 Q. Miss Flemming, why did it take you so long to tell
19 the police about who you saw that morning?

20 A. Because I didn't want to be in it, and I still don't
21 want to be up in this mess.

22 Q. Did anybody attempt to get you not to cooperate?

23 A. Yes. It was some people trying to get me to attempt
24 to not cooperate. My family members. Yes. A lot of
25 different people talking crap. Yes.

26 MR. EVANS: Nothing further, Your Honor.

27 THE COURT: Ladies and gentlemen, we are going
28 to take a ten-minute recess and take up another matter.
29 If you will, step in the jury room for a couple of

1 minutes.

2 (THE WITNESS GOT UP FROM THE WITNESS STAND.)

3 Ma'am, you'll need to stay here.

4 THE WITNESS: Oh, okay.

5 (THE JURY LEFT THE COURTROOM.)

6 THE COURT: I need quiet in the courtroom.

7 You may proceed.

8 EXAMINATION BY MRS. STEINER: (JURY OUT)

9 Q. Miss Fleming, I do not mean to distress you. I
10 believe these are questions that we need to ask.

11 MR. EVANS: Your Honor, I object. She can ask
12 the questions, but she doesn't have to carry on a
13 conversation with this witness.

14 THE COURT: Just make your proffer.

15 MRS. STEINER: All right.

16 Q. Miss Fleming, did you ever seek workers'
17 compensation benefits in connection with your back surgery?

18 A. No, ma'am.

19 Q. It's your testimony -- have you ever sought workers'
20 compensation benefits for any of your illnesses or injuries?

21 A. No, ma'am.

22 Q. Is it your testimony that you did not direct
23 Kilmichael Hospital and Kilmichael Clinic -- or strike that.
24 Is it your -- if Kilmichael Hospital or Kilmichael Clinic
25 records show that some lawyers defending an employer of yours
26 asked to get your records in connection with the workers'
27 compensation case, are you saying that you didn't file that
28 case that they have the record --

29 A. I don't even know what you are talking about. I

1 don't even know.

2 MRS. STEINER: Your Honor, one moment. I am
3 going to open Miss Lanelle's court file. There was a
4 return subpoena filed with Miss Lanelle on, on the moving
5 matters in front of it. And I'm extracting return
6 subpoenas on Kilmichael Hospital on Mary Jeanette
7 Fleming. They are in opened envelopes here. I am going
8 to ask the State to look at them before I show --

9 MR. EVANS: I don't care to look at something
10 that is just now being furnished to me. We have asked
11 for discovery in this case. The Court has compelled
12 discovery in this case. And for them to come in here now
13 trying to bring something on an irrelevant matter is far
14 from proper or ethical.

15 MRS. STEINER: Your Honor, this was a subpoena
16 that was returned in the court file. I had no idea she
17 would deny having --

18 THE COURT: Well, counsel, and you can proceed,
19 but I am going to -- I am going to, at least, tell you
20 for your own benefit that you are treading on very thin
21 water. And let me explain why. Because I presided over
22 a case in Tupelo where a lawyer had subpoenaed somebody's
23 medical records that, that did not have any involvement
24 in the case. And they ended up paying a substantial
25 judgment. The Court of Appeals first threw the case out.
26 And then it went back to trial and I was appointed. And
27 so I -- I'm just -- as I say, for your own benefit, I am
28 wanting to make that clear. But you can proceed now.

29 MRS. STEINER: Your Honor, these were returned

1 to the Court. These were not a private subpoena return.

2 THE COURT: Well, it is pretty much the same
3 type situation. But, as I say, I'm just -- I don't want
4 any counsel in front of me to expose himself to civil
5 liability without me at least possibly raising the issue.
6 And I am not sure that it would, but, you know, you can
7 proceed.

8 MRS. STEINER: Your Honor, in criminal cases
9 subpoenas duces tecum have to actually be returned to a
10 hearing. These were returned to, I believe, the 4th day
11 of June, and were filed.

12 One moment, Your Honor. I need to...

13 MR. EVANS: And for the record, Your Honor, I
14 would object to her acting in bad faith by purposely not
15 following the Court's order on discovery.

16 MRS. STEINER: Your Honor --

17 MR. EVANS: This is something that she has
18 subpoenaed. We were definitely entitled to know. If I
19 had done this, I would be run out of the courtroom.

20 MRS. STEINER: If the Court please, we filed a
21 request for subpoena. The subpoena was issued. And the
22 subpoena was returned. I, I don't even know --

23 I mean I'm sorry, Your Honor.

24 MR. EVANS: And I think by the rules to get a
25 subpoena duces tecum in a criminal case there is supposed
26 to be a hearing, which I was not invited to one.

27 MRS. STEINER: This was returnable to the 4th
28 day of June at 9:00 a.m. That was the state's date we
29 were --

1 THE COURT: This is outside the presence of the
2 jury. So I don't see any problem with any violation at
3 this point, because we are not doing this in the presence
4 of the jury.

5 MRS. STEINER: May I approach the witness?

6 THE COURT: You may.

7 Q. Miss Fleming, I'm going to hand you a document from
8 a law firm, Upshaw, Williams, Biggers, Beckham and Riddick.
9 And I'm going to ask you if you can tell me. It says it's
10 regarding Mary Fleming versus Mississippi Sportswear.

11 A. Oh, okay. I remember now. I'm sorry.

12 Q. Okay. Does that refresh your recollection?

13 A. Yes, ma'am.

14 Q. And sometime in June of 1998, you did have pending a
15 claim for workers' compensation.

16 A. Yes, ma'am.

17 Q. And you had filed that claim and you hired a lawyer
18 to help you get it, because you thought you were entitled to
19 it; is that correct?

20 A. Yes.

21 Q. And did you get it?

22 A. Yes, I got it.

23 Q. All right. And that was because you needed the
24 money because you were disabled from your back injury; is that
25 correct?

26 A. Yes.

27 MRS. STEINER: I have nothing further on this
28 proffer, Your Honor.

29 THE COURT: I assume, Mr. Evans, you don't have

Jury Out

1 any --

2 MR. EVANS: Nothing, Your Honor.

3 THE COURT: Well, again, I think whether she
4 drew workers' compensation benefits or not is irrelevant
5 to whether she saw Mr. Flowers down in the area of the
6 Tardy Furniture store on the date of this incident.

7 So it's a total collateral issue that is of no
8 evidentiary value at all. So, again, I will reiterate
9 that I will sustain the objection as to whether she
10 received workers' comp or ever filed any workers' comp
11 claim.

12 And is she finally excused?

13 MR. EVANS: Yes, sir.

14 MRS. STEINER: Yes, Your Honor.

15 THE COURT: Miss Fleming, you are free to go
16 now.

17 And since the jury has had a recess but we haven't,
18 we will take a few minute recess.

19 (A RECESS WAS TAKEN.)

20 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
21 DEFENDANT WERE PRESENT. PROCEEDINGS WERE AS FOLLOWS:)

22 MRS. STEINER: Your Honor, before the jury
23 comes back in, I would like to say that our designated
24 expert, Chief Robert Johnson, has arrived to observe the
25 testimony of some of the upcoming defense witnesses as an
26 expert. I think he is entitled to be excluded from the
27 rule and -- as part of forming his opinion, as we did say
28 he might use information adduced at trial and --

29 Chief Johnson, are you --

Jury Out

1 MR. CARTER: I think he went to the restroom.

2 MRS. STEINER: He is in the restroom. And we
3 would similarly, if Professor Mallory were to come here
4 and wanted to observe either Chief Johnson's testimony or
5 any of the other testimony for the Court, I think he
6 should properly also be excluded from the rule.

7 MR. EVANS: Your Honor, we are -- will prepare
8 a written motion if the Court would like, but I do move
9 in limine for him to be not -- his testimony not to be
10 allowed in this case.

11 There has never been a case where it has been
12 allowed that I'm aware of. And I think for them to
13 attempt to go into this would just be an attempt to try
14 to discredit witnesses or bolster testimony from --
15 testimony that they have already been able to elicit
16 stuff from. We do have some cases on this.

17 At some point it will be necessary to have a hearing
18 on whether or not this is a reliable field that can be
19 tested. But we can cover that whenever the Court would
20 like.

21 THE COURT: I mean I am not prepared to take
22 that motion up right now, because I don't even have such
23 a motion. You can file a written motion and brief it,
24 and I'll consider it at the appropriate time. But at
25 this time, I mean the expert -- my, my practice has
26 always been that an expert witness can sit and listen to
27 testimony as a basis for forming their opinion. And so
28 on that issue, I will grant your request that the rule
29 might be invoked as to this witness.

Jury Out

1 And if the State has an objection to this witness
2 testifying at some point in the future of this trial,
3 I'll take that up at that time.

4 MRS. STEINER: Your, Honor.

5 MR. EVANS: Yes, sir.

6 MRS. STEINER: This is Chief Johnson. He has
7 just come into the courtroom, so you could eyeball him
8 and know who he is when he is present.

9 THE COURT: I believe I recognize his picture.
10 I think I saw his picture in the paper before maybe. But
11 anyway, that is fine.

12 MR. CARTER: Additionally, Your Honor, I am
13 going to announce to the Court that I've thought about
14 it, thought about it. And at this point I am ready to
15 announce I don't need Patricia Snow anymore.

16 MRS. STEINER: Patricia Snow.

17 MR. CARTER: I'm sorry. Patricia Hallmon
18 Sullivan Odom, I think.

19 THE COURT: Okay.

20 MR. CARTER: And I can make a similar
21 announcement about Chief, Chief Hargrove and Sheriff
22 Thornburg, with the possible exception that I get
23 surprised and that the testimony of the other officers
24 turn out to be -- unless it turns out to be something
25 different than what they testified before, I don't need
26 them.

27 THE COURT: Okay. Would you advise -- I don't
28 know if former sheriff Thornburg is still -- I think the
29 other day he said he would be on standby if he is needed.

Jury Out

1 BAILIFF: He is here.

2 THE COURT: Well, you can tell him that he is
3 not needed anymore from the -- you know, that he is
4 excused and --

5 BAILIFF: Also, Chief Hargrove.

6 THE COURT: Chief Hargrove. And I think Miss
7 Odom was another one that was going to be waiting by
8 phone in case she was needed. And at some point I -- you
9 know, if the State has her phone number, you can contact
10 her and advise that she is not going to be needed
11 anymore.

12 MR. EVANS: Yes, sir.

13 THE COURT: So she doesn't have to stay, you
14 know, readily handy. And then --

15 MR. CARTER: Is there anyone else?

16 THE COURT: Catherine Snow. You still -- I
17 don't know.

18 MR. CARTER: What?

19 MRS. STEINER: Didn't we want to retain Miss
20 Snow pending the State resting?

21 MR. CARTER: Okay.

22 MRS. STEINER: One moment, Your Honor.

23 MR. CARTER: Yes, sir, Your Honor. Yes, sir.

24 THE COURT: Miss Snow was told -- I don't know
25 if she is at the courthouse. But she's certainly from
26 here in town and would be readily available if she was
27 needed. But thank you for doing what I requested and
28 just looking through your witness list to see if there
29 was any that might not be needed.

1 MR. CARTER: Yes, sir.

2 THE COURT: And you can bring the jury in.

3 BAILIFF: Okay.

4 (THE JURY RETURNED TO THE COURTROOM.)

5 THE COURT: Court will come back to order.

6 Who would be the State's next witness?

7 MR. EVANS: Doyle Simpson, Your Honor.

8 (THE WITNESS ENTERED THE COURTROOM.)

9 THE COURT: Come around, please. Raise your
10 right hand and take the oath.

11 (THE WITNESS APPROACHED THE BENCH.)

12 Do you solemnly swear or affirm that the testimony
13 you give in this case will be the truth, the whole truth
14 and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE COURT: Please come forward and have a
17 seat.

18 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

19 State your name for the record.

20 THE WITNESS: Doyle Simpson.

21 THE COURT: Mr. Simpson, you sound like you may
22 have a scratchy throat. But if you will, speak as loud
23 as you can. The ladies and gentlemen over here in the
24 jury box have to hear what you are saying. So when you
25 are responding to questions from both sides, please speak
26 as loud as you can.

27 Mr. Evans, you may proceed.

28 MR. EVANS: Thank you, Your Honor.

29 DOYLE SIMPSON, Called on behalf of the State, having been

1 duly sworn, was examined and testified as follows:

2 DIRECT EXAMINATION BY MR. EVANS:

3 Q. Mr. Simpson, if you will, kind of turn your chair
4 where you're facing the jury. I need you to speak loud so
5 that everybody can hear you.

6 Let us start over and try it.

7 State your name for the jury, please.

8 A. Doyle Simpson.

9 Q. Thank you. That is a little better.

10 I want to direct your attention back to the morning of
11 the murders at Tardy Furniture on July 16 of '96. Do you
12 remember that morning?

13 A. Yes, sir.

14 Q. Where were you living at that time?

15 A. Poorhouse Road.

16 Q. And where were you working?

17 A. Angelica.

18 Q. What was your job at Angelica?

19 A. I was janitor.

20 Q. Okay. How long had you been janitor there?

21 A. About three or four years.

22 Q. What hours did you work at that time?

23 A. 6:30 to 10:30.

24 Q. Did you work that day?

25 A. Yes, I did.

26 Q. What type of vehicle did you have?

27 A. Pontiac Phoenix.

28 Q. What time did you get to work that day?

29 A. 6:30.

1 Q. Did you have any type of weapon in your vehicle that
2 day?

3 A. I did.

4 Q. What was it?

5 A. .380 pistol.

6 Q. .380 pistol.

7 A. Yes, sir.

8 Q. Was it loaded?

9 A. Yes, it was.

10 Q. What was it loaded with?

11 A. Two different kind of cartridge.

12 Q. You say different. Were they different colored?

13 A. Different.

14 Q. Was that pistol an automatic or revolver?

15 A. Automatic.

16 Q. Where was it located when you went to work that
17 morning?

18 A. In my glove compartment.

19 Q. And that's in the glove compartment of that Pontiac
20 Phoenix.

21 A. Yes, sir.

22 Q. Where did you park your car that morning?

23 A. In the parking lot, front row --

24 Q. And -- I'm sorry. I think I interrupted you.

25 A. In the front row of the parking lot.

26 Q. All right. Did you have an occasion to go back out
27 to your car that morning?

28 A. Yes, I did.

29 Q. What was the first time that you walked back out to

1 your car?

2 A. About 9:20, 9:25. Something like that. No. Wait a
3 minute. About 9:15.

4 Q. Why did you walk out to your car at that time?

5 A. I was getting ready to go on break. I went out
6 there to get my breakfast.

7 THE COURT: Can you repeat that last answer? I
8 couldn't understand you, and I was sitting closer than
9 the jury. Would you repeat what you just said?

10 THE WITNESS: I went out there to get
11 breakfast.

12 THE COURT: Okay.

13 Q. All right. You say you were on your break.

14 A. Fixing to go on my break.

15 Q. Did you have your breakfast in the vehicle?

16 A. Yes, sir, I did.

17 Q. Did you notice anything about your car at that time?

18 A. No, I did not.

19 Q. What was the next time that you went out to the
20 vehicle?

21 A. When I got ready to -- about ten-something. Ten --
22 about 10:25. Something like that.

23 Q. Why did you go out to your vehicle at that time?

24 A. To let the windows down.

25 Q. And why did you do that?

26 A. Because it was hot that day.

27 Q. Did you notice anything about your vehicle at that
28 time?

29 A. No, I did not.

1 Q. Did you have an occasion to, to go to pick up
2 anything on a regular basis for people at Angelica?

3 A. Yes, I did.

4 Q. Tell the ladies and gentlemen of the jury about
5 that. Just explain that to us.

6 A. Oh, I go around every morning, get -- to get money
7 to go pick up lunch for different, different ones.

8 Q. All right. You would go pick up lunches for
9 different people.

10 A. Yes, sir.

11 Q. Did you do that on that morning?

12 A. Yes, I did.

13 Q. Do you know about how many different lunches you
14 were to pick up that morning?

15 A. Just about -- I guess about five or six, I guess.

16 Q. Okay. And what time did you go to pick up the
17 lunches?

18 A. After, after I got off.

19 Q. What time was that?

20 A. I left about something-to-11.

21 Q. Something-to-11.

22 A. Yes, sir.

23 Q. And where did you go to pick up the lunch?

24 A. I went to chicken place right there on 407. And I
25 went to City Cafe on 51.

26 Q. When you got in your car something-to-11 to go pick
27 up the lunches for the ladies at Angelica, did you notice
28 anything at that time?

29 A. Yes, I did.

1 Q. What did you notice?

2 A. After I got in the car, my door kind of hard to
3 shut. When I close the door, the pocket fell open.

4 Q. All right. You say the pocket fell open when you
5 closed the door. What pocket are you referring to?

6 A. That's the one the gun was in.

7 Q. Is that the glove compartment?

8 A. Glove compartment. Right.

9 Q. Was that usual?

10 A. No, sir.

11 Q. Glove compartment had some problem with it.

12 A. No, sir. It wasn't -- nothing wrong with it.

13 Q. Nothing wrong it.

14 A. No, sir.

15 Q. When you went in to work that morning, was that
16 glove compartment locked or unlocked?

17 A. It was locked.

18 Q. When you shut the door, it fell open.

19 A. Yes, sir.

20 Q. What did you notice when the glove compartment fell
21 open?

22 A. I noticed somebody been in it.

23 Q. How did you know somebody had been in it?

24 A. Because it had been broke into.

25 Q. Was anything missing?

26 A. The gun was.

27 Q. Did you report that gun missing?

28 A. Yes, I did.

29 Q. When did you report it missing?

1 A. I went back in there and told the plant manager
2 somebody had broke in my car and stole my gun.

3 Q. Did you know a person at that time named Curtis
4 Flowers?

5 A. Yes, I did.

6 Q. How did you know him?

7 A. We used to run. We used to hang out together.

8 Q. How long had you known him?

9 A. For a while.

10 Q. Give me some kind of idea. Are we talking about
11 years?

12 A. Yeah, years. Well, I always called him my nephew
13 anyway.

14 Q. You call him your nephew.

15 A. Yes, I did.

16 Q. Why was that?

17 A. Because his uncle is, is my brothers.

18 Q. So you had known him pretty much forever.

19 A. Yes, sir. Yes, sir.

20 Q. Did he know that you had this pistol?

21 A. Yes, he did.

22 Q. Had he seen it in your car before?

23 A. Yes, sir.

24 Q. Who is Emmitt? Who is Emmitt Simpson?

25 A. That's my brother.

26 Q. And did you have an occasion to ask him if he had
27 seen anybody around your car?

28 A. Yeah. I asked him and then two more guys next door.

29 Q. Do you remember who all you talked to at Angelica

1 that morning about your gun being stolen?

2 A. I didn't talk to nobody but the plant manager.

3 Q. And who is that?

4 A. Her name is Dot Rivers. (Phonetic) Something like
5 that?

6 MRS. STEINER: I can't --

7 THE COURT: Can you speak up a little louder?

8 MR. CARTER: I can't hear him.

9 THE WITNESS: Plant manager. I talked to the
10 plant manager. That is the only one I talked to that day
11 about the gun.

12 Q. When, when did you first talk to any law enforcement
13 officers about your gun being stolen?

14 A. Well, I didn't -- when I got back with the lunch,
15 Officer Thornburg was down there.

16 Q. Okay. Had you said anything at any one of the
17 places that you picked up lunches about the gun being stolen?

18 A. No, sir.

19 Q. When you first gave the officers a statement about
20 the gun being stolen, did you tell them the truth about where
21 you had gotten it from?

22 A. No, I did not.

23 Q. Where did you originally tell them you got it from?

24 A. I said I got it from my brother.

25 Q. Was that true?

26 A. No, sir.

27 Q. Why did you tell them that you got it from your
28 brother?

29 A. Only because of Curtis.

1 Q. Because of Curtis?

2 A. Yes, sir.

3 Q. Explain that to the ladies and gentlemen of the
4 jury.

5 A. I told them, because Curtis was my nephew, and that
6 is why I lied about the gun.

7 Q. And why was it necessary to lie about the gun
8 because Curtis was your nephew? What had you figured out by
9 the time you talked to the officers?

10 A. I figured -- well, I didn't really know the people
11 dead till after I -- you know, later on that day I found out
12 the people dead. They asked me about did I give Curtis the
13 gun. I said no, I did not.

14 Q. Okay. Did you know anything about Curtis having any
15 problems with Tardy Furniture?

16 A. I had heard about it.

17 Q. All right.

18 MRS. STEINER: I'm going to object to hearsay
19 on anything --

20 MR. EVANS: I am not asking what he heard.

21 THE COURT: Well, I will sustain. I mean he --

22 MRS. STEINER: He has no firsthand knowledge
23 also.

24 THE COURT: Well, I agree. And I mean, I guess
25 that is a pre-objection, but it is sustained that he
26 can't talk about what he might have heard.

27 MRS. STEINER: I would also object to his even
28 being inquired, having said that he has no firsthand
29 knowledge about any of this information.

1 MR. EVANS: Your Honor, I'm getting to why he
2 did what he did. I think it is relevant.

3 THE COURT: You can do that, but he can't talk
4 about, you know, what he might have heard --

5 MR. EVANS: I am not going to ask about what he
6 heard.

7 THE COURT: -- or hearsay.

8 Q. Based upon what you had heard and knowing that the
9 gun was missing and that there had been murders at Tardy
10 Furniture, what thoughts were going through your mind at that
11 time?

12 MRS. STEINER: I'm going to object to his
13 thoughts, his speculations. It's entirely speculative.
14 If there is some conduct he undertook --

15 MR. EVANS: It is not speculative if it's his
16 thoughts.

17 MRS. STEINER: May I finish my objection?

18 THE COURT: You may.

19 MRS. STEINER: If there is a conduct or action
20 he took with respect to information he gained, I think
21 that is relevant. An open question about what were you
22 thinking at the time is irrelevant and speculative.

23 THE COURT: I'll sustain. I don't think his
24 mental impression about -- you know, I don't think a
25 mental impression based on -- it's speculative at this
26 point.

27 Q. All right. You are saying that you lied to the
28 officers about where the gun came from to protect Curtis.

29 A. Yes, sir.

1 Q. Was that because of what you were thinking at that
2 time?

3 A. Yes, sir.

4 MR. EVANS: I'll just end it at that part, Your
5 Honor, and not go into his thoughts.

6 THE COURT: That's fine.

7 Q. What, if any, effort did you ever make to assist the
8 officers in determining if your gun was the murder weapon?

9 A. Repeat that, sir.

10 Q. Did you ever take the officers anywhere?

11 A. Yes, sir, I did.

12 Q. Where did you take them?

13 A. To, to my mom's house.

14 Q. And why did you take the officers to your mother's
15 house?

16 A. They wanted, wanted to dig some bullets where we
17 target practice at.

18 Q. What had you shot into? What had you been target
19 practicing with at that house?

20 A. That, that where we used to hang hogs at, had a big
21 tree out there, big poles out there.

22 Q. You were shooting at a big pole.

23 A. Yes, sir.

24 Q. What weapon were you shooting at that post?

25 A. With that .380.

26 Q. All right. What officer did you first take out to
27 where that post was?

28 A. Officer Thornburg. State Trooper James, James
29 Taylor. And I think --

1 MRS. STEINER: What was that last name, the
2 state trooper?

3 THE WITNESS: James Taylor.

4 THE COURT: Taylor.

5 A. And I think Officer Jack Matthews, I think. I think
6 it is Jack, Jack Matthews.

7 Q. The gun that was stolen out of your car, had you
8 shot it into that post?

9 A. Yes, sir.

10 Q. Did you see the officers do anything in reference to
11 that post?

12 A. Dug some cartridge out.

13 Q. You saw them do that?

14 A. Yes, sir.

15 Q. Did you know who the defendant's girlfriend was at
16 the time of the murders?

17 A. I think Connie Moore.

18 Q. Do you see the person in the courtroom here today
19 that you've described as your uncle, that you've been talking
20 about knowing the gun was in your car?

21 A. Do I see what now?

22 Q. Do you see that person in the courtroom today that
23 you've described as Curtis Flowers?

24 A. Yes, sir.

25 Q. Would you point to him and identify him, please?

26 A. Right there.

27 MR. EVANS: May the record reflect that he has
28 identified the defendant in this cause?

29 THE COURT: I'll let it so reflect.

1 MR. EVANS: One moment, Your Honor.

2 Tender the witness.

3 MRS. STEINER: Excuse me, Your Honor.

4 CROSS-EXAMINATION BY MRS. STEINER:

5 Q. Good morning, Mr. Simpson.

6 A. Good morning.

7 Q. Mr. Simpson, I believe your testimony on direct was
8 that you worked only part-time. You were the janitor and
9 clean-up person at the store, is that correct, at Angelica?
10 Is that correct?

11 A. Yes. I had two jobs at the time.

12 Q. Right. At Angelica you only worked in the mornings.

13 A. Right. With the school house in the evening.

14 Q. Say again.

15 A. I worked at school in the evening.

16 Q. Okay. That's the Winona High School.

17 A. Vo-tech.

18 Q. Vo-tech. All right. And at Angelica you came in
19 well before the rest of the workers, didn't you? You came in
20 around 5:00 or 6:00?

21 A. 6:30.

22 Q. 6:30. And the other workers didn't come until 7:00;
23 is that correct?

24 A. It was two of us came in early.

25 Q. All right. And you both do clean-up work.

26 A. No, I did. I was the only janitor.

27 Q. All right. And what did the other person who came
28 in --

29 A. He is -- he is machine worker.

1 Q. He is the man who maintains the machines.

2 A. Works on the sewing machines.

3 Q. And his job was to make sure that each of the sewing
4 machines could operate the minute the worker that operated
5 them got there; is that correct?

6 A. Womens.

7 Q. And he might have a list of machines that people had
8 complained about the day before that he had to get in shape.

9 A. Yes, sir. Yes, ma'am.

10 Q. And if a machine broke down, he would have to --
11 while the worker was working on it that morning, he would have
12 to go tend to it and get it fixed so she could go back to
13 work; is that right?

14 A. Yes. Correct. Yes, ma'am.

15 Q. All right. And you, you didn't have to fix the
16 machines; is that right?

17 A. No, ma'am.

18 Q. Your job was you would go from throughout the plant
19 wherever the machine was working. And among other things, if
20 somebody's scrap basket was full, you would take that and dump
21 it so she could keep putting scraps in there.

22 A. Yes, ma'am.

23 Q. And you had to put that in -- did you have a rolling
24 cart?

25 A. I had a... (Nodded.)

26 Q. All right. You would dump her scraps. You would
27 dump all the scraps that you could find.

28 A. Well --

29 Q. Basically make a cycle.

1 A. Every machine -- every machine in the plant.

2 Q. Right. And so, you know, you might be on one end of
3 the plant when the person doing the machine maintenance is on
4 the other end of the plant; is that correct?

5 A. That's correct.

6 Q. And then I take it you had to take that scrap. Your
7 -- did you have to dump that out during the course of the day?

8 A. Before -- I dump it out after I fill the basket.
9 After I fill the can up, I take it out back and dump it.

10 Q. So you go outside to dump the scraps.

11 A. Out, out back. Well, I don't -- it's from about
12 here to you.

13 Q. Say again.

14 A. The garbage about from here, big dumpster.

15 Q. All right. But you go out the door of the plant.

16 A. Right.

17 Q. Is it a cloth bag you put your scraps in and lift it
18 up and dump it out or did you -- how did you get it in the
19 dumpster?

20 A. I just rolled the can up there and flip it over.

21 Q. Okay. So the dumpster was down lower than you were.

22 A. Yes. Well, well, it was higher. I had a ramp to go
23 up on.

24 Q. Oh.

25 A. Up on a ramp.

26 Q. So you got -- you didn't have to -- sometimes when
27 you put things in dumpsters, you have to kind of throw them
28 over your head. You didn't have to do that. You got up a
29 ramp and just dumped it.

1 A. Yes, ma'am.

2 Q. And you would have to look and make sure it all got
3 in there.

4 A. Yes, ma'am.

5 Q. And you would not be inside the building when that
6 was happening.

7 A. No, ma'am.

8 Q. All right. And I take it that the reason you came
9 in at 6:30 was so you could -- for people who put scraps in
10 their basket --

11 A. Not --

12 Q. -- after you left the day before, so you could dump
13 those before you came in.

14 A. No, I came -- I came in to sweep before they get
15 there.

16 Q. Okay. So you also swept.

17 A. Swept the floor too.

18 Q. And I take it in a sewing factory part of the reason
19 you are there is because it's not safe to have a lot of scraps
20 of cloth and threads and everything on the floor.

21 A. Right.

22 Q. People could slip on them. Your job is to make sure
23 the scraps get dumped so that they don't overflow, so they
24 don't get on the floor. And even during the day you would
25 sweep if somebody dropped a bunch of threads and stuff down on
26 the floor; correct?

27 A. No, ma'am.

28 Q. Oh, you would only sweep in the morning.

29 A. Yes, ma'am.

1 Q. It kept you busy just collecting all the scraps.

2 A. Yes, ma'am.

3 Q. So basically, you were free. Nobody -- it would not
4 be unusual -- no one would think it unusual if you just walked
5 out the door if you were pushing your scraps.

6 A. I had to let the door up.

7 Q. Right.

8 A. Then go dump. Come back. Let the door back down.

9 Q. Right. But everybody that worked near that door was
10 accustomed to you going in and out that door.

11 A. Yeah. The most -- the mechanic seen me.

12 Q. Right.

13 A. Most of the mechanics.

14 Q. When he was at that end.

15 A. Well, there are three mechanics.

16 Q. When they were -- if you happened to go out the door
17 when they were working on a machine on that end, they would
18 see you go.

19 A. Everybody. Everybody see me when I go out the door.

20 Q. Okay. And they wouldn't think it unusual?

21 A. No. That is something -- that is something I did
22 every morning.

23 Q. Okay. You did that. And you probably did it a
24 couple of times during the course of your shift.

25 A. Yeah. After the -- when I fill it up, I go dump. I
26 fill it up, I go dump.

27 Q. Four or five times during the course of your shift
28 at least.

29 A. Yes, ma'am.

1 Q. Okay. So and that morning was no different. You
2 had been in and out of --

3 A. No.

4 Q. -- there four or five times that morning. And I
5 think you testified that in addition to going in and out of
6 the plant when you needed to dump your scraps, you also went
7 out that morning at 9:20.

8 A. 9:15. Something like that.

9 Q. 9:15. Your breakfast was in the car; is that right?

10 A. Right.

11 Q. You opened the car door, sat in the car, sat down,
12 ate your breakfast in the car.

13 A. No, ma'am. I came back in the plant.

14 Q. Okay. But you had to open the car door to get your
15 breakfast out.

16 A. Yes, ma'am. Open the door. Went back in the plant.

17 Q. All right. And you closed the door at that time.

18 A. Yes, ma'am.

19 Q. And then I believe you said you came out a little
20 after 10:00.

21 A. Yes, ma'am.

22 Q. And at that time -- well, now the passenger side
23 door didn't open at all, did it? It was broken.

24 A. No. Both sides open.

25 Q. Okay. So you opened -- but you went in the driver's
26 side both times.

27 A. I went in the driver's side.

28 Q. So when you came out at 10:30, you opened the car
29 door and shut it again.

1 A. No. When I went out that time, I opened it to let
2 my window down.

3 Q. All right.

4 A. I let my window down, then I went back in the plant.

5 Q. All right. So you had to open the door --

6 A. Oh, yeah. I had to open --

7 Q. -- to let the window down.

8 A. I had power windows.

9 Q. And after you -- so you put the key in the car --

10 A. Switch.

11 Q. -- to turn it on.

12 A. Turn it on.

13 Q. So could you let the window down?

14 A. Windows down. That's right.

15 Q. And then you -- when you came back to go inside, did
16 you leave the car running or did you --

17 A. No, ma'am.

18 Q. You took the key out.

19 A. Took the key out.

20 Q. After you put the window down.

21 A. Yes, ma'am.

22 Q. You closed the door and went back inside.

23 A. Right.

24 Q. And you started taking -- had you punched out by
25 then?

26 A. No. I punched out -- I punched out after I start
27 taking up money.

28 Q. All right. So you started -- so you actually
29 started taking up money before you punched out.

1 A. Let me see. Before -- let me see. I took money
2 after I punched out.

3 Q. Okay. And you did pretty much every day.

4 A. Every day.

5 Q. Is that correct?

6 A. Right. Right.

7 Q. And you did that for anybody in the plant who maybe
8 wanted to stay behind and eat in the break room instead of
9 having to go out and buy their own lunch.

10 A. They wanted something hot.

11 Q. If they wanted something hot.

12 A. Yes, ma'am.

13 Q. Is that place called Fuzzy's Fried Chicken that you
14 went to?

15 A. Yes, ma'am.

16 Q. And the City Cafe.

17 A. Yes, ma'am.

18 Q. And how many orders did you take that day?

19 A. About six or seven, I guess.

20 Q. Six or seven. And you collect the money.

21 A. Yes, ma'am.

22 Q. And then you'd bring it back. Even though you
23 weren't being paid by the company. You were off the clock.

24 A. Yes, ma'am.

25 Q. You were doing this as a favor to these other folks.

26 A. Yes, ma'am.

27 Q. And did they pay you for this? Did you get tips for
28 this?

29 A. Get gas money.

1 Q. You would get gas money.

2 A. Yes, ma'am.

3 Q. And about how far would you drive on each of these
4 trips? About how far is it from --

5 A. About, I guess about 10 minutes. Ten. Ten.

6 Q. Ten.

7 A. Five minutes down there and about five minutes up
8 the road.

9 Q. And how much gas money would you collect in a week
10 for picking up these lunches?

11 A. Sometimes get nothing. Sometimes -- it would depend
12 -- it would depend on somebody want to give me something.

13 Q. Okay.

14 A. That's all.

15 Q. Okay. But you would certainly, if somebody said
16 here's a couple of bucks for your gas, you would take it.

17 A. Yes, ma'am.

18 Q. And if they said here's couple of bucks, because I
19 am just happy I don't have to collect my own money and take it
20 -- my own food, hot food, you would take it; is that correct?

21 A. Say that again.

22 Q. If somebody said listen, I know this is more than
23 you would spend for gas, but I'm grateful, I'm going to give
24 you a tip for collecting my food all the time.

25 A. Oh, yeah.

26 Q. And you would get tips from people for that too.

27 A. Sometimes. Sometimes I did. Sometimes I didn't.

28 Q. All right. And some people just -- if they didn't
29 have the money to give you a tip, they would still -- they

1 would help you out on your job. It's a scratch my back, you
2 scratch yours situation.

3 A. Something like that.

4 Q. All right. Now, I believe that your testimony was
5 that as soon as you came back from collecting all the lunches,
6 before you were even allowed to give the lunches out, the
7 officer, you talked with the officers; is that correct?

8 A. I did that when I came back. Yes, ma'am.

9 Q. So other than the plant manager, who you told
10 beforehand, you didn't talk to anybody about your gun being
11 stolen or anything like that before you talked to the -- was
12 it Officer Thornburg who was there?

13 A. I, I, I didn't even call the police myself.

14 Q. I know you didn't.

15 A. Yes, ma'am.

16 Q. But they were waiting there --

17 A. I think the plant manager --

18 Q. -- when you got back.

19 A. Yes, ma'am.

20 Q. If your recollection differs, it's free -- Officer
21 Thornburg recalls that he was one of the officers there that
22 talked to you.

23 A. I think he was the only one at the time.

24 Q. Right. Was James Taylor Williams there when they
25 talked to you --

26 A. Let me see.

27 Q. -- that morning?

28 A. I can't remember. I can't remember.

29 Q. Okay. If you testified in a prior proceeding here

1 in Winona back in around 2003 that the officer who you met
2 there was Mr. Thornburg, would you dispute that?

3 A. At the plant?

4 Q. Yeah.

5 A. That was Officer Thornburg.

6 Q. Okay. So you agree it was Officer Thornburg?

7 A. Yes, ma'am.

8 MR. EVANS: Your Honor, I think he has already
9 testified twice to that fact.

10 Q. All right. And do you also agree that at the point
11 at which you had the conversation with Officer Thornburg
12 you -- and reported the gun missing, you didn't have any
13 reason to suspect Curtis of being involved at all; is that
14 correct?

15 A. At that time, right.

16 Q. So the first time -- and you told the lie to Officer
17 Thornburg that first time you spoke to him about where you got
18 it from, didn't you?

19 A. Say that...

20 Q. You told the ladies and gentlemen of the jury here
21 that you lied --

22 A. Oh, yeah.

23 Q. -- when Officer Thornburg --

24 A. Where I got the gun.

25 Q. At that time you lied and said you had gotten that
26 gun from your brother down in Louisiana at that time.

27 A. Right. Yes, ma'am, I did.

28 Q. And that was a lie.

29 A. I did lie.

1 Q. You had gotten that from a local man up there in
2 Winona --

3 A. Yes, ma'am.

4 Q. -- named Ike Williams; right?

5 A. Yes, ma'am.

6 Q. And that was before you had ever talked to Catherine
7 Snow or anybody else about --

8 A. Right.

9 Q. -- your gun being missing.

10 A. (Nodded.)

11 Q. Now, you kept up that lie about -- well, let me ask
12 you this. You said you've got a kinship to Curtis. As I
13 understand it, your daddy at one point was married to his
14 mother; is that correct?

15 A. Married to his grand momma.

16 Q. His grandmother. Excuse me.

17 A. Curtis grandmother.

18 Q. You are no blood kin to Curtis.

19 A. Well, I guess -- well, they always call me uncle
20 anyway.

21 Q. But you are not the -- you are a step uncle. You
22 are not blood kin to him.

23 A. Yeah. Half brothers.

24 Q. The Campbells who are your brothers are your half
25 brothers.

26 A. Right.

27 Q. But you're no blood kin to Curtis. It's just a step
28 relationship.

29 A. Yeah. Well, he always call me uncle.

1 Q. I have three step-brothers and I love -- you know, I
2 don't make any distinction between my blood brothers
3 emotionally. But I don't have that -- but you are not related
4 to him by blood. It is by marriage and being part of the
5 family by marriage; is that correct?

6 A. Right.

7 Q. Now, it's your testimony that you never told anybody
8 up at either of these cafes that your gun had been stolen,
9 either at Fuzzy's or at City Cafe.

10 A. No. No. Not of my knowledge.

11 Q. Say again.

12 A. Not of my knowledge.

13 Q. I am so sorry. I can't --

14 A. Not to my knowledge. I can't remember. No, ma'am.

15 Q. All right. Would you like some water? Would you be
16 able to talk a little louder if maybe one of the deputies got
17 you a bottle of water?

18 A. Well, well, my throat, it stays dry, because I got
19 shot.

20 Q. Might it be better if you, at least -- I see -- we
21 have all been drinking water. His Honor is drinking water.
22 There is no reason why you shouldn't.

23 (THE WITNESS WAS HANDED A BOTTLE OF WATER.)

24 Do you want to take a drink of water?

25 A. I'm ready. I'm ready.

26 Q. Okay. Now, did you return to work that week at all
27 after you clocked out that day?

28 A. Yes, ma'am.

29 Q. All right. You didn't get put on suspension for

1 some reason?

2 A. Yes, I did.

3 Q. All right. Now, why were you suspended?

4 A. Because I had -- I had the gun in the parking lot.
5 Because I had brought a gun to the plant.

6 Q. Okay.

7 A. I got three days suspension.

8 Q. All right. So you weren't even at work to talk to
9 anybody. From the minute you had been questioned by police
10 that they -- you checked out, I'm suspending you for three
11 days. You hadn't talked to anybody --

12 A. I went back to work. I worked the rest of that
13 week.

14 Q. Oh, okay. Then you were suspended after.

15 A. That Monday, Tuesday, Wednesday that next week.

16 Q. Okay. All right. Now, you already owned a gun,
17 didn't you, --

18 A. (Shook head.)

19 Q. -- at the time you bought this gun --

20 A. No.

21 Q. -- from Ike Williams?

22 A. No, I did not.

23 Q. This was the only gun you owned.

24 A. Yes, ma'am.

25 Q. Now, you stated, I think, that Curtis Flowers knew
26 you owned a gun; is that correct?

27 A. Yes.

28 Q. But, in fact, you don't know any -- but you didn't
29 always keep that gun in that glove pocket; is that right?

1 A. That's right.

2 Q. Because, in fact, as you heard when you are
3 suspended, it was illegal to bring a gun into the parking lot
4 at Angelica or that was --

5 A. And plus, I worked at the school too.

6 Q. Plus, you worked at the school. And you weren't
7 supposed to have a gun at the school either; right?

8 A. Right.

9 Q. And so it would have been very unusual, excuse me,
10 for you to have actually had a gun in your car parked at
11 either of your work places.

12 A. Right.

13 Q. And I believe you agreed in -- when you were
14 testifying at a prior proceeding down in Harrison County that
15 there is no way that Curtis Flowers could have known the gun
16 was in the car that particular morning. Did you agree to that
17 when you were asked that?

18 A. I can't recall that.

19 Q. Okay. You did testify in a prior proceeding in this
20 matter in Harrison County; is that correct?

21 A. Yes.

22 MRS. STEINER: May I approach the witness, Your
23 Honor?

24 THE COURT: You may.

25 Q. Mr. Simpson, in that proceeding -- I'm going to hand
26 you a piece of paper. Do you read and write?

27 A. Yeah.

28 Q. Well enough. You can read this to yourself. I'm
29 going to ask you to start reading at Line 20 and --

1 Forgive me, Your Honor. I, I misspoke. This is from the
2 proceeding in Tupelo.

3 I don't want to put words in your mouth. This is from
4 the proceeding in Tupelo. The person asking the questions is
5 Mr. Gilmore.

6 Do you have any objection? I mean I'm just showing it to
7 him.

8 MR. EVANS: I don't have any objection to you
9 showing it to him, asking him about it.

10 Q. All right. Now, this was actually in Tupelo, back
11 in 1998, within about a year and a half of when this happened.
12 Do you recall testifying in a proceeding in Tupelo?

13 A. Yes, ma'am.

14 Q. Did you ride up on the bus with the other witnesses
15 to that proceeding, or did you get there on your own?

16 A. No, I rode with Mr. Thornburg.

17 Q. Mr. Thornburg drove you up there. Now, I'm going to
18 show you this page. I'm going to ask you to look at the top.
19 Is that your name at the top? Doyle Simpson.

20 A. That's it.

21 Q. Okay. So you don't disagree that if -- there is a
22 court reporter taking down what you are saying here.

23 A. I know.

24 Q. And when you were there up in Tupelo, she was also
25 taking down what -- there was someone taking down what you
26 were saying.

27 A. I think. I guess so. Yes, ma'am.

28 Q. All right. Anyway, you've identified this as your
29 testimony. Would you please read for the ladies and gentlemen

1 of the jury, Lines 21 --

2 MR. EVANS: Your Honor, that is not proper.

3 MRS. STEINER: I'm sorry. Forgive me.

4 MR. EVANS: We can't guy through the testimony
5 of all the prior transcripts. She can ask him if he
6 remembers saying that.

7 MRS. STEINER: Sorry. Thank you. I will
8 rephrase.

9 Q. Your testimony was you did not recall agreeing and
10 saying there was no way that Curtis Flowers would have known
11 that gun was in the car that particular morning.

12 A. No. He, he didn't know it.

13 Q. He did not know it.

14 A. He did not know it.

15 Q. Okay. There was -- okay. You now remembered that
16 that was the case.

17 A. Yea, I knew it.

18 MRS. STEINER: One moment, Your Honor.

19 Q. Now, some time after you had told the police about
20 the lie about where that gun came from, is that correct, you
21 then talked to Catherine Snow about somebody she had seen --

22 A. Seen.

23 Q. -- at your car?

24 A. I think the next day or the next day. It might have
25 been the next day or the next day after. I can't recall.

26 Q. Okay. After you first told Mr. Thornburg the lie
27 about where you got the gun.

28 A. Yes.

29 Q. Okay. Now, at that time did Miss Snow tell you that

1 the person she had seen at your car was wearing a cap?

2 A. Yes, she did.

3 Q. At that time did she tell you the person standing at
4 your car was -- well, was about 5'6"?

5 A. She described -- she described something like that.
6 I can't remember.

7 Q. 6'5". 5'6".

8 A. No. She didn't say 6'5". She said kind of short
9 like. She said they was short.

10 Q. Now, do you know how tall your nephew is? He is
11 about 5'10", isn't he?

12 A. Yeah. I guess so. I don't know.

13 Q. All right.

14 MRS. STEINER: One moment, Your Honor.

15 Your Honor, I would like to approach and ask the
16 witness. I didn't hear something. I don't want to ask
17 him, introduce this line of inquiry in front of the jury.
18 But I would like to have him respond to the question
19 either from the Court or else at the bench so I, I don't
20 want to ask --

21 MR. EVANS: I think everybody needs to hear the
22 questions and answers.

23 THE COURT: Step in the jury room for a minute.
24 I am not sure what is being requested, but it needs to
25 be, apparently, out of your presence. So if you will,
26 step back in there.

27 (THE JURY LEFT THE COURTROOM.)

28 THE COURT: Proceed.

29 Q. Mr. Simpson, I -- remember when I asked to give you

1 water. It's because I wasn't hearing everything you were
2 saying. Did you say something about you had ever been shot?

3 A. Excuse me.

4 Q. Did you say something when the ladies and gentlemen
5 of the jury were in the room that you had personally been shot
6 at one time?

7 A. Yes, I have.

8 Q. But did you say that while in response to any of my
9 questions --

10 A. No, ma'am.

11 Q. -- so far?

12 MRS. STEINER: All right. Your Honor, that is
13 all I have out of the presence of the jury.

14 THE COURT: You can tell them to come back in.
15 (THE JURY RETURNED TO THE COURTROOM.)

16 You may continue.

17 MRS. STEINER: All right.

18 Q. Now, this lie you told to the police about where you
19 had gotten this gun that you -- this lie about getting it from
20 somebody in your family, it was several weeks before you
21 admitted to them that that was a lie; is that correct?

22 A. Yes.

23 Q. They had actually already sent a police officer over
24 to talk to your brother and found out he didn't ever remember
25 selling you a gun; is that right?

26 A. Say that again.

27 Q. They had actually already sent a New Orleans or St.
28 Rose, a Louisiana police officer over to talk to Mr. Campbell,
29 your brother --

1 A. Um-hum.

2 Q. -- and learned he had never sold you that gun; is
3 that right?

4 A. I don't know. I don't know.

5 Q. They confronted you with that though.

6 A. No, they didn't confront me with nothing.

7 Q. Okay. But it was several weeks -- well, let me ask
8 you this. Do you recall having a conversation with the police
9 where they made a recording of what you were saying to them?

10 A. They didn't -- they didn't tell me that neither.

11 Q. Okay.

12 A. They did not tell me that.

13 Q. All right. Did you have a conversation with John
14 Johnson and Mr. Jack Matthews on or about August 14, 1996?

15 A. (No response.)

16 Q. About a month after this happened.

17 A. I can't recall.

18 Q. All right. And at that time did they confront you
19 with the fact that they knew you hadn't gotten that gun from
20 your brother?

21 A. Oh, yeah. Yes, ma'am.

22 Q. That's pretty much when you came clean about where
23 that gun really came from.

24 A. Yes, ma'am.

25 Q. Right here in Winona.

26 A. Yes, ma'am.

27 Q. Is that correct?

28 A. Yes, ma'am.

29 Q. In fact, you got so upset with them for even

1 pressing you about that that you really got kind of angry and
2 told them you didn't want to talk to them anymore; is that
3 right?

4 A. I can't recall. I can't remember that.

5 Q. All right. They'd have to tell whether they thought
6 you --

7 A. Yes, ma'am.

8 Q. -- got nervous or angry or whatever in that
9 interview.

10 MR. EVANS: Object to that, Your Honor. It is
11 improper.

12 THE COURT: I mean, he would be speculating
13 totally as to that. So I will sustain the objection.

14 Q. Okay. Now, at the time you reported -- you spoke to
15 Officer Thornburg about the gun, did you know that people had
16 been killed at Tardy Furniture?

17 A. No, ma'am.

18 Q. All right. It hadn't been on the street when you
19 were there at Fuzzy's or at --

20 A. (Shook head.)

21 Q. -- or at the cafe?

22 A. No, ma'am. Nobody ever told, told me about it.

23 Q. You deny that you told -- you learned about this up
24 at Fuzzy's or City Cafe.

25 A. I didn't know.

26 Q. About the shootings.

27 A. No, ma'am. I didn't know either one of them places.

28 Q. And you deny you told anybody up there after you
29 learned about that --

1 A. Well --

2 Q. -- your gun had been stolen?

3 A. When I found out the people was dead, that is after
4 I had came back from lunch.

5 Q. It was after you came back from lunch.

6 A. After I brought the lunch back. After I brought the
7 lunch back, that is when I found out there had been killing.

8 Q. All right. And I believe your testimony here today
9 is that the time you first told the lie about where the gun
10 was, you didn't even know Curtis was a suspect in this matter;
11 is that correct?

12 A. That's correct.

13 Q. And that there was no way Curtis could have known
14 that you would have had that gun in your car this morning; is
15 that also correct?

16 A. Yes.

17 Q. That morning.

18 A. That's correct.

19 Q. Thank you.

20 MRS. STEINER: That's all I have, Your Honor.

21 REDIRECT EXAMINATION BY MR. EVANS:

22 Q. You were asked in that trial whether or not there
23 was any way he knew the gun was in there that morning and your
24 answer was that it wasn't; is that right?

25 A. That's right.

26 Q. But you were also asked how Curtis knew you kept a
27 gun in your car, I believe. How did Curtis know you had had a
28 gun in your car? Had he seen it in there before?

29 A. Yes, sir, he had.

1 Q. Who told you it was Curtis standing by your car?

2 A. Catherine Snow.

3 Q. You were asked about leaving the plant. Did you
4 ever leave the plant from the time you got there that morning
5 until you got off work?

6 A. No, sir, I did not.

7 Q. Other than going to the dumpster and to your car,
8 did you go anywhere else that morning until you got off of
9 work?

10 A. No, sir, I did not.

11 Q. And the dumpster is located where?

12 A. In the back.

13 Q. And how far away from the door?

14 A. About from here to me and you. (Indicated.)

15 Q. Okay. And how did you open that door?

16 A. It was pull up, pull down door.

17 Q. Big bay door.

18 A. Sir.

19 Q. Big bay door.

20 A. Yes, sir.

21 Q. Could the people working in there see you at the
22 dumpster?

23 A. Oh, yes, sir.

24 Q. And how many people could see you when you walked
25 out there and dumped your stuff and came back in?

26 A. Probably half of -- quarter of the plant.

27 MR. CARTER: Object to his speculation.

28 MR. EVANS: If he knows, he can answer, Your
29 Honor.

1 MRS. STEINER: Object to speculation.

2 Q. All right. Give us a number. Since they don't want
3 you to speculate. About how many people would you say could
4 see you?

5 A. About -- I, I would say about 15 or 20.

6 Q. Thank you.

7 Nothing further, Your Honor.

8 THE COURT: Is he excused?

9 MR. EVANS: Your Honor, we may possibly need
10 him in rebuttal. He, he is free to go. But he would not
11 need to come in the courtroom just in case we need him in
12 rebuttal.

13 THE COURT: Mr. Simpson, you can go at this
14 time. But you need to be available if you are -- you
15 know, at your home or wherever they could locate you so
16 that you can be -- and you can't sit out in the courtroom
17 or anything at this time.

18 THE WITNESS: All right.

19 THE COURT: So you can step down for now.

20 Ladies and gentlemen, we are going to recess for
21 lunch at this time.

22 If you will, step in the jury room for a couple of
23 minutes. Then they will walk you across for lunch. And
24 don't talk about the case with anyone or among yourselves
25 during this recess.

26 Court will stand in recess until 1:00.

27 (COURT RECESSED FOR THE NOON HOUR.)

28 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
29 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS WERE AS

1 AS FOLLOWS:)

2 THE COURT: You can bring the jury in now.

3 (THE JURY RETURNED TO THE COURTROOM.)

4 MRS. STEINER: Your Honor, may we approach?

5 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER

6 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD

7 OUTSIDE THE HEARING OF THE JURY.)

8 MRS. STEINER: Your Honor, the last witness the
9 State had reserved, we would also like to reserve the
10 right to recall him. The State has made that
11 reservation.

12 THE COURT: I think I told him to be available
13 to come back and not sit in the courtroom.

14 MRS. STEINER: I just didn't want the State to
15 release him.

16 MR. HILL: Doyle Simpson.

17 THE COURT: That's fine. He will be readily
18 available, if necessary.

19 MRS. STEINER: Thank you, Your Honor.

20 (THE BENCH CONFERENCE WAS CONCLUDED.)

21 THE COURT: Who would be the State's next
22 witness?

23 MR. EVANS: Your Honor, the next witness will
24 be Miss Clemmie Fleming.

25 (THE WITNESS ENTERED THE COURTROOM.)

26 THE COURT: Thank you. If you will, come
27 forward, turn this way.

28 If you will, raise your right hand.

29 Do you solemnly swear or affirm the testimony you

1 give in this case will be the truth, the whole truth and
2 nothing but the truth, so help you God?

3 THE WITNESS: Yes.

4 THE COURT: Miss Fleming, please have a seat.
5 State your name, please.

6 THE WITNESS: Clemmie Fleming.

7 THE COURT: You may proceed.

8 CLEMMIE FLEMMING, Called on behalf of the State, having
9 been duly sworn, was examined and testified as follows:

10 DIRECT EXAMINATION BY MR. EVANS:

11 Q. Miss Fleming, if you would, kind of turn your chair
12 over in this direction toward the jury.

13 A. (Complied.)

14 Q. And I want you to speak loud so that everybody on
15 the jury can hear you. Okay. All right. Let's try your name
16 again. State your name for the jury.

17 A. Clemmie Fleming.

18 Q. Okay. Miss Fleming, I want to direct your attention
19 back to July 16 of 1996, the morning of the murders at Tardy
20 Furniture. Do you remember that morning?

21 A. Yes, sir.

22 Q. Did you have an occasion to go down to Tardy
23 Furniture company that morning?

24 A. Yes, sir.

25 Q. About what time did you go down to the store?

26 A. A little after 10:00.

27 Q. Why did you go to Tardy Furniture that morning?

28 A. To pay on my furniture.

29 Q. How did you go?

1 A. With Roy Harris.

2 Q. All right. Miss Fleming, when you got down to Tardy
3 Furniture, how were you traveling, as far as in what road?
4 What road were you on?

5 A. In front of Tardy Furniture.

6 MR. CARTER: I can't hear.

7 THE COURT: Can you speak up a little louder,
8 Miss Fleming?

9 THE WITNESS: In front of Tardy Furniture.

10 Q. Everybody has got to hear you. So make sure that
11 you keep your voice up.

12 As you were in front of Tardy Furniture around 10:00 on
13 that morning, did you go in the store?

14 A. No, sir.

15 Q. Why not?

16 A. I ain't feel good.

17 Q. All right. And explain why you didn't feel good.

18 A. I was five-and-a-half months pregnant.

19 Q. Your voice is dropping.

20 A. Five-and-a-half months pregnant.

21 Q. All right. And because you felt bad from being
22 pregnant, you say that you didn't go in; is that right?

23 A. No.

24 Q. Which direction did y'all travel at that point?

25 A. On the side of Tardy Furniture.

26 Q. All right. Is that the road that runs right beside
27 Tardy Furniture?

28 A. Yes, sir.

29 Q. When you turned on that road, what did you see?

1 A. I seen Curtis.

2 Q. What did you see Curtis doing?

3 A. Running.

4 Q. Where was he running?

5 A. Across the yard. At the time it was a pink house.

6 Q. Okay. In relationship to the back of Tardy

7 Furniture, how close was he to Tardy Furniture when you first
8 saw him running?

9 A. 90-something feet?

10 Q. How do you know it was 90-something feet?

11 A. Because I did the steps.

12 Q. Okay. Did you have an occasion to go back with an
13 officer and see how far it was?

14 A. Yes, sir.

15 Q. Now, you've said you saw Curtis running from the
16 back of Tardy Furniture. Who is Curtis?

17 A. Right there. (Pointed.)

18 MR. EVANS: May the record reflect that she has
19 identified the defendant in this cause?

20 THE COURT: I'll let it so reflect.

21 Q. How long had you known Curtis Flowers at that time?

22 A. I always known him.

23 Q. When you turned that corner, did you make any
24 comment about what you saw?

25 A. I told him there go Curtis.

26 Q. Who did you tell there goes Curtis?

27 A. The man I was in the car with. Roy Harris.

28 Q. All right. I want you to explain, as well as you
29 can, where you first saw him and which direction he was

1 running.

2 A. Towards the pink house. Across the yard.

3 Q. All right. Is that, that pink house, is it still
4 there?

5 A. No, sir.

6 Q. All right. At that time there was a pink house
7 across over there.

8 A. Yes, sir.

9 Q. And you say he was running in the direction of that
10 pink house.

11 A. Yes, sir.

12 Q. How was he running?

13 A. I thought somebody was after him.

14 Q. As far as speed, how was he running?

15 A. He was running hard.

16 Q. Which direction did you and Roy Harris go from that
17 corner?

18 A. We went -- we took a left, a left from leaving
19 Tardy. We took a left, and we went up that road. And then we
20 went down Powell Street. And we came back, and he was on the
21 highway. And I seen him again.

22 Q. All right. You say you seen him again. Who did you
23 see again?

24 A. I seen Curtis again.

25 Q. All right. So you went down and came back up to the
26 highway. And then which direction did you turn on the
27 highway?

28 A. I turned right.

29 Q. Okay. And after you came back up Highway 51, where

1 did you see Curtis the second time?

2 A. Like he was going to the store where his daddy work.

3 Q. Do you know the name of that store his daddy worked
4 at?

5 A. It's -- it was Jeff's Store at the time.

6 THE COURT: Speak up. I didn't hear that.

7 A. It was Jeff's Store at the time.

8 Q. Which side of the highway did you see him on there?

9 A. He was like he was fixing to cross over 51.

10 Q. He was fixing to cross over toward the store.

11 A. Yes, sir.

12 Q. Do you know whether he went in the store or not?

13 A. No.

14 Q. When was the first time that you told somebody about
15 seeing Curtis Flowers running from the back of Tardy Furniture
16 that morning?

17 A. I was working in Multi-Craft at the time, and I told
18 one of my friends. We were talking about it. It was a
19 coworker.

20 Q. All right. Speak up now.

21 A. It was a coworker, and I told her.

22 Q. Who was that coworker?

23 A. Wanda Meeks.

24 Q. When you told Wanda Meeks about seeing Curtis
25 Flowers running from the back of Tardy Furniture, did you and
26 her do anything?

27 A. She said she wanted me to talk to one of her
28 friends.

29 Q. All right. Who was her friend that she wanted you

1 to talk to?

2 A. John Johnson.

3 Q. You need to speak up.

4 A. John Johnson.

5 Q. Did you, in fact -- you and her go to see John
6 Johnson?

7 A. Yes, sir.

8 Q. Did you tell John Johnson who you saw running away
9 from the back of Tardy Furniture --

10 A. Yes, sir.

11 Q. -- on the morning of the murders?

12 A. Yes, sir.

13 MR. EVANS: Your Honor, may I have the witness
14 step down?

15 THE COURT: You may step down, Miss Fleming.
16 (THE WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

17 MR. CARTER: Wait a minute, Doug. Let me see
18 what you are looking at.

19 Q. Miss Fleming, I have Exhibit S-5-A that I would like
20 for you to look at, please. If you would, stand to where you
21 can see it, but don't block the jury.

22 A. (Indicated.)

23 Q. You are pointing on that. What are you pointing to?

24 A. A big tree.

25 Q. Is that where you saw Curtis Flowers running on that
26 morning?

27 A. Yes, sir.

28 Q. You may take your seat.

29 A. (Complied.)

1 Q. I, I noticed that there is an "X" on this poster.
2 Did you place that "X" there?

3 A. Yes, sir.

4 MR. EVANS: Your Honor, I tender the witness.

5 CROSS-EXAMINATION BY MR. CARTER:

6 Q. Miss Fleming, where was Mr. Flowers running from?

7 A. I don't know where he was running from.

8 Q. You don't know what store he was running from or
9 whether he was even running from a store, do you?

10 A. No.

11 Q. You don't even know if he was jogging.

12 A. No.

13 Q. Or getting in shape or not, do you?

14 A. No.

15 Q. What did he have on?

16 A. I don't know what he had on.

17 Q. What color -- what kind of shirt?

18 A. I don't know. I just know his face.

19 Q. What was his hair like on that day?

20 A. Like it always been.

21 THE COURT: Speak up. I am afraid everybody --

22 THE WITNESS: Like it always been.

23 Q. How is that?

24 A. He had some hair at the time, a little bit.

25 Q. How was his hair cut?

26 A. I don't know how his hair cut.

27 Q. What kind of hair did he have on his face, beyond
28 his head?

29 A. I didn't -- he didn't have a whole lot of hair on

1 his face.

2 Q. How much did he have on his face?

3 A. I didn't see a lot of hair. I just know it was him.
4 I know how he look.

5 Q. You know how he look. Didn't you say you just got a
6 quick glance?

7 A. Yes, sir.

8 Q. A quick glance. If you knew you had seen Mr.
9 Flowers and you knew that the murders had occurred at Tardy's
10 some time ago, why did you wait until April 11, 1997, before
11 you decided to go to the police?

12 A. I wasn't going to say nothing. I never did go to
13 the police.

14 Q. You never did go to the police.

15 A. No.

16 Q. Did you go to Mr. Johnson at some point?

17 A. After a friend -- she wanted me to talk to a friend.

18 Q. Okay. And when you got to the police department,
19 you realized that was -- you went to Winona Police Department.

20 A. No.

21 Q. Where did you go?

22 A. First we went in the office of the Multi-Craft.

23 Q. Office at Multi-Craft.

24 A. Um-hum.

25 Q. Okay. And who did you talk to there?

26 A. John Johnson.

27 Q. Mr. Johnson came to the Multi-Craft.

28 A. Yes, sir.

29 Q. How long did he stay?

1 A. Long enough for me to talk to him.

2 Q. Okay. Did he get a statement from you there, a
3 written statement?

4 A. No.

5 Q. So did he get a taped statement from you there at
6 Multi-Craft?

7 A. Yes.

8 Q. Okay. So your testimony is had it not been for this
9 friend, you wouldn't of ever gone to the police and told them
10 you had seen Mr. Flowers. Is that your testimony?

11 A. Yes.

12 Q. And what did that friend do to make you tell? Let
13 me be sure we're straight. You knew there were -- four people
14 had been killed. And did you know there was a reward out at
15 the time?

16 A. I did at that time, but it didn't matter about the
17 reward.

18 Q. I know.

19 MR. EVANS: Your Honor, may she be allowed to
20 finish her answer before --

21 MR. CARTER: I apologize.

22 MR. EVANS: -- before she is interrupted by his
23 comments.

24 MR. CARTER: I apologize. Would you please
25 finish?

26 A. It was a baby involved. It was a child involved,
27 and she let me see a picture of the child, because I never
28 seen him before.

29 Q. Was a child involved in what?

1 A. In the murders.

2 Q. Okay. One of the victims was a child. Okay. And
3 you said child, you are talking about somebody -- how old was
4 he? Do you know?

5 A. No.

6 Q. Okay. A child to you is anybody who is not adult.
7 That is just the position you are taking on that.

8 A. He was younger than me.

9 Q. How old were you at the time?

10 A. Twenty-one.

11 Q. And now you, you hired Mr. Roy Harris to take you to
12 Tardy to pay your bill; is that right?

13 A. Yes.

14 Q. You got there, and you decided not to pay the bill.

15 A. I told him to go in. He said he wasn't going to go.
16 He would bring me back later.

17 Q. Okay. Let's talk about what you did. So you got
18 there, and you decided that you were not going to go inside
19 and pay your bill; is that correct?

20 A. Yes.

21 Q. And before you got down there, you had been called
22 and told you had to come pay it or else you were going to be
23 sued to get your furniture taken; is that correct?

24 A. I just need to come and pay on my bill.

25 Q. Okay. What exactly -- you were told to come pay
26 your bill, and it was urgent that you pay your bills because
27 you were --

28 A. Late paying.

29 Q. You were late paying. And you needed to pay it; is

1 that correct?

2 A. Yes.

3 Q. Did you ever pay it?

4 A. No.

5 Q. Okay. So you got to Tardy's to pay a bill that was
6 late, that you knew you needed to pay. And you decided once
7 you got there, you weren't going to pay it. And then you told
8 the guy you hired to take you somewhere else; is that correct?

9 A. Yes.

10 Q. Where was he supposed to take you then?

11 A. I went back home at that -- I went back home at the
12 time.

13 Q. Okay. And you saw somebody running that you got a
14 glance of. And you couldn't tell me what he had on his feet.
15 You couldn't tell me what kind of pants he had on. You
16 couldn't tell me what kind of shirt.

17 A. No.

18 Q. And he had the usual haircut. And you saw him down
19 by this big tree running and -- was anything unusual about
20 that?

21 A. I never seen him running.

22 Q. You had never seen him running before.

23 A. No.

24 Q. Okay. And you didn't stop to ask him any questions.
25 You didn't offer any relief or help; is that correct?

26 A. No.

27 Q. Then you turned -- made a left turn or right turn
28 off of Carrollton.

29 A. Went left.

1 Q. And that would be Church; is that correct?

2 A. Yes.

3 Q. And you went down to Church. And you took Powell.

4 Is that what you are telling us?

5 A. Yes.

6 Q. And this person -- by the time you got to Jeff's
7 Store you saw him again running.

8 A. Yes.

9 Q. You were in a car. This person was walking. So he
10 ran fast enough to beat y'all to 51; is that correct?

11 A. I guess. I don't know.

12 Q. You saw him again at 51. Now, Mr. Harris didn't,
13 didn't pull over and talk to anybody, did he?

14 A. No.

15 Q. And he didn't slow down after seeing Mr. Flowers,
16 did he?

17 A. He drive slowly anyway.

18 Q. So he was driving slower than Mr. Flowers was
19 running?

20 A. Yes. He wasn't driving wide open.

21 Q. Okay. And you said the person you saw was Mr.
22 Flowers was running fast.

23 A. Yes.

24 Q. Okay. How many times had you seen him?

25 A. Two times.

26 Q. Okay. And either time did you notice any clothing?
27 Did you notice any weapons?

28 A. No.

29 Q. You didn't notice any evidence of any crime at all,

1 did you?

2 A. No.

3 Q. At what point did you in your mind think that Mr.
4 Flowers might have had something to do with the killings at
5 Tardy's?

6 A. No.

7 Q. You never thought he did.

8 A. No.

9 Q. Okay. And you don't think he did to this day, do
10 you?

11 A. No.

12 Q. Thank you.

13 One moment.

14 Now, prior to going to -- prior to Mr. Johnson coming and
15 talking to you and prior to your talking to Miss Meeks, had
16 you been reading about the murders down at Tardy's Furniture
17 store?

18 A. No.

19 Q. You hadn't read about it. Had you seen anything
20 about it on television?

21 A. Never.

22 Q. Had you seen any reward posters or signs around
23 town?

24 A. No.

25 Q. You didn't know there was a reward out.

26 A. I heard about it.

27 Q. You heard about it. Okay. So you knew. How much
28 did you hear the reward was? What was your understanding of
29 how much it was?

1 A. I don't know. I think \$5,000. I don't know.

2 Q. Okay. Whatever it was, that is what it was. Okay.

3 Now, do you know a Stacey Wright?

4 A. Yes.

5 Q. Do you know Latarsha Blissett?

6 A. Yes.

7 Q. Have y'all ever had a conversation about who you saw
8 running?

9 A. I talked to Tarsha about it.

10 Q. Okay. You ever talked to Stacey Wright?

11 A. No.

12 Q. Is that your cousin?

13 A. Yes.

14 Q. Did you ever deny to either one of those that you
15 had seen Curtis Flowers running back behind Tardy's?

16 A. No.

17 Q. If they came in and said you did, that would be a
18 lie.

19 A. Yes.

20 Q. Now, did you ever have one of those great moment
21 experiences where you decided you were going to go ahead and
22 pay Tardy's for the furniture that you owed, that was owed?
23 Did you ever pay it?

24 A. I tried to get my brother to go pay it and they --
25 he didn't have no way of getting in contact with them. When I
26 talked to them, they told me don't worry about.

27 Q. Who told you don't worry about it? Somebody at
28 Tardy's Furniture told you don't worry about paying it.

29 A. Yes.

1 Q. Why? Just because they are nice people?

2 A. No. They told me don't worry about it. They were
3 just trying to grieve over their family members.

4 Q. How much did you owe them?

5 A. I don't know.

6 Q. Give me a rough estimate.

7 A. I don't know.

8 Q. What was the items that you owed them for? What did
9 you get from there that you didn't pay for? What was it?

10 A. Living room set.

11 Q. Living room set. Did you ever discuss with anyone
12 what you were going to do with this reward once you finally
13 get it?

14 A. No. I never discussed nothing like that.

15 Q. Okay. You never received any money; is that
16 correct?

17 A. No.

18 Q. Do you know anyone named Wanda?

19 A. Yes.

20 Q. You never -- oh, that's Miss Meeks. You talking
21 about somebody other than Miss Meeks. Is Miss Meeks the only
22 one you know?

23 A. Yes.

24 Q. Okay. Now, this Wanda Meeks lady -- and do you
25 still work at Multi-Craft.

26 A. No. It's closed down.

27 Q. It's closed down. Now, have you seen Miss, Miss
28 Meeks since she helped you get with Mr. Johnson?

29 A. I see her on the highway.

1 Q. See her on the highway. Now, this will make your
2 sixth time testifying in this case; is that correct?

3 A. Yes.

4 Q. Did you ever mention that Wanda Meeks facilitated
5 your going to John Johnson before in any, any trial?

6 A. No.

7 Q. Why didn't you?

8 A. They never asked.

9 Q. It was never asked. And now, when you talked to Mr.
10 Johnson was, was Miss Meeks in the room with you?

11 A. No.

12 Q. Now, do you know if Mr. Johnson took a statement
13 from Miss Meeks back then as well?

14 A. No.

15 Q. Now, you are sure that this conversation with Mr.
16 Johnson, statement, statement with Mr. Johnson, that you gave
17 telling him what you saw occurred at Multi-Craft.

18 A. I, I think. Yeah. At Multi-Craft and down at the
19 police station.

20 Q. And you went to the police station. And where is
21 the police station located?

22 A. It's the old police station down on the corner.

23 Q. Down where?

24 A. On the corner.

25 Q. Oh, right down there.

26 A. Yes.

27 Q. Right behind us?

28 A. No.

29 Q. Is it downtown?

Clemmie Fleming - Cross

1 A. It is downtown. Emergency 911 building.

2 MR. CARTER: May I approach the witness, Your
3 Honor?

4 THE COURT: You may.

5 Q. Miss Fleming, can you look at this just briefly, or
6 however long you need to look at it, and tell me what it is,
7 if you know.

8 Could you read this line, first line, line for us, first
9 paragraph?

10 A. Today is April 11, 19 --

11 Q. Speak up a little bit. I'm not sure everybody can
12 hear you?

13 A. Today is April 11, 1997.

14 Q. Read the rest. First paragraph.

15 A. The time is 4:21 p.m. The following is --

16 THE COURT: Speak up, Miss Fleming. I don't
17 think anybody can hear you.

18 A. The time is now 4:21 p.m. The following is a
19 volunteer statement from Clemmie Fleming of 905-B Vernon
20 Street, Winona, Mississippi.

21 Q. Does it say where the statement took place at?

22 A. (No response.)

23 Q. Read the rest of it.

24 A. At my house.

25 Q. Hold on a second.

26 A. It said 905-B Vernon. That's at my house.

27 Q. Read right there where it says the location.

28 A. The location in Montgomery County Courthouse.

29 Q. Okay. So did you -- so you gave a statement at

1 Multi-Craft to Mr. Johnson and he recorded it; right?

2 A. Um-hum.

3 Q. You gave a statement to Mr. Johnson at the police
4 department. He recorded that. Is that correct?

5 A. Yes.

6 Q. And you also gave a statement, according to him, at
7 the Montgomery County Courthouse. Is that also correct?

8 A. Yes.

9 Q. So you have given three statements to Mr. Johnson.

10 A. Somebody taped one at the -- at the police station
11 too.

12 Q. Okay. The police station, Montgomery County
13 Courthouse and Multi-Craft. Did you say the same thing in all
14 of them.

15 A. I just -- that one, I didn't do that one.

16 Q. I'm sorry. I didn't understand --

17 A. I didn't say that one about the courthouse. It was
18 so many. We done went to five cases.

19 Q. Okay. Can you tell us why they needed to talk to
20 you so many different times and get so many different
21 statements?

22 A. No.

23 Q. It wasn't your idea. It was the police idea. And
24 you just complied with what they asked you to do.

25 A. Yes.

26 Q. Now, how many of these statements was Miss Meeks at?
27 How many did Miss Meeks attend?

28 A. One.

29 Q. Now, did Mr. Johnson ever mention a reward to you?

1 A. No.

2 Q. Now, in this discussion -- strike that. Are you
3 closer to Latarsha Blissett or your cousin, Stacey Wright?

4 A. Tarsha Blissett.

5 Q. Tarsha Blissett. And y'all used to talk a lot back
6 in them days; right?

7 A. Yes, sir.

8 Q. And y'all used to, I think, get your hair fixed
9 together or go to the beauty shop together; is that correct?

10 A. No.

11 Q. Y'all never did that.

12 A. (Shook head.)

13 Q. Did y'all visit a lot back then --

14 A. Yes.

15 Q. -- with each other? Now, the day that you were out
16 there trying to pay your bills, did you see -- it was around
17 10:00. Did you ever get to know Mr. Sam Jones?

18 A. No.

19 Q. Did you see him that, that morning?

20 A. No.

21 Q. Did you see -- you know Mary Jeanette Fleming?

22 A. Yes.

23 Q. That's your aunt, I believe, isn't it?

24 A. Yes.

25 Q. Did you see her that morning?

26 A. No.

27 Q. Or that day?

28 A. No.

29 Q. And after you decided you weren't going to pay your

1 bill, where did you go?

2 A. Went by sister's house. Then I went home.

3 Q. Okay. And what is your sister's name?

4 A. Mary Fleming.

5 Q. And how long did you stay at her house?

6 A. Not long.

7 Q. Didn't you get in the car with your sister after
8 y'all heard about the murders at Tardy Furniture --

9 A. No.

10 Q. -- and actually try to drive down Tardy's?

11 A. No.

12 Q. Okay. You didn't. Okay. Now, when you went to
13 your sister Mary's house did you tell her that you saw anybody
14 running?

15 A. I told her later on that day.

16 Q. Okay. Now, did you tell the police that you had
17 told your sister you saw somebody running? Did you tell Mr.
18 Johnson that in the three statements you gave him?

19 A. What?

20 Q. I don't want to confuse you. Let me start over.
21 Now, you said you told your sister and you told -- you told
22 Mary Ella that you saw somebody or Curtis Flowers running that
23 day. Is that what you are telling us?

24 A. I told her later on that day.

25 Q. At some point that day you told her. About what
26 time was it? In the afternoon?

27 A. It was in the evening time.

28 Q. In the evening. Okay. Who was at your sister's
29 house when you got there that day?

1 A. My family members.

2 Q. Name them for me.

3 A. Mary Eloise. And Juanice. And her friend BT.

4 (Phonetic.)

5 Q. B --

6 A. BT.

7 Q. BT. Now, didn't the Tardys tell you that if you
8 didn't pay for your furniture at some point, and I'm talking
9 about prior to your going down there that day to pay your
10 bill, prior to those horrible incidents that occurred down at
11 Tardy's. Hadn't you been told that if you didn't pay your
12 bill, the furniture would be repossessed?

13 A. I answered that before.

14 Q. And I apologize. But did you say no, you hadn't
15 been told that?

16 A. Hadn't been told what?

17 Q. I'm sorry. Too much going on. You said you had
18 been told or had not?

19 A. I had been told that if I come down there, that was
20 she was going to come get my furniture? Is that what you are
21 asking?

22 Q. Okay. I think I understood you then. How long had
23 Wanda Meeks and you been working together before y'all talked
24 and she showed you a picture?

25 A. I really don't know. I really don't know.

26 Q. Okay. Now, before Miss Meeks showed you the
27 picture, you did not know that there was a young man.

28 A. I know it was a kid, but I never seen his picture.
29 I never seen his face.

1 Q. Okay. And you had known Miss Meeks for how long
2 before this happened?

3 A. I don't know how long I knowed her.

4 Q. Was she your supervisor?

5 A. No. A employee. Regular employee just like me.

6 Q. Okay. Now, other than Miss Meeks, did you tell
7 anyone else there --

8 A. No.

9 Q. -- that you had seen Mr. Flowers?

10 A. No.

11 Q. Okay. Now, haven't you talked to the district
12 attorney or somebody in his employment recently concerning the
13 role Miss Meeks played in your coming forth and giving a
14 statement to the police?

15 A. Yes.

16 Q. And who exactly did you talk to?

17 A. I talked to John Johnson.

18 Q. Okay. And maybe three weeks ago? Is that about the
19 time?

20 A. I don't remember.

21 Q. Okay. When he talked to you, isn't it a fact that
22 he asked you about Miss Meeks and the role that she played in
23 helping you come forth and to give information?

24 A. He -- she just said she knew a friend that I could
25 talk to.

26 Q. Okay. And I probably confused you. Let me make
27 sure you are not confused, and I'm not confused. My question
28 was -- this what I think my question was. Did you talk to Mr.
29 Johnson or somebody with the D.A.'s office recently, within

1 the last month, regarding Wanda Meeks?

2 A. Yes.

3 Q. Okay. And that person was Mr. Johnson; is that
4 correct?

5 A. Yes.

6 Q. And no one but Mr. Johnson. Is that fair to say?
7 Just Mr. Johnson. Nobody else.

8 A. Nobody.

9 Q. And isn't it fair to say that Mr. Johnson discussed
10 with you Wanda Meeks?

11 A. She's the whole reason I'm here.

12 Q. She is the whole reason you are here.

13 A. Um-hum.

14 Q. And Mr. Johnson wanted you to say that; is that
15 correct?

16 A. No.

17 Q. He wanted to remind you that Miss Meeks facilitated
18 your coming forth and talking to him; is that correct?

19 A. I always told -- I always, you know, through all the
20 cases I always asked him why she wasn't never here, because,
21 you know, she was the reason why I was here. So why she
22 wasn't here?

23 Q. Okay. And you asked him this about a month ago the
24 last time you talked to him; is that correct?

25 A. Yes.

26 Q. You asked him again. And you asked him that every
27 trial. Is that your testimony?

28 A. No. I asked him a couple of times.

29 Q. A couple of times. Despite your concern about that,

1 he, to your knowledge, never involved her; is that correct?
2 He never, to your knowledge, interviewed her. To your
3 knowledge he never -- she never got called as a witness. Is
4 that your understanding?

5 A. I guess. I don't know.

6 Q. And were you made aware that on this particular
7 occasion, the sixth trial, that the D.A.'s office had an
8 interest in getting her involved this particular time? Was
9 that made known to you in some way?

10 A. A little bit.

11 Q. Little bit. So it's your understanding at this
12 point, that this particular time she will be coming forth as a
13 witness.

14 A. I -- yes.

15 Q. And it's your understanding that she is coming forth
16 this time to -- what is she coming forth for this time? Do
17 you know?

18 MR. EVANS: Your Honor, that's my call, not
19 this witness's call.

20 MR. CARTER: I just want to know what she
21 knows, Your Honor, not what Mr. Evans --

22 THE COURT: I think it would be totally
23 speculative as to this witness's knowledge of why
24 somebody else might be called. So I will sustain the
25 objection.

26 MR. CARTER: Yes, sir.

27 Q. Now, all of those statements that you gave to Mr.
28 Johnson, did they all happen on the same day?

29 A. No.

1 Q. Different days. And I know it's been a long time.
2 And I'm not trying to tie you down. But if you can, how much
3 distance, how much time between the statements, lapsed between
4 the time you gave the different statements?

5 A. I don't really know.

6 Q. Okay. Okay. Now, let me ask you this. You
7 remember going to Tupelo and testifying.

8 A. Yes.

9 Q. Now, at the time you went to Tupelo, you had already
10 talked to Mr. Johnson those three times; is that correct?

11 A. Yes.

12 Q. Okay. As a matter of fact, the first time that you
13 talked to Mr. Johnson, Miss Meeks was, in fact, if not
14 present, nearby. Is that fair to say?

15 A. Yes.

16 Q. Was she in the same room with you or next --

17 A. No.

18 Q. -- next door?

19 A. I don't know where she was at.

20 Q. Okay. Now, isn't it a fact that Miss Meeks had not
21 been working at Multi-Craft for a long period of time before
22 she facilitated your talking to Mr. Johnson? She hadn't been
23 there several years working with you before then.

24 A. No.

25 Q. Okay. And one other question. Did you start
26 working there first, or did Miss Meeks start working there
27 first?

28 A. She was there first.

29 Q. She was there first. Now, did you go to Miss Meeks

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

1 during this conversation you had with her, or did she come to
2 you?

3 A. We were just sitting there talking, and we were
4 talking about it. And it went from there.

5 Q. Okay. Now, the facts are that you were talking to
6 somebody else other than Miss Meeks; is that correct, and Miss
7 Meeks might have overheard what you were talking about; isn't
8 that correct?

9 A. No.

10 Q. It's not. So you were not talking to other people
11 and Miss Meeks overheard the conversation. You were talking
12 directly to Miss Meeks when it was decided that you would come
13 to Mr. Johnson; is that correct?

14 A. Yes.

15 Q. And to your knowledge --

16 One moment, Your Honor.

17 One final question, Miss Fleming. Miss Fleming, I hate
18 to keep asking you questions. I am just trying to make a -- I
19 just want to be clear. I want the jury to be clear. Do you
20 know if you talked to any police officers concerning this case
21 before you talked to Mr. Johnson?

22 A. No.

23 Q. Okay. Now, are you sure the street that you saw or
24 allegedly saw Mr. Flowers on was Carrollton and not Church?

25 A. Yes.

26 MR. CARTER: One moment.

27 Thank you very much, Miss Fleming. I'm finished.

28 REDIRECT EXAMINATION BY MR. EVANS:

29 Q. Miss Fleming, did you allegedly see Curtis Flowers,

1 or did you see Curtis Flowers?

2 A. I seen Curtis Flowers.

3 Q. Any doubt about who you saw running from the back of
4 Tardy Furniture on the morning of the murders?

5 A. No, sir.

6 Q. Now, you've stated that you didn't want to get
7 involved in this? What, what got you involved in this case?

8 A. Like I said, it was a baby involved.

9 THE COURT: Speak up.

10 THE WITNESS: It was child involved.

11 Q. And that made you come forward.

12 A. Yes, sir.

13 Q. Now, opposing counsel has asked you about some
14 family members. Have your family members tried to get you to
15 do anything in relationship to this case?

16 MR. CARTER: Your Honor, I object to that. I
17 didn't make any kind of inference that, that her family
18 tried to --

19 MR. EVANS: He talked about conversations
20 between them, and I think --

21 MR. CARTER: Judge, can I --

22 MR. EVANS: -- I can go into them.

23 MR. CARTER: Your Honor, I didn't make any
24 remark whatsoever about her family members trying to
25 influence her in any kind of way.

26 MR. EVANS: He talked about conversations
27 between them, and he brought it up, Your Honor. So I
28 think I am entitled to go into what the conversations
29 were about.

1 THE COURT: Miss Fleming, you may step down.
2 You are free to leave and go where ever you need to.

3 MR. EVANS: Your Honor, you may want to take,
4 if you will, a short break. I think we are going to go
5 into the transcript.

6 THE COURT: Ladies and gentlemen, you
7 definitely need a break right now. So we will call about
8 a 15-minute recess, allow you to -- some of you that need
9 to smoke, go out and take you a break. We will resume
10 after that.

11 (A RECESS WAS TAKEN.)

12 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
13 AND THE DEFENDANT WERE PRESENT IN OPEN COURT.)

14 (THE JURY RETURNED TO THE COURTROOM.)

15 THE COURT: I believe the State indicated
16 Charles "Porky" Collins is next.

17 Ladies and gentlemen, Mr. Collins at some previous
18 time, testified under oath. He is deceased now. So this
19 is going to be the same procedure that was done with --
20 when Mr. Jones' testimony was read. And Mr. Collins at
21 the time was under oath. He was subject to
22 cross-examination by both counsel. He's -- this
23 testimony is just to be considered just like the
24 testimony of a witness that you have actually seen live
25 here in the courtroom.

26 Mr. Blackmon is going to come forward. But when he
27 is reading he is going to be speaking the words that Mr.
28 Collins spoke when he was giving testimony at a previous
29 time.

1 Mr. Howie, you may proceed.

2 (THE TRANSCRIPT OF THE TESTIMONY OF CHARLES "PORKY"
3 COLLINS WAS READ.)

4 MRS. STEINER: If the Court please, may we
5 interrupt and approach?

6 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER AND MR.
7 CARTER APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE
8 HAD OUTSIDE THE HEARING OF THE JURY.)

9 MRS. STEINER: My question was do we have an
10 Exhibit S-113? That is that same item he is discussing.
11 We are going to have that displayed to the jury.

12 MR. HOWIE: I was wanting to get it admitted.

13 THE COURT: Has this been agreed?

14 MRS. STEINER: We have no objection.

15 THE COURT: Why don't I just go ahead and tell
16 the jury that what is going to be referred to as Exhibit
17 S-99 is S-113.

18 MR. HOWIE: Yes, sir. That's right.

19 (THE BENCH CONFERENCE WAS CONCLUDED.)

20 THE COURT: Okay. Ladies and gentlemen, there
21 is a piece of evidence that is going to be admitted now
22 as S-113, State Exhibit 113. In this transcript it was
23 referred to as Exhibit S-99, but it is in fact S-133
24 (sic) in this trial.

25 (THE WAL-MART RECEIPT FROM CHARLES "PORKY" COLLINS
26 PREVIOUSLY MARKED STATE'S EXHIBIT S-113 WAS ADMITTED INTO
27 EVIDENCE.)

28 THE COURT: Miss Steiner, why don't we take a
29 recess right now?

1 (A RECESS WAS TAKEN.)

2 (MR. EVANS, MR. HOWIE, MRS. STEINER, MR. CARTER AND THE
3 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS WERE AS
4 FOLLOWS:)

5 MR. EVANS: Your Honor, before we go forward --

6 THE COURT: I have got to get quiet in the
7 courtroom.

8 MR. EVANS: Before we go forward, I have an
9 issue that I'd like to bring up with the Court. The
10 exhibits that are in evidence 131, 132, 133, 134 and 135,
11 the rods that Dr. Hayne demonstrated angles of the
12 projectiles have been removed from them. And I have been
13 told by folks in the audience that Mr. Carter is the one
14 that removed those. If he is I would like to know why he
15 is tampering with exhibits that are in evidence in this
16 case.

17 MR. CARTER: I did do it, Your Honor. I
18 certainly didn't mean to tamper. What I caught myself
19 doing, and I didn't think -- it was keeping the jury from
20 continuing to look at this display with the rods in the
21 head. Maybe I made an error. The hole is still in it.
22 I thought it was just as simple to just stick the rod
23 back in it when we needed to. I didn't realize I was
24 debasing it. I certainly wasn't trying to.

25 THE COURT: Mr. Carter, if you have got a trial
26 where evidence is displayed in the courtroom that needs
27 to be addressed to the Court. You don't need to be
28 taking it upon yourself to do this, and I would just
29 instruct you to just --

1 MR. CARTER: I agree, Your Honor.

2 THE COURT: -- put them back in like they were,
3 if we can agree on that. And then they can be sat down
4 out of the constant view of the jury.

5 MR. EVANS: I don't know that they can be put
6 back like Dr. Hayne put them, Your Honor. I can't.

7 MR. CARTER: I can see one hole. I caught
8 myself looking at it.

9 MR. EVANS: That was the whole purpose of the
10 exhibit, was so that the jury could see the exact angles.

11 MR. CARTER: Wait a minute. I looked at it
12 good. It ain't but one hole.

13 MR. HOWIE: That is the one that doesn't have
14 an exit wound. He has made an exit wound on that.

15 MR. CARTER: Excuse me. I certainly didn't
16 intend to. I didn't mean it. I apologize. Whatever
17 consequences I have got to pay, I will pay it. I
18 certainly didn't mean anything by it.

19 THE COURT: I will have the State now look at
20 them. They look to be pretty close approximations to me.

21 MR. EVANS: They are as close as I can tell,
22 Your Honor.

23 THE COURT: I am not sure that there is a
24 trajectory of the bullet issue involved in this case
25 anyway. So I think that is very close to where Dr.
26 Hayne --

27 Tammy, you can just set those on the floor right now
28 so the jury won't be constantly looking at them. Because
29 they --

1 MRS. STEINER: Your Honor, I do think --

2 THE COURT: I don't say distracting but in the
3 event they might be, I want them to just be sat down for
4 right now.

5 MRS. STEINER: They are not relevant to what
6 the jury is hearing now.

7 THE COURT: I'll have the jury come back in
8 now.

9 MRS. STEINER: Your Honor, before they come in,
10 I was preparing for the second two-thirds of this. I
11 realize that we are on -- now, we are going to eventually
12 come to Page 650 of this transcript.

13 THE COURT: And y'all are going to -- because
14 my numbers at the top -- it's the very same transcript,
15 but I have got different numbers.

16 MRS. STEINER: In five pages -- we've stopped
17 at Line 14 on what the Court transcript, which is what
18 I'm working from, Page 1645.

19 THE COURT: Page what?

20 MRS. STEINER: In the Supreme Court transcript,
21 if I may approach, Your Honor.

22 THE COURT: My numbers are like 1700 and things
23 like -- I don't know.

24 MRS. STEINER: Let me look at the transcript
25 that's been marked for identification, and I can say this
26 using those page numbers. On the transcript marked for
27 identification, we are presently on Page 1645.

28 THE COURT: My numbers and -- I don't know,
29 because it's the very same transcript. But for some

1 reason the numbers are not the same.

2 MRS. STEINER: I'm wondering if maybe it got
3 printed straight from the ASCII file.

4 THE COURT: It may be. I don't know. But
5 anyway, what -- you say it is in about five pages.

6 MRS. STEINER: In about five pages, at Page
7 1650, Mr. Lumumba asks to approach and there is bench
8 conference.

9 THE COURT: Okay. I am on that now.

10 MRS. STEINER: And then the next three -- and
11 then on the next page, there is a bench conference, which
12 obviously wouldn't be to the Court -- to the jury. And
13 then at that point, the Court elects to recess for the
14 night. And I was going to propose that since we have
15 already had a recess for this jury, that at the point at
16 which Mr. Lumumba proposes to approach, at Page 1650 read
17 through where the Court says sure and then not commence
18 reading again until on this transcript it's 1654, when
19 Court resumes mid-page at Line 14, 15. There is a good
20 morning, Mr. Collins. Good morning. I would propose
21 that we simply, once the pause for bench conference
22 happens -- or just to read nothing in this transcript
23 from Page 1650, Line 27, to redact from the reading of
24 this transcript everything --

25 THE COURT: Well, like good morning or good
26 evening.

27 MRS. STEINER: Not even good morning.

28 THE COURT: Well, I mean the good evening or
29 that we are recessing for the evening.

1 MRS. STEINER: Well, I was thinking we might
2 just resume with just to put this quickly in context and
3 -- rather than even announce that a recess.

4 THE COURT: Well, I have no problem with doing
5 it that way.

6 MR. HILL: We don't object to that.

7 MRS. STEINER: Okay. I'll show you.

8 THE WITNESS: I understand.

9 MRS. STEINER: Thank you. This is confusing
10 enough as it is.

11 THE COURT: You can bring them in now.

12 (THE JURY RETURNED TO THE COURTROOM.)

13 THE COURT: Okay. Court will come back to
14 order.

15 Ladies and gentlemen, this is the continuation of
16 the testimony of Porky Collins.

17 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF
18 CHARLES "PORKY" COLLINS RESUMED.)

19 MR. HOWIE: I'm sorry to interrupt. I think
20 that needs to be marked, as it was placed into evidence.
21 That is just marked for identification right now.

22 THE COURT: I didn't know if Tammy had already
23 premarked it, because there were some things she already
24 premarked. So I will go ahead and let her now mark it
25 into evidence.

26 MR. HOWIE: And also, Your Honor, I think it
27 has a different number as the exhibit that is referred to
28 in here.

29 THE COURT: When she gives it a new exhibit

1 number here, I will state for the record what that number
2 is.

3 MRS. STEINER: May we approach, Your Honor?

4 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER AND MR.
5 CARTER APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE
6 HAD OUTSIDE THE HEARING OF THE JURY.)

7 MRS. STEINER: I realize it wasn't done in this
8 transcript, but we now have the originals of both of
9 these photo i.d. line-ups available to be marked into
10 evidence.

11 MR. HOWIE: The original.

12 MRS. STEINER: The originals came in at that --

13 THE COURT: Why don't we all just go ahead and
14 all agree right now to let them both be admitted into
15 evidence?

16 MRS. STEINER: All right. I'd like to have the
17 Court instruct that the second thing we are marking is
18 the first thing the witness -- we are talking about, if
19 that would be all right.

20 MR. HOWIE: Why don't we just mark -- just put
21 the original in and --

22 MRS. STEINER: Right.

23 MR. HOWIE: I don't even know --

24 THE COURT: I am kind of confused about what
25 you just said. I figure the jury knows. But why don't
26 you, when they are both marked, just state into the
27 record what it is that they are looking at so that -- I
28 mean what it is you are handing him.

29 MR. HOWIE: Only thing I know about, that is

1 that one right there that he has --

2 THE COURT: He was shown two.

3 MR. HOWIE: Oh, okay.

4 (THE BENCH CONFERENCE WAS CONCLUDED.)

5 MRS. STEINER: If the Court please, after the
6 bench conference, I'm showing something -- we might as
7 well go ahead and mark what was actually the first
8 line-up discussed by the witness. I think it is S-173
9 for identification. We would like to -- if the parties
10 agree, that may be offered into evidence at this time
11 together with S-142 for identification. And because they
12 didn't have the originals then I would like to state into
13 the record that the one marked S-143 for identification,
14 that is going to be entered into evidence as S-143 is the
15 first line-up that the witness was discussing. And that
16 what is going to be marked into evidence as S-142 for
17 i.d. is actually the second line-up that the witness is
18 about to discuss in his testimony as it proceeds here.

19 THE COURT: Okay. That is fine. If you will
20 just have the court reporter mark these both into
21 evidence.

22 (A PHOTO LINE-UP WAS MARKED STATE'S EXHIBIT NUMBER 142
23 AND ADMITTED INTO EVIDENCE.)

24 (A PHOTO LINE-UP WAS MARKED STATE'S EXHIBIT NUMBER 143
25 AND ADMITTED INTO EVIDENCE.)

26 THE COURT: We will take about a five-minute
27 recess.

28 (A RECESS WAS TAKEN.)

29 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE

1 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS CONTINUED
2 AS FOLLOWS:)

3 MRS. STEINER: Yes, Your Honor, before the jury
4 comes in, I would just like to invite the Court's
5 attention that we have a continuing objection based on
6 our pretrial motion to suppress all evidence of the
7 identification. We do not waive it by virtue of the fact
8 that we have marked these into evidence in connection
9 with this witness.

10 THE COURT: So noted.

11 MRS. STEINER: Thank you. That was all I had.

12 THE COURT: Okay. You can bring the jury in.

13 (THE JURY RETURNED TO THE COURTROOM.)

14 THE COURT: You may continue.

15 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF
16 CHARLES "PORKY" COLLINS CONTINUED.)

17 MRS. STEINER: May we approach, Your Honor?

18 (MR. HOWIE AND MRS. STEINER APPROACHED THE BENCH FOR THE
19 FOLLOWING BENCH CONFERENCE HAD OUTSIDE THE HEARING OF THE
20 JURY.)

21 MRS. STEINER: I just wanted to confer with the
22 Court. Are we talking -- is this what we think is the
23 other? Are we introducing this one or the other one? He
24 marks two of them, and I just don't want the jury to be
25 confused.

26 They are both -- oh, I'm sorry. Forgive me. That
27 has to do with the photographs of the store.

28 This is the color photo line-up was marked Exhibit
29 D-10 for identification. Should we just skip that since

1 we have both of them in evidence now?

2 THE COURT: Just state in the record what line
3 you are going to be picking up on and what page. I mean
4 state it here.

5 MRS. STEINER: Right. I'm going to -- I think
6 this is the first, because the first one -- what I was
7 going to do is, is I was going to skip Line -- I was
8 going to skip, for the record, Line 17 on Page 1689
9 through Line 5 on 1690. And then in lieu -- and then in
10 lieu of starting at Line 6 with the words, for
11 identification Mr. Collins, this has been marked as D-10
12 for identification, I was simply going to say I am
13 presenting you D-1, whatever the second line-up -- the
14 first line-up. I think it's D-143.

15 MR. HOWIE: S.

16 MRS. STEINER: And then, then I am showing you
17 what is in evidence as S-143. That's the first line-up.

18 THE COURT: Okay. That's fine.

19 MRS. STEINER: And then, then I will commence
20 on Line 7 with the next sentence. And I am showing you,
21 it appears to be one of the pictures.

22 THE COURT: Okay.

23 MRS. STEINER: Thank you, your Honor.

24 (THE BENCH CONFERENCE WAS CONCLUDED.)

25 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF
26 CHARLES "PORKY" COLLINS RESUMED.)

27 MRS. STEINER: Your Honor, for the record, I
28 believe that we have a different exhibit number in this
29 transcript than is actually the exhibit number that this

1 jury will be looking at. And with the Court's
2 permission, at Line 21 the transcript reads this is
3 State's Exhibit Number 1. And I am going to read State's
4 Exhibit S-2, because in conference with the district
5 attorney we have determined that when this witness was
6 being examined S-2 is the photo he was being shown.

7 THE COURT: That is fine.

8 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF
9 CHARLES "PORKY" COLLINS RESUMED.)

10 MRS. STEINER: Your Honor, I think this may be
11 mistaken, because the witness responds yes.

12 MR. HOWIE: Three or four pictures of the
13 outside.

14 That must be it then.

15 MRS. STEINER: Your Honor, allow me to correct
16 for the jury.

17 I am going to give, for the purpose of this
18 testimony, what is also marked S-1 in this trial.

19 THE COURT: Okay. So the Exhibit 1 is the same
20 then as Exhibit 1 --

21 MRS. STEINER: Yes.

22 THE COURT: -- that was being referred to in
23 his testimony.

24 MRS. STEINER: His testimony is referring to
25 what this jury will be looking at marked as S-1.

26 THE COURT: That is fine.

27 MRS. STEINER: Thank you.

28 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF
29 CHARLES "PORKY" COLLINS RESUMED.)

1 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER AND MR.
2 CARTER APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE
3 HAD OUTSIDE THE HEARING OF THE JURY.)

4 MR. HILL: Miss Steiner told me she was looking
5 for some of the older defense exhibits that we had
6 brought in the other day.

7 MRS. STEINER: Yeah.

8 MR. HILL: And they may have been collected
9 back up when we left the other day and taken back out of
10 the courtroom.

11 MRS. STEINER: Oh, okay.

12 MR. HILL: If the Court will give me a -- I'm
13 not the one doing the questioning. If the Court will
14 excuse me, I will go out there and see if I can gather
15 up --

16 What are you looking for?

17 MRS. STEINER: D-11 and D-12.

18 MR. HILL: What, what is --

19 (MR. HILL AND MRS. STEINER STEPPED AWAY FROM THE BENCH.)

20 COURT REPORTER: Judge.

21 THE COURT: Are y'all off the record because --
22 I mean if you are going to be on the record you need to
23 be standing here so the court reporter can --

24 MR. HILL: No.

25 MRS. STEINER: We are conferring.

26 THE COURT: Okay.

27 MRS. STEINER: Your Honor -- this is on the
28 record.

29 Is this going to take five or so minutes?

1 MR. HILL: Three, four, minutes. Maybe less.

2 THE COURT: Well, I mean, this witness -- why
3 don't you just go find what was originally marked as D-11
4 and 12 and then we can tell the jury what you were
5 referring to?

6 MRS. STEINER: All right. Thank you.

7 THE COURT: What was being referred to. But
8 you can go ahead and be reading this.

9 MRS. STEINER: Thank you.

10 (THE BENCH CONFERENCE WAS CONCLUDED.)

11 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF
12 CHARLES "PORKY" COLLINS RESUMED.)

13 MRS. STEINER: Your Honor, what's been being
14 referred to as Exhibit D-9 from the trial held in
15 Harrison County has been discovered, and I would like to
16 have it marked as the next succeeding defense exhibit in
17 this trial.

18 THE COURT: That's fine.

19 MRS. STEINER: But to leave the sticker that
20 says D-9 from the previous trial exposed since the
21 witness has been talking about it by that number.

22 THE COURT: That's fine.

23 To be clear for the record, the new evidence sticker
24 is a very dark blue color, where the original sticker is
25 a light blue that had D-11.

26 MRS. STEINER: D-9.

27 THE COURT: I'm sorry. D-9. But for the
28 purpose of this trial, it will have a new evidence
29 sticker in dark blue. And the court reporter momentarily

1 can advise what number that will be.

2 COURT REPORTER: Thirteen.

3 THE COURT: Okay. Number 13. It will be D-13
4 for this trial.

5 (A COPY OF A MAP WAS MARKED DEFENDANT'S EXHIBIT NUMBER 13
6 AND WAS ADMITTED INTO EVIDENCE.)

7 MRS. STEINER: For the record, this is S-1.

8 And this was then passed to the jury also.

9 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF
10 CHARLES "PORKY" COLLINS RESUMED.)

11 THE COURT: S-4 that is being referred to in
12 the transcript is -- do we have a new exhibit number for
13 it?

14 MRS. STEINER: We do not apparently have that
15 exhibit. If we have that exhibit, it will have to be
16 found and passed to the jury.

17 MR. EVANS: We are going to compare when we get
18 through with this.

19 THE COURT: So we can clear that up sometime
20 later then. How about D-11 and D-12?

21 MRS. STEINER: D-11 and D-12 are also pictures
22 that we do not presently have physically present in the
23 courtroom.

24 Did you find those?

25 MR. EVANS: Huh-huh. They are not in this.

26 MRS. STEINER: Your Honor, I do have on my
27 computer copies of those two pictures that I made when
28 they were produced to us. We can reproduce those and
29 have those entered into evidence, but I don't want to

1 hold this jury up.

2 THE COURT: Okay. That is fine.

3 MRS. STEINER: It is getting late.

4 THE COURT: As long as we get that clear at
5 some point in the record.

6 MRS. STEINER: And what I'm going to do is read
7 this. The ladies and gentlemen of the jury will have to
8 when this is concluded and when they are -- when it's
9 finally in evidence, they can review them then.

10 THE COURT: Okay.

11 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF
12 CHARLES "PORKY" COLLINS RESUMED.)

13 MRS. STEINER: Your Honor, that is one that
14 will be marked at a subsequent time.

15 THE COURT: That's fine.

16 MRS. STEINER: S-91 in this case. S-142.

17 THE COURT: Okay. S-142 is for the new trial.

18 MRS. STEINER: It's in evidence.

19 THE COURT: But it was originally marked in
20 another trial as S-91.

21 MRS. STEINER: That's true.

22 (THE READING OF THE TRANSCRIPT OF THE TESTIMONY OF
23 CHARLES "PORKY" COLLINS RESUMED.)

24 THE COURT: We are going to recess and begin
25 tomorrow morning with you reading the redirect.

26 Ladies and gentlemen, we are going to recess for the
27 evening. I'll ask you, like I have and like I will
28 continue to, please do not discuss this case with anyone
29 or among yourselves. You can't talk to anybody or the

1 lawyers are not going to nod your way if they were to see
2 you.

3 Also, you are being sequestered. But by
4 happenstance, if you should see some newspaper, look the
5 other direction. And with that, ladies and gentlemen, we
6 will resume at 9:00 in the morning.

7 (THE PROCEEDINGS ON JUNE 14, 2010, CONCLUDED.)
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COURT DISCUSSES MATTERS WITH COUNSEL - JURY OUT

1 (THE FOLLOWING PROCEEDINGS WERE HAD IN
2 OPEN COURT ON JUNE 15, 2010, WITH THE
3 COURT, THE COURT REPORTER, ALL COUNSEL FOR
4 BOTH PARTIES, THE DEFENDANT, THE CIRCUIT
5 COURT CLERK AND THE JURY PRESENT, TO-WIT:)

6 **BY THE COURT:** Good morning, ladies and
7 gentlemen of the jury. We're ready to proceed.

8 There were some exhibits yesterday that
9 were made reference to when the testimony of
10 Mr. Collins was being read. Now we're going to
11 actually have those available for your use
12 during deliberations and counsel is going to
13 read the exhibit numbers that they have now
14 been given.

15 **BY MRS. STEINER:** All right, sir. It's
16 presently marked for identification. Your
17 Honor, Exhibits D-11 and D-12 discussed
18 yesterday in testimony have been marked D-15 as
19 a collective exhibit, and we'd move that into
20 evidence with consent of the --

21 **BY MR. HOWIE:** No objection.

22 **BY THE COURT:** Fine.

23 **BY MRS. STEINER:** And what has been
24 identified as S-3 yesterday has now been marked
25 as D-14 for identification, and we move those
26 into evidence now.

27 **BY MR. HOWIE:** No objection.

28 **BY THE COURT:** I'll allow them both to be
29 admitted.

COURT DISCUSSES MATTERS WITH COUNSEL - JURY OUT

1 (DEFENDANT'S EXHIBITS NO. D-14 and D15
2 WERE RECEIVED INTO EVIDENCE.)

3 BY MRS. STEINER: I'd like to have the
4 jury look at them as well.

5 BY MR. HOWIE: Are you ready, Your Honor?

6 BY THE COURT: You can proceed now.

7 (THE CONTINUED TESTIMONY OF PORKY
8 COLLINS WAS THEN READ TO THE JURY)

9 BY THE COURT: Who will the State now call
10 next?

11 BY MR. EVANS: Odell Hallmon.

12 BY THE COURT: Come around, please. Raise
13 your right hand and take the oath. Do you
14 solemnly swear or affirm that the testimony you
15 give in this case to be the truth, the whole
16 truth and nothing but the truth, so help you
17 God?

18 BY THE WITNESS: Yes, sir.

19 BY THE COURT: Have a seat, please. State
20 your name for the benefit of the record,
21 please.

22 BY THE WITNESS: Odell Hallmon.

23 BY THE COURT: You may proceed.

24 BY MR. EVANS: Thank you, Your Honor.

25 DIRECT EXAMINATION

26 BY MR. EVANS:

27 Q Mr. Hallmon, you're going to need to speak
28 loud so that everybody on the jury can hear you;
29 okay?

HALLMON - DIRECT

1 **A** Yes, sir.

2 **Q** Let's start over. State your name,
3 please.

4 **A** Odell Hallmon.

5 **Q** All right. Mr. Hallmon, I noticed that
6 you are in prison clothes; is that correct?

7 **A** Yes, sir.

8 **Q** Are you in the penitentiary at this time?

9 **A** Yes, sir.

10 **Q** For what charge?

11 **A** Possession of a controlled substance.

12 **Q** Who put you in the penitentiary?

13 **A** You -- or Doug, Mr. Doug Evans.

14 **Q** So I'm the one that prosecuted you?

15 **A** Yes, sir.

16 **Q** What are your prior convictions?

17 **A** Aggravated assault and possession of a
18 firearm.

19 **Q** Okay. You know a person by the name of
20 Curtis Flowers?

21 **A** Yes, sir.

22 **Q** How long have you known him?

23 **A** Long time.

24 **Q** Can you give us just some kind of rough
25 idea? You need to speak up.

26 **A** About 20-something years.

27 **Q** All right. Now, you still need to speak a
28 little louder.

29 **A** Yes, sir.

HALLMON - DIRECT

1 Q Act like I'm hard of hearing and just
2 holler at me if you have to.

3 A Yes, sir.

4 Q Were you in jail with the Defendant Curtis
5 Flowers after the murder at Tardy Furniture?

6 A Yes, sir.

7 Q And do you know a person by the name of
8 Patricia Hallmon or Odom?

9 A Yes, sir.

10 Q Who is she?

11 A That's my sister.

12 Q And she's a witness in this case; is that
13 right?

14 A Yes, sir.

15 Q Did the Defendant Curtis Flowers ask you
16 when y'all were in jail together --

17 BY MR. CARTER: I object to leading.

18 BY MR. EVANS:

19 Q Did the Defendant ask you to do anything
20 in reference to his sister Patricia?

21 A Yes, sir.

22 Q What did he ask you do?

23 A He asked me to discredit her testimony,
24 lie against her for him.

25 Q Did you do that?

26 A Yes, sir.

27 Q You actually testified in a case against
28 the State for the Defendant that she had lied?

29 A Yes, sir.

HALLMON - DIRECT

1 Q Was that true?

2 A No, sir.

3 Q Why did you lie on your sister for him?

4 A Because me and him were friends at the
5 time, and he made it like her testimony was -- if I
6 could get her testimony throwed out, it would
7 benefit him and get his case overturned.

8 Q And you tried to help him by lying?

9 A Yes, sir.

10 Q Now, while you were in jail with him, did
11 he ever admit anything to you about the murders at
12 Tardy's Furniture?

13 A Yes, sir.

14 Q What did he admit to you?

15 A He admitted that he killed the people at
16 Tardy Furniture.

17 BY MR. EVANS: Your Honor, I tender the
18 witness.

19 BY MR. CARTER: One moment, Your Honor.

20 BY THE COURT: Certainly.

21 CROSS-EXAMINATION

22 BY MR. CARTER:

23 Q When did he admit it, Mr. Hallmon?

24 A When we first went to Parchman.

25 Q Where were you at?

26 A Lockdown in Parchman.

27 Q You were in lockdown?

28 A We --

29 Q What cell were you in?

HALLMON - CROSS

1 **A** We were right beside one another.

2 **Q** And Curtis Flowers charged with four
3 murders?

4 **A** Yes.

5 **Q** He told you he committed the murders?

6 **A** Oh, yes, sir. Just like he told me to lie
7 against my sister.

8 **Q** Do you remember giving a videotaped
9 statement at some point and being asked that
10 question by Mr. Johnson or somebody?

11 **A** I believe I do.

12 **Q** And it's your testimony that you said on
13 that tape that Mr. Flowers told you he killed those
14 people?

15 **A** Well, not exactly then. But now I told
16 Mr. Evans when I first started talking to him.

17 **Q** What did you tell Mr. Evans?

18 **A** Well, my mama had -- when I got out of
19 prison, mama was on me every day about the lie I
20 made because my sister wouldn't talk to me because I
21 had lied against her. And so trying to help him and
22 so I called him and told him even what happened.

23 **Q** Who was there when you told Mr. Evans
24 that?

25 **A** Well, my mama was in the house, but I was
26 taking to Mr. Evans on the phone.

27 **Q** You love your sister?

28 **A** Oh, yes, sir.

29 **Q** Deeply, don't you?

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1 **A** Yes, sir.

2 **Q** She loved you deeply, don't she?

3 **A** Yes, sir.

4 **Q** Yet you went in Gulfport, Mississippi --

5 **A** Yes, sir, I did that, but see --

6 **Q** -- and lied on her?

7 **A** Yes, sir, I did it because --

8 **Q** You lie a lot, don't you?

9 **BY MR. EVANS:** Your Honor, he keeps
10 interrupting the witness. I would object to
11 him not allowing the witness to answer the
12 questions.

13 **BY THE COURT:** Yeah. Let him complete his
14 answer, and you can ask the next one.

15 **A** Yes, sir. But at the time, I was -- we
16 was right beside one another, and I was looking at
17 him as a friend. And the time we was in Unit 32
18 lockdown where you couldn't smoke so he was the only
19 one being able to smoke cigarettes so he was keeping
20 me supplied with cigarettes. All this until I sent
21 or he wrote a note. I recopied the note. I did
22 exactly what he said. But I sent it there, and I
23 got on the stand and did it. And it didn't dawned
24 on me until I got up that I done made a mistake. I
25 didn't know how crucial this was. But now when I
26 found out and my mama and my family turned against
27 me.

28 **BY MR. CARTER:** Your Honor, I object to
29 that. That's not answering my question.

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1 **BY MR. EVANS:** He's trying to answer the
2 question.

3 **BY MR. CARTER:** That is not answering a
4 question. That's not answering my question.

5 **BY MR. EVANS:** He's trying to.

6 **BY THE COURT:** I'll let him continue with
7 that. I mean, he's answering a question.

8 **BY MR. CARTER:** Your Honor, he's not
9 answering the question.

10 **BY MR. CARTER:**

11 **Q** Go on. Just go on as long as you need to.
12 Take the next hour if you need to.

13 **A** Well, I got out and my mama was carrying
14 on about telling the truth, so my sister and my
15 family turned against me because I got up there and
16 lied on him. So I tried to straighten it out, and
17 that's when I called Mr. Doug Evans and told him
18 that I lied on the stand and tried to get Curtis off
19 the charges and that he did admit to me; he did.
20 But we was friends in lockdown together.

21 **Q** You were friends with Mr. Flowers?

22 **A** Yes, sir.

23 **Q** And that friendship was so -- when is
24 Mr. Flowers' birthday?

25 **A** I don't know how all that, sir.

26 **Q** Mr. Flowers have any children?

27 **A** I don't know. I believe so, yes, sir. We
28 was locked up together now. I been knowing him all
29 my life.

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1 Q I know, but you're supposed be friends and
2 I'm shocked you don't know his birthday. Now,
3 Mr. Flowers made you tell on your sister?

4 A Well, he did.

5 Q That's what I'm understanding. Had he
6 convinced you, overwhelmed your own personal
7 feelings toward your sister, who you admitted you
8 loved --

9 A It wasn't --

10 Q Do you mind if I ask a question?

11 BY THE COURT: Let him finish his question
12 first.

13 A Yes, sir.

14 BY MR. CARTER:

15 Q Mr. Flowers told you what to do,
16 overwhelmed your own personal judgment and
17 conscience and had you to lie on your sister and you
18 did that. You're telling the jury you did that
19 because you wanted some cigarettes?

20 A Man, in jail --

21 Q Did you do that because you wanted --

22 BY MR. EVANS: Your Honor, he has to have
23 a right to answer the question. He can't just
24 keep interrupting him.

25 BY MR. CARTER:

26 Q Did you do that because you wanted some
27 cigarettes?

28 A I wanted the cigarettes, but he promised
29 me thousands of dollars, too. But, see, this is how

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1 it went. All right. He asked me -- he wrote -- me
2 and him talked for months before it even came to
3 him. He feels like -- I just feel like he trust me
4 like I trust him. But now nicotine was an
5 addiction. Now, and you being somewhere where can't
6 nobody smoke, and he the only one got a cigarette,
7 man, play a mind game.

8 Q Okay. Mr. Flowers was the only one at the
9 prison that has some cigarettes?

10 A We was in the two zone. We was only two
11 of the 25 inmates, he was the only one person.

12 Q Mr. Flowers was the only person out of 25
13 people who had some cigarettes?

14 A Yes, sir.

15 Q And was Mr. Flowers also able to control
16 the other 25 and tell them what to do as well?

17 A I don't know. Me and him was just -- like
18 when you away from places like this and you're
19 homeboys, they righteously just stick together, so.

20 Q And you know all kind of personal stuff
21 about Mr. Flowers. Now, what position -- what
22 number child is Mr. Flowers in his family?

23 A What you say?

24 Q What number child is Mr. Flowers in his
25 family?

26 A I know his brothers and sisters, but I
27 don't what number he is. I don't know him like
28 that --

29 Q You ever been to Mr. Flowers' house?

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1 **A** Well, when he stayed by my sister I been
2 over there.

3 **Q** You ever been to his mama's house?

4 **BY MR. EVANS:** Your Honor, I object. He
5 keeps interrupting.

6 **BY THE COURT:** I think he was on the next
7 question.

8 **A** Well, now what you say? Have I gone to
9 his mama's house?

10 **Q** Yeah.

11 **A** I been around through there.

12 **Q** Have you been to his mother's house, yes
13 or no?

14 **A** No, but my -- my sister --

15 **Q** I will settle on the no.

16 **BY MR. EVANS:** Your Honor, I object. He
17 has got to let this witness answer the
18 questions.

19 **BY THE COURT:** Wait, wait, wait. After
20 he -- you know, I don't think anybody can
21 narrow the answer that a witness intends to
22 give. He can answer yes or no and then explain
23 his answer.

24 **BY MR. CARTER:**

25 **Q** Okay. Explain your answer, sir.

26 **A** I said not really, but my sister got a
27 baby by his brother so we was real close like that.

28 **Q** How -- can you explain to me how this is
29 an answer to whether or not you been to his mother's

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1 house?

2 **A** You said how close we was. I'm saying you
3 asked did I know his family and in so many words.

4 **Q** So you said -- tell me that again. His --

5 **A** His brother have a baby by my sister.

6 **Q** His brother have a baby?

7 **A** Or a daughter, yes, sir.

8 **Q** How does that make you close?

9 **A** Well, we been knowing one another all our
10 lives, really.

11 **Q** I know you're fine, Mr. Hallmon.

12 **A** But, see, it didn't get close like that
13 until we were locked up together. When you beside a
14 person locked up for almost a year, now that bring
15 you -- you get real close. Right there where you
16 can only talk to him, and he can only talk to you.

17 **Q** Right. And you become closer to them when
18 you're next to them than you are to your sister? Is
19 that what you telling us?

20 **A** I told you I was a cigarette addict. I
21 just rewrote the letter. I was doing this thing to
22 keep my habit up, my smoking habit. It's just like
23 a junkie trying to keep his habit up; that's all it
24 was. And I didn't know how serious it was until I
25 got out and approached my family, then I found out
26 how serious it was.

27 **Q** You didn't know --

28 **A** No, sir.

29 **Q** -- that lying on your sister --

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1 **A** I did lie on her.

2 **Q** -- was serious? And she was the one that
3 was committing perjury was what you said? You had
4 no idea?

5 **A** No, sir, not at the time. The only thing
6 I had on my mind was cigarettes and a promise of
7 money. That's all I had.

8 **Q** Mr. Hallmon, you've been in the criminal
9 justice system for a while, haven't you?

10 **A** Yes, sir.

11 **Q** And you know that prosecution is serious,
12 don't you?

13 **A** I never took it to trial. I always
14 pleaded out and went on and did my time.

15 **Q** And when you pled out, did you go home to
16 your family?

17 **A** I got out and went home.

18 **Q** You plead and got out of where?

19 **A** Prison and went home.

20 **Q** So when you pled, you pled and you knew
21 you were going to prison, didn't you?

22 **A** Yes, sir.

23 **Q** You didn't want to go to prison. If you
24 had the preference, you would have gone home instead
25 of prison; is that correct?

26 **A** If I did the crime, they caught me and I
27 did my time.

28 **Q** If you had a preference --

29 **A** I never try to run from the system or

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1 nothing.

2 Q If you had a preference to go home or go
3 to prison, which one would you choose?

4 A That's common sense. Anybody would choose
5 home.

6 Q Okay. To go to prison is a serious
7 matter, isn't it?

8 A Yes, sir.

9 Q And you know it's a serious matter because
10 you had been; isn't that correct?

11 A Yes, sir.

12 Q I didn't hear you, sir.

13 A Yes, sir.

14 Q Now, Mr. Hallmon, what exact cell were you
15 in since you got this good memory?

16 A We was in 32 lockdown. I don't remember
17 the exact cell.

18 Q What cell were you in?

19 A You was looking at something like over 11
20 years ago. The cell numbers?

21 Q Yeah, that's right. That's the question.

22 A All right. 59 -- 58, something like that.

23 Q Which one was Mr. Flowers in?

24 A He had to have been in -- he was right
25 beside me. He had to been in 57, or I was in 59 and
26 he was in 58. I was in 58 or he was in 57. We was
27 right there together.

28 Q Okay. Now, how long were you in lockdown
29 by Mr. Flowers?

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1 **A** I was in there about -- all together back
2 and forth, I was leaving and then I'm -- about six
3 months or so, then I come back over there.

4 **Q** Why did you keep leaving and coming back?

5 **A** Because they would just move me.
6 Administration would move me.

7 **Q** Okay. You didn't have anything to do with
8 it? You didn't commit any infractions that would
9 cause yourself to get moved back and forth?

10 **A** Well, they just moved people. Some guys
11 jumped on me, and they moved me because of that.

12 **Q** So you did do some things to cause
13 yourself to get moved?

14 **A** No, I didn't do nothing. I was just a
15 victim.

16 **Q** Mr. Hallmon.

17 **A** Yes, sir.

18 **Q** Are you an honorable person, Mr. Hallmon?

19 **A** So many ways, I am.

20 **Q** Which way are you?

21 **A** Well, right now I'm honest as I can be.

22 **Q** I said honorable, not honest.

23 **A** Well, yes. Yes, sir.

24 **Q** Okay. Are you a reliable person?

25 **A** Yes, sir.

26 **Q** Are you a trustworthy person?

27 **A** Yes, sir, I can be trustworthy.

28 **Q** Would you lie on a person?

29 **A** It's according to who -- it's according.

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1 See, I was -- I was --

2 Q Yeah, I'm trying to see. Go ahead.

3 A I'm doing -- I was doing everything for a
4 friend. At the time, I was doing it for a friend.

5 Q Can I take that as a yes, that you will
6 lie on a person?

7 A Yes, sir. That was for a friend now.

8 Q You have lied?

9 A I wouldn't -- it was according to the
10 predicament they got me in. See, if you're doing --
11 see, it got to be -- you got to break down the
12 element of the mind. So if -- you know, if anything
13 control the mind so you had to -- I was caught up in
14 a bind at the time, that's all.

15 Q Mr. Hallmon.

16 A Yes, sir.

17 Q You're not the only person that smokes
18 cigarettes. You agree with that; right?

19 A Now, I got a bad nerve problem right now.
20 And the system -- well, within the penitentiary
21 system, you can check my work --

22 Q Let me see if I understand what you're
23 saying.

24 A -- I got a bad nerve.

25 Q Let me see -- go ahead. How much time do
26 you need? Go on.

27 A I've got a bad nerve problem. I got --
28 you know, and smoking, it helps me. It has helped
29 me.

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1 **Q** Okay. So I take your answer is, I will
2 lie; it depends on the circumstances. Is that what
3 you're saying?

4 **A** Yes, sir, it's according. At the time, I
5 would. But now I'm telling you the truth.

6 **Q** Okay. When did you start telling the
7 truth, Mr. Hallmon? When did you become honest?

8 **A** See, I know I done got myself in it. See,
9 I'm dealing with the serious crisis within myself
10 right now. So I don't want lie and going out lying
11 on peoples and doing wrong toward people. I'm
12 trying to better myself. That's God's truth.

13 **Q** Okay.

14 **A** And I done -- like I said, I done -- I
15 done got myself in a bind whereas I want to just do
16 right now.

17 **Q** Okay.

18 **A** Because I know there's a God in Heaven,
19 and I know that I got to see Him soon because I'm
20 going through a medical crisis right now so I want
21 to get myself right with God.

22 **Q** Okay.

23 **A** Therefore --

24 **Q** Are you finished?

25 **A** I want to get myself right with God.
26 Therefore, I'm up here on this stand every time they
27 need me. I'm getting up here and telling the truth
28 that I lied and I'm trying to make up for my
29 mistakes.

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1 Q Are you finished?

2 A Yes, sir.

3 Q So you have lied and, in fact, you have a
4 reputation as a liar; is that correct?

5 A No, sir. I have lied before but right now
6 I ain't lying, man.

7 Q In fact, you've lied in this case before,
8 haven't you?

9 A I lied for the Defendant. I lied for the
10 one you were helping, man.

11 Q Okay. Well, you gave John Johnson or
12 somebody a statement, a recorded statement; is that
13 correct?

14 A I done gave --

15 Q You've given several?

16 A Yeah.

17 Q In one of them you were asked if
18 Mr. Flowers said he killed all these people and you
19 never say no; is that correct? And you never said
20 he did; is that correct?

21 A I told Mr. Evans that the first time I
22 talked to him.

23 Q Can we talk about the recorded statement?

24 A At the time?

25 Q Yeah, we're talking about the recorded
26 statement.

27 A Yeah.

28 Q In the recorded statement that you gave
29 John Johnson or someone, you were asked if Curtis

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1 Flowers told you he killed those people. And in
2 that recorded statement, you never said he told you;
3 is that correct?

4 A It's a possibility. But I told Mr. Evans
5 from the start --

6 Q What do you mean by, It's a possibility?

7 A It's a possibility I didn't say -- tell
8 Mr. Johnson because I went straight to the district
9 attorney and called him on the phone and told him.

10 Q Okay. I admit it. I don't -- wouldn't
11 nothing surprise me that you told Mr. Evans.

12 A Yes, sir.

13 Q But my question is --

14 BY MR. EVANS: I object to that, Your
15 Honor. That's completely inappropriate.

16 BY THE COURT: I sustain.

17 BY MR. CARTER:

18 Q My question is that if I got to pay it,
19 I'll play it. Didn't you give a recorded statement
20 to Mr. Johnson where you were asked if Mr. Flowers
21 admitted to you that he killed those people, and
22 isn't it a fact that you never said that he admitted
23 that to you?

24 A I know I told Mr. Evans. I don't know --
25 see, I told Mr. Johnson during another process. We
26 can't bring that up what I told Mr. Johnson.

27 Q Say again?

28 A You know --

29 BY MR. EVANS: Your Honor, we might need

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1 to approach because he's trying to cover an
2 area that the Court has ruled on, and he's
3 trying to explain why he can't answer that
4 question.

5 **BY MR. CARTER:** Your Honor, my question is
6 simply did he gave a recorded statement. He
7 knows he did.

8 **A** Yes.

9 **BY MR. CARTER:** He knows he did. He's
10 admitted that. I just want a simple answer.

11 **BY MR. CARTER:**

12 **Q** Now, you do know, Mr. Hallmon, that you
13 were asked if Mr. Flowers told you that he killed
14 those people?

15 **A** Yes, sir. This is what I'm saying. I had
16 told Mr. Johnson, but now we can't talk about that,
17 what I told Mr. Johnson.

18 **Q** I'm not asking you what --

19 **A** I give Mr. Johnson -- done told
20 Mr. Johnson before I told Mr. Evans the first time.
21 But, see, when we was at the court -- and you might
22 be the one that I told him on or it might be one I
23 didn't tell him on. But now the one I told him on,
24 we can't bring that up.

25 **Q** You can't bring up yes or no whether you
26 did?

27 **BY MR. EVANS:** Your Honor, we might need
28 to approach because we're fixing to get into
29 something here.

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1 **BY THE COURT:** Step in the jury room for a
2 minute, ladies and gentlemen, because I need to
3 find out what he's making reference to.

4 (THE FOLLOWING PROCEEDINGS WERE HAD IN
5 OPEN COURT OUTSIDE THE HEARING AND
6 PRESENCE OF THE JURY, TO-WIT:)

7 **BY THE COURT:** Now, if you'll step out in
8 the hall for a minute, Mr. Hallmon. I need to
9 find out.

10 (Witness Leaves the Stand and exits the
11 courtroom)

12 **BY MR. EVANS:** Your Honor, he is trying to
13 keep from saying that I made sure that he was
14 telling the truth by polygraphing him. When we
15 polygraphed him, that's when he admitted that
16 Curtis Flowers had told him specifically that
17 he had killed these four people. Now, he is
18 trying his best to follow my instructions of
19 telling him the Court said he could not go into
20 that statement, and the defense counsel keeps
21 asking him about whether he said that he
22 specifically killed those people or not. If he
23 keeps asking him, I'm going to have to ask that
24 he be allowed to explain that answer.

25 **BY MRS. STEINER:** Your Honor, it's the --

26 **BY MR. CARTER:** Your Honor, that is the
27 craziest crap I've ever heard in my life.

28 **BY THE COURT:** Mr. Carter, that's not
29 appropriate language to use in this courtroom.

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1 **BY MR. CARTER:** Your Honor, if the
2 Court -- my apologies. Your Honor, I keep
3 asking him about his tape-recording. I'm not
4 even asking him about what he talked about with
5 Mr. Evans, so I can't understand how my
6 question about a tape-recording is asking him
7 about what happened with Mr. Evans with the
8 conversation with -- I'm not even asking about
9 him the conversation with Mr. Evans. I don't
10 even want to know.

11 **BY MR. EVANS:** That conversation with
12 me -- I believe it was with Mr. Johnson and
13 Mr. Jennings, and he has explained the fact
14 that it might be on one of the tapes, and it
15 might not be on the other. And it is extremely
16 clear that he is doing his best to follow the
17 Court's instruction.

18 **BY MRS. STEINER:** Your Honor --

19 **BY MR. EVANS:** And the defense counsel
20 knows that he can't go into it is why he
21 continues to ask this question.

22 **BY MR. CARTER:** I didn't ask him to go
23 into it. I want to talk about the tape and
24 whether or not he said on the tape that
25 Mr. Flowers told him he committed the murders.
26 That's all I want to know, yes or no. I don't
27 know what Mr. Evans is talking about.

28 **BY MR. EVANS:** Oh, yeah, you do.

29 **BY THE COURT:** Well, let me bring the

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1 witness in now and explain why the wit- -- I
2 mean, we're in agreement. I'll explain to him
3 that he is just to answer the question yes or
4 no as far as whether he ever told --

5 **BY MR. CARTER:** Your Honor --

6 **BY MR. EVANS:** But, Your Honor, that's not
7 appropriate either. If he's going to be asked
8 a yes or no question, he should have a right to
9 explain it.

10 **BY THE COURT:** Well, I don't want him to
11 explain anything about a polygraph test.

12 **BY MR. EVANS:** But that's the problem and
13 defense counsel knows that.

14 **BY MR. CARTER:** It's not a problem.
15 Mr. Evans knows that a polygraph test has no
16 evidentiary or scientific basis.

17 **BY THE COURT:** Well, let me back up and
18 say, I mean, y'all know what happened in the
19 investigative stages. That's not something I
20 know, so I don't know if he gave more than one
21 statement to Mr. Johnson or more than one
22 recorded statement. I mean, I'm in the dark on
23 that.

24 **BY MR. CARTER:** Well, we only know of one,
25 Your Honor. I don't know what Mr. Evans knows.

26 **BY THE COURT:** And so I -- you know, I --
27 I'm --

28 **BY MR. EVANS:** And, Your Honor, if it gets
29 to that point, my argument would be that the

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1 polygraph would not be for the truth of whether
2 it is reliable; it would be for why he changed
3 his story to tell the truth.

4 **BY THE COURT:** There's not going to be any
5 mention of polygraph, period, explanation point
6 next to it. I can assure you of that, and
7 that's just not going to be allowed under any
8 circumstances.

9 **BY MR. CARTER:** And I -- can I say one
10 other thing, Your Honor? It's the defense's
11 position that there's only one tape-recording,
12 and it stopped at some point and then it
13 resumed. And if there's another one that
14 Mr. Evans know about that we don't know about
15 it and we would just submit that there's
16 discovery that we probably have not been given.

17 **BY MR. EVANS:** Your Honor, we would ask
18 that the Court specifically advise him again --
19 and it can be done in open court -- that no
20 matter what he's asked by the defense counsel,
21 he cannot discuss the polygraph.

22 **BY THE COURT:** I'll call Mr. Hallmon in
23 and advise him of that very fact.

24 **BY THE BAILIFF:** Are you ready?

25 **BY THE COURT:** I'm ready for him to come
26 in.

27 (Witness Retakes the Stand.)

28 **BY THE COURT:** Mr. Hallmon -- and you've
29 very carefully avoided mentioning it and I want

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1 to reiterate that -- because I didn't know what
2 they were talking about as far as not making
3 reference to something, but apparently at some
4 point you had taken a polygraph test.

5 **BY THE WITNESS:** Yes, sir.

6 **BY THE COURT:** But under no circumstances
7 are you to mention anything about the polygraph
8 test. Now, if he asks you if you've ever given
9 a statement to Mr. Johnson that said
10 Mr. Flowers did not have anything to do with
11 the murders, you can answer that yes or no.
12 But I don't think that there's any need for any
13 further explanation for that particular
14 question.

15 But, now, under no circumstances could you
16 get into any mention of the polygraph, and I
17 appreciate the fact that you have carefully
18 avoided that. But after they advised me what
19 was going on, I felt like I needed to remind
20 you of that again, even though it seems like
21 you are doing a good job already of not
22 mentioning it.

23 **BY THE WITNESS:** Yes, sir.

24 **BY THE COURT:** And is there any further
25 need to -- anything further that either side
26 believes necessary?

27 **BY MR. CARTER:** No, sir, Your Honor, I
28 just want to ask the question again and move
29 on.

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1 **BY MR. EVANS:** Not that I'm aware of.

2 **BY THE COURT:** You can bring the jury back
3 out now.

4 (THE FOLLOWING PROCEEDINGS WERE
5 CONTINUED IN OPEN COURT WITH THE JURY
6 PRESENT, TO-WIT:)

7 **BY THE COURT:** Okay. Court will come back
8 to order. Mr. Carter, you may proceed.

9 **BY MR. CARTER:** Yes, sir.

10 **CONTINUED CROSS-EXAMINATION**

11 **BY MR. CARTER:**

12 **Q** Mr. Hallmon.

13 **A** Yes, sir.

14 **Q** Mr. Hallmon.

15 **BY MR. CARTER:** May I approach the
16 witness, Your Honor?

17 **BY THE COURT:** You may.

18 **BY MR. CARTER:**

19 **Q** First of all, Mr. Hallmon, you testified
20 in at least three or four of these trials. How many
21 does this make?

22 **A** You know.

23 **Q** At least -- I think you were in the one in
24 Gulfport; is that correct?

25 **A** Right.

26 **Q** And you've been involved in three -- three
27 in this court, I believe; is that correct?

28 **A** Yes, sir.

29 **Q** Now, Mr. Hallmon -- well, you read and

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1 write?

2 A Yes, sir.

3 Q Now, at the top there, what -- whose name
4 is at this top there?

5 A My name, Odell Hallmon.

6 Q And it has direct cross?

7 A Right.

8 Q And if you go down here, you see where it
9 says cross examination by Mr. Carter --

10 BY THE BAILIFF: He needs to speak up for
11 the jury.

12 A Yes, sir.

13 BY MR. CARTER:

14 Q And start reading this first question
15 right here and go to the --

16 BY MR. EVANS: Your Honor, he can ask him
17 questions about it, but I think just going
18 through a prior transcript is improper.

19 BY MR. CARTER:

20 Q Mr. Hallmon, are you able to read that?

21 A I'm saying -- yes, I'm able to read it.

22 Q Could you read it, sir?

23 A You going to read your question?

24 Q Could you read that, sir?

25 A Good morning, Mr. Hallmon. I am Mr. Ray
26 Carter.

27 Q Go ahead.

28 BY MR. EVANS: Your Honor, I offer that
29 exhibit into evidence if we're going to be

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1 reading from it because I think it's got to be.

2 BY MR. CARTER: Can we have it marked?

3 BY MR. EVANS: Then I'd like the whole
4 transcript entered into evidence if we're going
5 to use part of it.

6 BY MR. CARTER: Fine with me.

7 BY THE COURT: I don't know the necessity
8 of having the transcript -- entire transcript.
9 I think the appropriate thing is to ask him to
10 read that, and not out loud, but read it
11 silently and then ask him if that refreshed his
12 memory on anything. That's my understanding of
13 appropriate procedure.

14 BY MR. CARTER: Yes, sir.

15 A (Witness reading).

16 BY MR. CARTER:

17 Q You ready, Mr. Hallmon?

18 A Yes, sir.

19 Q Now, Mr. Hallmon, in this document it's --
20 I'm cross-examining you; is that correct?

21 A Yes, sir.

22 Q At a previous time. And isn't it a fact
23 that you read where I said, good morning,
24 Mr. Hallmon, I'm Ray Carter?

25 BY MR. EVANS: Again, it's improper to
26 read the transcript. He can ask him a question
27 based upon him refreshing his memory, but he
28 knows it's improper to attempt to try to read a
29 prior transcript.

HALLMON - CROSS

1 BY MR. CARTER:

2 Q Mr. Hallmon?

3 BY MR. EVANS: And I object, Your Honor.

4 BY THE COURT: Response?

5 BY MR. CARTER:

6 Q Mr. Hallmon, what --

7 BY THE COURT: I mean, response to the
8 objection now.

9 BY MR. CARTER: Your Honor, could you
10 restate it? I'm not even sure I heard it.

11 BY MR. EVANS: You need to follow the
12 rules.

13 BY THE COURT: Well, that's not what
14 you --

15 BY MR. CARTER:

16 Q Mr. Hallmon, I just passed you a document.
17 Did that document refresh your memory in any way?

18 A Not exactly. I'm talking about you
19 just --

20 BY THE BAILIFF: Speak up.

21 A I don't -- refresh my memory in which way?

22 BY MR. CARTER:

23 Q Did you read the document?

24 A I read it.

25 Q The portion that I asked you to read?

26 A Yes, sir.

27 Q And do you dispute what's written in it?

28 A Well, Mr. Charles, you got to see, I don't
29 know who is who. I know Mr. Evans. I don't know

HALLMON - CROSS

1 everybody by name like that. I know this right here
2 I told Mr. Evans, and at a point in time, I done
3 told Mr. Johnson. But now you -- you got me to
4 where I don't know who it is. Who this person is.
5 I don't be around them like that, Mr. Charles.

6 Q Mr. Hallmon.

7 A Yes, sir.

8 Q In this document that I passed you, isn't
9 it a fact that I asked you some questions? Didn't
10 you see where I asked you some questions, yes or no?

11 A Yes, sir.

12 Q And you answered. Do you see where you
13 answered? Yes or no?

14 A Yes, sir, I see, but --

15 Q And isn't it a fact that you answered in
16 reply to my question? My question is: Isn't it a
17 fact that you told John Johnson that Curtis Flowers
18 never directly admitted to you that he killed
19 anybody at Tardy Furniture Store? And isn't it a
20 fact that you said, "I told John Johnson that, I
21 believe"?

22 A It's according to the situation. I was
23 put up under a lot of people who came in and
24 investigated me. I don't know who -- at the time, I
25 probably didn't know who Mr. Johnson was. Now I
26 know him, and I could point him out to you.

27 Q Now, Mr. Hallmon, do you know Lola
28 Flowers, Curtis' mother?

29 A Just know of her. That's --

HALLMON - CROSS

1 **Q** Now, you wrote her a letter at some point,
2 didn't you?

3 **A** That's the letter Curtis wrote. I
4 recopied the letter. That's what I was just
5 telling --

6 **BY MR. CARTER:** May I approach the
7 witness, Your Honor?

8 **A** That's why I'm here today.

9 **BY THE COURT:** You may approach.

10 **BY MR. CARTER:**

11 **Q** First of all, let me ask you this: Whose
12 name is on that letter that you -- whose signature
13 is on that letter?

14 **A** I just recopied the letter he wrote.

15 **Q** I mean, how do you know?

16 **A** That's how I got here. I don't know
17 nothing about what went on. He the one that told
18 me, that volunteered it. He -- I didn't have
19 anything to do with this. He put me in here.

20 **Q** Who wrote the letter, put it in a
21 envelope?

22 **A** I recopied the letter.

23 **Q** Sent it to Ms. Flowers?

24 **A** Got her address from him and went and put
25 it on the envelope. I did everything he asked me to
26 do.

27 **Q** And what proof do you have of --

28 **A** I don't know her address. I ain't got a
29 phone book with no address. I don't know -- I got

HALLMON - CROSS

1 to get it from somebody; where could I have got it
2 from?

3 Q Okay. I don't know how you got it,
4 Mr. Hallmon.

5 A I got it from him.

6 BY MR. CARTER: May I approach the
7 witness, Your Honor?

8 BY THE COURT: You may.

9 BY MR. CARTER:

10 Q Mr. Hallmon, do you recognize that
11 document?

12 A This is the letter I wrote right here.

13 Q Okay. And it's in your handwriting?

14 A Yes, sir.

15 Q Your signature?

16 A Yes, sir, I recopied it.

17 Q And you sent it to Ms. Flowers?

18 A Yes, sir. Did exactly what he asked me to
19 do.

20 Q And what did you tell her?

21 A I told her this right here on the letter.

22 Q Tell us what it is. Read it.

23 A I hope this letter finds you in --

24 BY THE COURT: Wait a minute, now. If
25 he's reading something, it's got to be admitted
26 into evidence. I mean, he can't read
27 something, a document that's not admitted into
28 evidence.

29 BY MR. CARTER: Your Honor, I move at this

HALLMON - CROSS

1 point in time, admit into evidence a letter
2 that was written by Mr. Hallmon on January the
3 13th, 1998, while he was at the Mississippi
4 State Penitentiary to Ms. Lola Flowers.

5 **BY MR. EVANS:** I don't have any objection.

6 **BY THE COURT:** I'll allow it to be marked.
7 Go ahead and admit it into evidence, and then
8 you can proceed after that.

9 (DEFENDANT'S EXHIBIT NO. D-16 RECEIVED
10 INTO EVIDENCE.)

11 **BY MR. CARTER:**

12 **Q** Mr. Hallmon, could you read your letter so
13 the jury can hear it?

14 **A** Our letter, me and Mr. Flowers. Well, he
15 wrote it, and I recopied it.

16 **Q** I know you're telling us that but read it
17 anyway.

18 **A** Hello, Ms. Flowers. I hope this letter
19 finds you in the best of health. For myself, I'm
20 feeling sorry for what I done.

21 **Q** Mr. Hallmon, can you read up a little?

22 **A** "I know apologizing is not going to help,
23 but I had to -- I know apologizing is not going to
24 help, but I had to give it a try. I was behind
25 everything that I did. I'm truly sorry,
26 Ms. Flowers. I was locked up in the Carroll County
27 Jail when I had answered to the police he felt like
28 Curtis committed those murders. I was trying to get
29 out of jail. I had a fine to pay off, and I

HALLMON - CROSS

1 couldn't get the money up so I tried to get that
2 reward they had by using -- and -- and done got
3 herself trapped in something she didn't know and
4 I -- I -- how bad it seemed to be. She know we
5 planned that -- well, I mean, while she was coming
6 to see me in the county jail. Then people -- I
7 mean, those people done told her that if she get on
8 the stand and say she was" -- what's that? What --
9 for the money? "Lying for money. Lying for money
10 they going to convict her. So the only thing I can
11 do is tell the judge. I pushed her up to get --
12 which I did. Ms. Flowers, please forgive me. I
13 never thought things would get out of hand like
14 this. Each day -- each -- I mean, every day that I
15 talk to Curtis, I feel guilty. My family might turn
16 against -- against me for what I'm doing but I don't
17 care. And she know herself what we was trying to
18 do, so anything I can do -- so anything I can do to
19 help in a matter, I'll do it. And in time, after
20 everything's over, I will ask for your forgiveness.
21 Ms. Flowers, take care of yourself and may God bless
22 you through these hard times."

23 Q Thank you, sir.

24 A That's the letter I copied.

25 Q Now, when you was in jail, you weren't on
26 death row, were you?

27 A No, sir.

28 Q Mr. Flowers was, though, wasn't he?

29 A Yes, sir.

HALLMON - CROSS

1 **Q** So they house death row inmates and
2 non-death row inmates together, huh?

3 **A** Yes, sir, right beside one another.

4 **Q** So if -- if an ex-commissioner of MDOC
5 said that wasn't true, the ex-commissioner would be
6 wrong?

7 **BY MR. EVANS:** Your Honor, I object.
8 That's not proper. I think he knows where they
9 were housed.

10 **BY MR. CARTER:** May I approach the witness
11 again, Your Honor?

12 **BY THE COURT:** You may.

13 **BY MR. CARTER:**

14 **Q** Mr. Hallmon, do you know Harvey Freelon or
15 Chuck Williams?

16 **A** Yes, sir.

17 **Q** And who are they?

18 **A** I don't know them just personally, know
19 them like, you know, friends.

20 **Q** You've met them though, haven't you?

21 **A** Yes, sir.

22 **Q** And you've had some interaction with them
23 at some point?

24 **A** Yes, sir.

25 **Q** With respect to this case; is that
26 correct?

27 **A** Yes, sir.

28 **Q** And tell us what -- well, first of all,
29 who -- they represented Mr. Flowers at some point;

HALLMON - CROSS

1 is that correct?

2 A Yes, sir.

3 BY MR. CARTER: One moment, Your Honor.

4 BY MR. CARTER:

5 Q And you actually testified on behalf of
6 Mr. Flowers at trial at some point; is that right?

7 A I was trying to help, yes, sir. That was
8 where the letter came from. He wrote the letter for
9 me to write to his lawyer and his mama.

10 Q You didn't do anything, did you,
11 Mr. Hallmon except just do what you was told; is
12 that correct?

13 A Yes, sir.

14 Q And Mr. Flowers is on death row yet was so
15 powerful and yet persuasive and the friendship was
16 so overwhelming that he got you to do all these
17 things?

18 A Yes, sir.

19 Q He got you to write his mama. He got you
20 to write Mr. Lumumba who represented him at the
21 time?

22 A Yes, sir.

23 Q He got you to go down to Gulfport to
24 testify?

25 A Yes, sir.

26 Q And your free will was just gone; is that
27 your testimony?

28 A Yes, sir.

29 Q You couldn't decide what was right and

HALLMON - CROSS

1 what was wrong because Mr. Flowers was just so
2 powerful?

3 **A** Well, Mr. Charles, it's like this right
4 here. It's just like putting you beside him. Say
5 well, all right, if you -- let's say he the only one
6 that had food and he was over there too, and he was
7 feeding you food to live. That's where my mind was
8 coming from at that time.

9 **Q** So a lot of people get food in prison,
10 didn't they?

11 **A** I'm using you for an example like you used
12 me.

13 **Q** And if I was in prison, they wouldn't be
14 feeding me?

15 **A** I'm saying it's just like using that
16 analogy if you needed to eat.

17 **Q** So are you also telling us that
18 Mr. Flowers was the only one that had food?

19 **A** No, I'm saying about the cigarettes. I'm
20 talking about the cigarettes, but I'm saying if you
21 don't smoke I'm using food for you.

22 **Q** Now, do you remember that you told -- you
23 sent Mr. Lumumba a letter as well; right?

24 **A** Right.

25 **Q** And what did you tell him?

26 **A** I can't recall because it's been so long
27 ago. But I know I sent him a letter and he -- I
28 didn't see him -- I didn't talk to him. I talked to
29 an investigator. When I talked to him, I was on the

HALLMON - CROSS

1 stand. I believe that was --

2 Q Okay. I think you're right about that.
3 Where were you when you wrote this letter to
4 Mr. Lumumba?

5 A I was right beside Curtis. Me and him was
6 beside one another in 32 lockdown.

7 Q Okay. And again, this powerful state of
8 influence of this great friendship y'all had and his
9 promises to you and who knows what else, you wrote a
10 letter to his lawyer for Mr. Flowers. You didn't do
11 it based on your free will. You didn't do it
12 because you wanted to do it. And I suppose you're
13 saying that it's a lie; is that correct?

14 A Yes, sir. I didn't -- I didn't -- them --
15 I wrote him. I'm just doing what he asked he to do.
16 He wrote the letter, Mr. Charles.

17 Q Okay.

18 A And I recopied them and sent them like he
19 asked me to.

20 Q He asked you to lie. You knew it was lie;
21 right?

22 A I wasn't -- and, yes, sir, I wasn't
23 thinking about the lying or the consequences at the
24 time. I'm thinking about my next cigarette.

25 Q Okay. What kind of cigarettes were those?

26 A They were rolled tobacco, rolled tobacco,
27 Newport cigarettes.

28 Q Okay. And was any Prince Albert involved?

29 A I don't know about no Prince Albert. I

HALLMON - CROSS

1 know tobacco. Tobacco, I believe.

2 Q Okay. You didn't have any family sending
3 you anything?

4 A My family turned against me for helping
5 him. My whole family just kicked me to the curb.

6 Q And did they turn against you?

7 A Oh, they know I was a liar.

8 Q I said did they turn against you before
9 you started doing all this stuff?

10 A No, sir, they didn't turn against me then.

11 Q If they didn't turn against you before you
12 started doing all this stuff for Mr. Flowers, then
13 that means you had cigarettes and whatever else you
14 needed; is that correct?

15 A I was just managing. I was --

16 Q Did they turn against you before you lied
17 or before --

18 A When I told my mama what I did it was over
19 with. My sister turned and quit -- my sister been
20 helping me all my life. My sister been there for me
21 all of my life. But now at the time, I wasn't
22 thinking at the time I was right beside him. He was
23 smoking; I was smoking. We was just living for then
24 and there.

25 Q Okay.

26 A And going through -- going through the
27 process, I done seen my mistake. I'm trying to make
28 up for the lie we done put together. I'm trying to
29 get it straighted out. Because I got to worry about

HALLMON - CROSS

1 myself now. And when I'm a-talking about worry
2 about myself, I got to think about the consequences,
3 thinking about --

4 **BY MR. CARTER:** Your Honor, I'll object to
5 that as being not responsive.

6 **BY MR. CARTER:**

7 **Q** Mr. Hallmon, let me ask you this. Did
8 your family turn against you before you got involved
9 with Mr. Flowers or was it afterward?

10 **A** Afterward.

11 **Q** Afterward?

12 **A** They didn't turn against me. They just
13 won't help me, won't do nothing for me.

14 **Q** They were helping you before you got
15 involved with Mr. Flowers; is that right?

16 **A** When I told them about what happened, man,
17 they just -- they just -- but --

18 **Q** Were they helping before you got involved
19 with Mr. Flowers?

20 **A** See, I told my mama about it and my mama
21 knew I'm lying.

22 **Q** Okay. You're not going to answer. All
23 right. Now --

24 **BY MR. CARTER:** May I approach? May I
25 approach the witness, Your Honor?

26 **BY THE COURT:** You may.

27 **BY MR. CARTER:**

28 **Q** Mr. Hallmon, do you recognize that
29 document?

HALLMON - CROSS

1 **A** I rewrote it. That's the same one I
2 recopied. I copied that one, too.

3 **Q** You copied it, Mr. Flowers wrote it?

4 **A** That's my handwriting.

5 **Q** You put it in your handwriting and you
6 sent it to his lawyer?

7 **A** Mr. Charles, can I say something?

8 **Q** No. Can you answer my question?

9 **A** Yes, sir.

10 **Q** Can you answer my question?

11 **A** Yes, sir.

12 **Q** Now, was Mr. Flowers already in prison
13 when you went?

14 **A** Yes, sir, we was down there together.

15 **Q** I know. Who went first?

16 **A** I might have went first. I don't know. I
17 can't recall. I went in '97. 1997.

18 **Q** Okay.

19 **A** So if he was there then, we were there.

20 **BY MR. CARTER:** Your Honor, I move to have
21 admitted into evidence the letter that
22 Mr. Hallmon wrote to Mr. Lumumba.

23 **BY MR. EVANS:** No objection.

24 **BY THE COURT:** Well, normally we would
25 have it marked for identification and then into
26 evidence but we'll just go ahead and have it
27 marked into evidence at this time.

28 (DEFENDANT'S EXHIBIT NO. D-17 RECEIVED
29 INTO EVIDENCE.)

HALLMON - CROSS

1 BY MR. CARTER:

2 Q Okay. Mr. Hallmon, could you take that
3 and -- your letter, that's in your handwriting?

4 A Uh-huh.

5 Q That has your signature?

6 A Yes, sir.

7 Q And that you sent to Mr. Lumumba. Could
8 you read it?

9 A Okay. "My name is Odell Hallmon. I am
10 writing in concern of a case you is handling, the
11 case of Mr. Curtis Flowers. My sister was a witness
12 in that case. Well, I had my sister to lie on the
13 stand. It all staying at the county jail."

14 Q Do what?

15 A I said --

16 Q Could that be started?

17 A "Started at the county jail. At the
18 county jail. I had a fine to pay off. Since I
19 didn't -- and I didn't have the money. So I told --
20 told her to tell the parole -- police she know
21 who" -- what's that?

22 Q Is it committed, Mr. Hallmon?

23 A "Committed those numbers."

24 Q Murders, Mr. Hallmon?

25 A I mean murders.

26 Q Mr. Hallmon, are you sure it's not murder?

27 A Yes, it's murders. It looks like an n.

28 "So she could get that 30,000 -- \$30,000 and get me
29 out. My sister loved me like I was her child. She

HALLMON - CROSS

1 do for me when others don't. I'm -- I'm --"

2 Q Could that be truly?

3 A "Truly sorry everything happened this way.
4 I never -- I never thought Curtis would be found
5 guilty. All I was thinking -- all I was thinking
6 about at that time was myself. Mr. Lumumba, I'm
7 willing to do everything in my -- I mean, I'm
8 willing to do anything in my power to make up for
9 what I did. I'm truly sorry for what me and my
10 sister did. I -- I was trying to get out of jail
11 and that was the only way I had, so -- I had -- so I
12 did it and I'm still locked up. Once again -- once
13 again, if I can do everything -- I mean, anything,
14 please let me know. My sister is a -- is a long" --
15 what that word is, Mr. Charles?

16 Q I don't know what it says either. Just
17 read the word after it the best you can. What's the
18 word that comes after?

19 A I don't know that one either. Line or
20 lying. She is the --

21 Q Worstest?

22 A "Worstest child my mama had. She just
23 like me, do anything for money. Mr. Lumumba, I hope
24 that I can be of some use to you. I never thought
25 things would go out of hand like this. Thanks for
26 listening. Thank you."

27 Q Mr. Hallmon, would you agree with me that,
28 you know, people can -- we can say all kinds of
29 things but what's more important is what we do; is

HALLMON - CROSS

1 that correct? Is that a fair statement?

2 A Repeat your question.

3 Q I say is it a fair statement that it's not
4 what we say that counts; it's what we do that
5 counts?

6 A In so many words, yes, sir.

7 Q That sound like a pretty fair statement,
8 don't it? Pretty sound statement, wouldn't you
9 agree?

10 A In so many ways.

11 Q What you mean by that?

12 A I'm saying you -- I'm not agreeing with
13 you 100 percent. I'm just saying in so many words.

14 Q What percent will you agree with me?

15 A You say what you say is what you do?

16 Q Wouldn't you agree with me it's more
17 important -- what we do speaks louder to who we are
18 than what we say? Actions speak louder than words.
19 Do you agree with that?

20 A Yeah. Sometimes people can be forced to
21 do stuff they don't want to do.

22 Q Okay. Now, you eventually went to
23 Gulfport?

24 A Yes, sir.

25 Q In Harrison County, you testified similar
26 to how you presented yourself in that letter to
27 Mr. Lumumba; is that correct?

28 A Yes, sir.

29 Q And I'll bet my last dollar Mr. Flowers

HALLMON - CROSS

1 made you go to Gulfport and to testify as well,
2 didn't he? You certainly didn't do it on your own.

3 **A** I went down there with him. Me and him
4 went down together.

5 **Q** Okay. And did Mr. Flowers take you down
6 there?

7 **A** No, when they picked him up, they picked
8 me up at the same time.

9 **Q** Okay. And you took an oath and you
10 testified --

11 **A** Yes, sir.

12 **Q** -- about your sister. And you were
13 willing to do that; is that correct?

14 **A** Mr. Charles, when I got out, so much stuff
15 done happened in my life. Man, I'm trying to
16 straighten it out.

17 **Q** And you were trying to straighten yourself
18 up at that particular time in Gulfport, too; is that
19 correct?

20 **A** Well, I was just only doing what he wanted
21 me to do. I wasn't thinking about the long haul; I
22 was just thinking about then and there.

23 **Q** And you weren't thinking about your sister
24 that you loved?

25 **A** I wasn't thinking about her.

26 **Q** Who loved you.

27 **A** I was only thinking about where I was
28 going to get the next cigarette --

29 **Q** An inmate in prison?

HALLMON - CROSS

1 **A** -- and the money that he offered me, I
2 couldn't -- I was --

3 **Q** Now, you know that Mr. Flowers is on death
4 row; is that correct?

5 **A** Yes, sir.

6 **Q** And when you're on death row, why are you
7 there?

8 **A** Cause he killed them peoples at Tardy
9 Furniture.

10 **Q** And what they planning on doing to you?

11 **A** Who?

12 **Q** What's the government planning on doing to
13 you when you're on death row?

14 **A** The government?

15 **Q** Yeah.

16 **BY MR. EVANS:** I object. That's not
17 proper.

18 **BY THE COURT:** I'll overrule. I mean,
19 he's in jail. He probably knows what death row
20 is.

21 **A** That's because they done did wrong, and
22 they going to get prosecuted for it.

23 **BY MR. CARTER:**

24 **Q** Now, they're already prosecuted before
25 they get there; is that correct?

26 **A** I guess.

27 **Q** They wouldn't be there if they wasn't
28 prosecuted.

29 **A** Right.

HALLMON - CROSS

1 Q And when you're on death row, what are
2 they waiting for?

3 A I guess they're waiting for a lethal
4 injection.

5 Q Mr. Hallmon?

6 A Yes, sir.

7 Q Now, did Mr. Flowers -- how did
8 Mr. Flowers know that you had a fine to pay off and
9 all that you put that in your letter?

10 A Me and him talked about it. We talked
11 about everything. I ain't had no fine after I got
12 locked up. They even sent me to a restitution to
13 pay my fine off. I told him I wasn't worried about
14 the fine. I was going to do my time and be
15 finished. They sent me to a restitution -- I
16 wouldn't have to go back to do it. They sent me to
17 a restitution to pay my fine off. I told the
18 judge -- what judge was that? I believe it was --
19 it might have been Judge Morgan or somebody. I told
20 the judge just go on and lock me back up. I ain't
21 fixing to go out there and work. It's too hot out
22 there to work, and I went back and just do my time.

23 Q Okay. You don't --

24 A But it wasn't possible -- well, they sent
25 me to a restitution to work it off. I said, Man --

26 Q You don't want to work, do you?

27 A I want to go to prison and go on and get
28 it over with.

29 Q Now, those letters that Mr. Flowers wrote

HALLMON - CROSS

1 in Mr. Flowers' handwriting, why didn't you give
2 those to Mr. Evans?

3 A Why I didn't give it to him?

4 Q Mr. Flowers wrote these letters, you
5 claim, and gave them to you and you copied them?

6 A Yes.

7 Q And at some point, you came clean and you
8 found Mr. Evans. What happened to the letters that
9 Mr. Flowers wrote?

10 A It was over here. I thought it was --
11 Mr. Charles, if I knew all this stuff right here
12 now, I wouldn't have ever got caught up in this
13 stuff.

14 Q Mr. Hallmon, where are the letters?

15 A They done described -- you got them,
16 Mr. Charles.

17 Q The one that Mr. Flowers wrote.

18 A You got them.

19 Q Okay. Mr. Hallmon, let's be clear about
20 something. You said -- didn't you tell me that
21 Mr. Flowers wrote the letters that you copied?

22 A You got the letters.

23 Q I got the ones that you wrote. Where is
24 the one Mr. Flowers wrote?

25 A That what I'm saying, the letter he wrote,
26 I just recopied it.

27 Q Okay. Let's be clear on something. Let's
28 assume this is the letter Mr. Flowers wrote for you
29 to copy. You copied on this one; is that correct?

HALLMON - CROSS

1 **A** Right.

2 **Q** Let's just say you copied on this one.

3 **A** Right.

4 **Q** You sent that one to Ms. Flowers and you
5 sent one off to --

6 **A** I gave it back to him.

7 **Q** -- Mr. Lumumba? Where is this one?

8 **A** He wanted it back.

9 **Q** Okay. He wanted it back, and you gave it
10 back?

11 **A** You had the original. You had the
12 original.

13 **Q** Now, Mr. Hallmon, when you was down in
14 Gulfport, you mentioned a few times over and over
15 that you had a conscience.

16 **A** Oh, man.

17 **Q** Look here. Did you not say that or did
18 you say that to my face?

19 **A** Man, that why I'm up here now because my
20 conscience is eating at me.

21 **Q** Okay. Well, your conscience was eating at
22 you when you was down on the coast, too; is that
23 correct?

24 **A** That was lies we plotted up.

25 **Q** But was your conscience eating at you when
26 you was down on the coast, yes or no?

27 **A** No, sir, it wasn't no conscience.

28 **Q** It may have, may not?

29 **A** I didn't think that day would come. Yeah,

HALLMON - CROSS

1 I got a conscience, Mr. Charles. I know I do. Lord
2 knows I do.

3 Q All right. Mr. Hallmon, who are you more
4 loyal to, your family member or friends?

5 A Man, that's a hard question. But now,
6 it's according to the predicament on me. I'm more
7 loyal to my family but I could be more loyal to a
8 friend if --

9 Q If you're in some certain situations; is
10 that what you're saying?

11 A In the situation I was put in,
12 Mr. Charles, I didn't think it would elevate to this
13 right here.

14 Q Mr. Hallmon, Mr. Flowers didn't have
15 nothing to do with you going to prison; is that
16 correct?

17 A See, in 1999, I got on the stand for
18 Mr. Flowers. Okay. 2000, when I found out --
19 dadgum it, I was diagnosed. I tried to get all
20 myself -- get myself clear, straight, my conscience
21 was --

22 Q Mr. Hallmon, you're not answering. You
23 can answer this next question. Mr. Hallmon,
24 Mr. Flowers didn't have anything to do with you
25 being in prison; is that correct?

26 A No, sir. I didn't have nothing to do with
27 him being in prison.

28 Q Okay. Now, Mr. Hallmon, you ever heard
29 the old saying by a great writer, Oh, what a tangled

HALLMON - CROSS

1 web we weave when we practice to deceive?

2 A No.

3 Q You never heard that?

4 A No, sir, never heard.

5 Q Now, lying in court is a serious offense,
6 wouldn't you say?

7 A Yes, sir. Now I do.

8 Q Yet you went to court and testified that
9 your sister was lying?

10 A I didn't know at the time, Mr. Charles. I
11 didn't know at the time.

12 Q You didn't know that lying in court was
13 a --

14 A Man, I ain't never been in no system. I
15 ain't never studied the law and none of that. I
16 ain't never --

17 Q Can I get you to agree that lying is
18 wrong, period?

19 A Lying is wrong, anyway you put it.

20 Q And you learned that real early; right?

21 A Right.

22 Q Probably learned that as a little boy;
23 right?

24 A Yes, sir.

25 Q And yet you -- you've embraced it fully;
26 is that fair to say?

27 A Yes, sir, just trying to help a friend at
28 the time.

29 Q So you admit you've been lying?

HALLMON - CROSS

1 **A** Mr. Charles, pretty much it -- I was put
2 in the predicament. I got caught up, man.

3 **Q** And you didn't have the power to resist
4 it? I wrote -- Mr. Hallmon, you're telling us that
5 you didn't have the power to resist lying?

6 **A** Well, I --

7 **Q** Is that what you're telling us?

8 **A** See, I did wrong. Now, you know better;
9 you do better.

10 **Q** What did you do wrong?

11 **A** I lied. I lied for Curtis. I lied for
12 it. I lied against my sister. But now I was only
13 going by what he wanted me to do. When you know
14 better, you do better. Now I know better; now I'm
15 doing better.

16 **Q** And you didn't know before that, before
17 you started to help Mr. Evans?

18 **A** Well, I started -- when I told -- my mama
19 got on me and got on me.

20 **Q** Mr. Hallmon, you've been in -- this last
21 stint in jail, how long have you been in there?

22 **A** Almost six years now.

23 **Q** Okay. Now -- and you learned a little and
24 you've become honorable, I would say; is that fair
25 to say? You're honorable now, and you're honest
26 now, and you're reliable now; is that what you're
27 saying?

28 **A** Well, Mr. Charles, it's like this: Man, I
29 had to catch odd jobs just to stay in lockdown

HALLMON - CROSS

1 because my life's in danger. This newspapers put my
2 life in danger. This trial put my life in danger.
3 I can't go nowhere.

4 Q Now, Mr. Hallmon --

5 A I'm hooked. They won't grant me
6 protective custody. I can't even leave out my cell.
7 You know, that's a bad way to live, man, when
8 people's -- I'm telling the truth. This wouldn't
9 have got me, yet my conscience feel better. Yet
10 still, I'm stuck like. I'm sitting here. I ain't
11 got no reason to tell no lie. I'm trying to
12 straighten a lie up we made.

13 Q Mr. Hallmon, tell the ladies and gentlemen
14 of the jury what you testified to in Gulfport,
15 Mississippi.

16 A What did I testify to?

17 Q Yes. What did you --

18 A I testified for Mr. Flowers.

19 Q What did you say for Mr. Flowers?

20 A I told them -- I just -- everything he
21 told me to tell them.

22 Q Okay. What did he tell you to tell them?
23 What did you say once you got there on the witness
24 stand Mr. Flowers told you to say?

25 A I told them my sister was lying.

26 Q Did you say little sister? Is she younger
27 than you?

28 A I said my sister was lying.

29 Q I'm sorry.

HALLMON - CROSS

1 **BY MR. CARTER:** Your Honor, earlier I
2 passed Mr. Hallmon a copy of a transcript that
3 he -- I was eventually able to ask him
4 questions about and he answered it. I'd move
5 to have it admitted into evidence at this time.

6 **BY THE COURT:** That one page?

7 **BY MR. CARTER:** Yes, sir, one page.

8 **BY THE COURT:** I'll allow it to be
9 admitted. He's testified to it.

10 (DEFENDANT'S EXHIBIT NO. D-18 RECEIVED
11 INTO EVIDENCE.)

12 **BY THE COURT:** You can proceed.

13 **BY MR. CARTER:**

14 **Q** Mr. Hallmon, now, you knew that address on
15 McNutt where Mr. Flowers lived and where you sister
16 lived. You're familiar with the area; right?

17 **A** Yes, sir.

18 **Q** Now, if you leave out of the back, there's
19 a hill out back behind the house; right?

20 **A** Right.

21 **Q** If you walk straight back behind those
22 apartments, there's not --

23 **A** Not a big old hill but a little --

24 **Q** Isn't there a hill back there?

25 **A** It's a little -- it ain't a hill or like a
26 big old hill.

27 **Q** What would you call it? It goes up a
28 little bit. It ain't no mountain or anything but it
29 goes up a little bit?

HALLMON - CROSS

1 **A** Yes.

2 **Q** Now, if you walk straight back there and
3 continue, say, half a mile, where would you wind up?

4 **A** Half a mile?

5 **Q** Well, if you walked straight back behind
6 that apartment and continue for -- continue walking,
7 which direction are you going in?

8 **A** You could be going toward the gym.

9 **Q** Okay. There's a gym back there, right.
10 And if you continue --

11 **A** I believe. Now, I believe the gym -- it's
12 a pathway you go through.

13 **Q** Now, and I understand you're not going to
14 walk in the trees and all that kind of stuff. But
15 I'm just saying if you go back behind that apartment
16 where Curtis lived and where Ms. Hallmon lived and
17 you continue to walk straight, could you ever get to
18 Angelica's, the plant Angelica's if you go straight
19 now and not turn but go straight? If you walk back
20 behind the apartment and go straight and never make
21 a right turn?

22 **A** If you go -- all right. If you -- okay.
23 What you said whereabouts?

24 **Q** If you walk -- let's suppose we're in
25 Curtis' apartment and you walk out the back door and
26 go as straight as you can, continue to walk back
27 straight. If you continue to walk straight, would
28 you ever get to plant Angelica's?

29 **A** You got to ask him that. I don't know

HALLMON - CROSS

1 that.

2 Q I'm asking you.

3 A I don't know.

4 Q You don't know? I can accept that.

5 A I'm saying as far as what I'm saying, I
6 don't know.

7 Q If you don't know, you don't know. I
8 ain't trying to make you say something you don't
9 know.

10 A I ain't even know where Angelica at.
11 Where that at?

12 Q Thank you.

13 BY MR. CARTER: One moment, Your Honor.

14 BY THE COURT: Certainly.

15 BY MR. CARTER:

16 Q Mr. Hallmon?

17 A Yes, sir.

18 Q Didn't you testify in Gulfport,
19 Mississippi, that your sister was too poor and never
20 bought her kids any Grant Hill Fila shoes?

21 A Mr. Charles, them was all lies.

22 Q Did you testify to that?

23 A I did. I said exactly what he asked me to
24 say. My sister ain't afford all that, shoes.

25 Q Was she working?

26 A Who -- I don't even know at the time. I
27 can't think. It's been a long time ago,
28 Mr. Charles.

29 Q I'm sure it has been, Mr. Hallmon.

HALLMON - CROSS

1 **A** She might have been working.

2 **Q** But did you testify -- did you say in
3 court that your sister did not buy and couldn't
4 afford any Grant Hill Fila shoes?

5 **A** I said that. If it's on that statement, I
6 said it because I was only doing what I was asked to
7 do.

8 **Q** Okay. Curtis asked you to do that. Now,
9 you read two letters that you claim Curtis wrote.
10 Does it say in one letter -- and if you have those
11 letters -- that your sister was too poor to buy some
12 Grant Hill Fila shoes for her children?

13 **A** But I was lying, Mr. Charles.

14 **Q** Huh?

15 **A** I was lying. Them children has -- they
16 had the top of the line stuff ever since I was --

17 **Q** You said you were lying. Now, I believe
18 that.

19 **A** He had me to do. Mr. Charles, I didn't
20 know nothing about this.

21 **Q** I know, Mr. Hallmon, you haven't done
22 anything. You're as innocent as the driven snow.

23 **BY MR. EVANS:** Your Honor, I object.

24 **BY THE COURT:** I'll sustain the objection.
25 Mr. Carter, you're not to make comments.
26 You're to ask questions.

27 **BY MR. CARTER:** Yes, sir, Your Honor.

28 **BY MR. CARTER:**

29 **Q** Now, Mr. Hallmon, you're a changed man

HALLMON - CROSS

1 now, and you've gotten yourself together. And let
2 me just tell you something: I got a lot of
3 relatives works up there at the prison. Have you
4 committed any felonies since you've been locked up
5 over the last year or so?

6 **A** No, I ain't committed no felony. A
7 felony?

8 **Q** Right.

9 **A** I ain't been charged with no felonies or
10 nothing.

11 **Q** Have you been charged with having a cell
12 phone?

13 **A** Yeah, I was charged with it. But I was
14 wrote up for it but it wasn't mine.

15 **Q** I know it wasn't, Mr. Hallmon. That
16 doesn't surprise me. You were charged with a cell
17 phone; is that correct?

18 **A** They pled it out, though.

19 **Q** When did that happen?

20 **A** That happened -- that happened --

21 **Q** If you can't remember, that's fine.

22 **A** That happened about a year or two years
23 ago.

24 **Q** Are you allowed to have cell phones?

25 **A** No, sir.

26 **Q** Okay. Now, wasn't you also caught with
27 some other stuff you wasn't supposed to have?

28 **A** Just a charger.

29 **Q** No drugs?

HALLMON - CROSS

1 **A** No, I wasn't caught with no drugs. They
2 didn't get them off my possession.

3 **Q** Do you remember an officer named Joanne
4 Shivers?

5 **A** That ain't no officer.

6 **Q** What is she?

7 **A** That was a case manager.

8 **Q** Okay. So you deny that you were charged
9 with possession of marijuana since you've been up
10 there? Do you deny that?

11 **A** They didn't get it off my possession;
12 that's what I'm saying.

13 **Q** What happened?

14 **A** They had all of us lined up on the wall.
15 They went in searching.

16 **Q** And you weren't charged?

17 **A** They charged a lot of us, all of us with
18 the same thing. They dismissed it, though.

19 **Q** Okay.

20 **A** Mr. Charles, I take medication with
21 marijuana in it.

22 **Q** You do what?

23 **A** I take medication with marijuana in it.

24 **Q** You take medication for marijuana use?

25 **A** With marijuana in it.

26 **Q** But I wasn't talking about medication,
27 though. You do understand that; right?

28 **A** Okay.

29 **Q** You weren't charged with marijuana?

HALLMON - CROSS

1 **A** I take medication with it in it.

2 **Q** But you understand that's not what I'm
3 talking about; right?

4 **A** Right.

5 **BY MR. CARTER:** One moment, Your Honor. I
6 think I'm finished.

7 **BY THE COURT:** Sure.

8 **BY MR. CARTER:** Thanks, Mr. Hallmon. I
9 tender.

10 **BY THE COURT:** We'll take a ten-minute
11 recess. Ladies and gentlemen of the jury, I'll
12 allow you to stretch and move around a little
13 bit.

14 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
15 CONTINUED IN OPEN COURT WITH THE JURY
16 PRESENT, TO-WIT:)

17 **BY THE COURT:** Court will come back to
18 order. Mr. Evans, you may proceed.

19 **BY MR. EVANS:** Thank you, Your Honor.

20 **REDIRECT EXAMINATION**

21 **BY MR. EVANS:**

22 **Q** Mr. Hallmon, how do you feel about your
23 mother?

24 **A** I love my mom.

25 **Q** Would you lie to your mother?

26 **A** No, sir.

27 **Q** Who got you to come tell me the truth?

28 **A** My mom did.

29 **Q** You need to speak up.

HALLMON - REDIRECT

1 **A** My mom.

2 **Q** Did I contact you or did you contact me?

3 **A** I contacted you.

4 **Q** And you told me that the Defendant
5 admitted about killing those people, didn't you?

6 **A** Yes, sir.

7 **BY MR. CARTER:** Your Honor, that's
8 leading, first of all.

9 **BY THE COURT:** That is leading.

10 **BY MR. EVANS:**

11 **Q** When did you first admit to me that he
12 told you he killed them?

13 **A** Well --

14 **Q** Now, I'm not talking about that day
15 because you may not remember that. How did you get
16 in touch with me?

17 **A** I called you on the phone.

18 **Q** Did you tell me that he admitted that he
19 killed them?

20 **A** Yes, sir.

21 **Q** Now, you've been asked about why you're
22 now telling the truth?

23 **A** Yes, sir.

24 **Q** And you say your mother is the one that
25 got you to come see me?

26 **A** Yes.

27 **Q** And you've talked about it being in a
28 medical crisis?

29 **A** Yes, sir.

HALLMON - REDIRECT

1 Q Can you tell the ladies and gentlemen of
2 the jury --

3 BY MR. CARTER: Your Honor, I object to
4 that. That has no relevance whatsoever to this
5 case.

6 BY MR. EVANS: Yes, sir, it does. He has
7 attacked his credibility. He has tried to
8 explain to him that because of his condition he
9 wanted to get his life straight with God, and I
10 think he's got a right to explain that.

11 BY MR. CARTER: Your Honor, I don't
12 remember asking him anything about his medical
13 condition.

14 BY MR. EVANS: You didn't ask him about
15 his medical condition, but you asked him why he
16 was -- why he was testifying now, and he made
17 reference to the fact that he had a medical
18 condition so I certainly think this is
19 appropriate redirect.

20 BY THE COURT: I'll overrule the
21 objection.

22 BY MR. EVANS:

23 Q What is your medical crisis?

24 A Well, I've been diagnosed with HIV. And I
25 know my life ain't that far from coming so I just
26 want to clear my conscience, get all this out of the
27 way.

28 Q Is what you're telling the jury today the
29 truth?

HALLMON - REDIRECT

1 **A** Yes, sir.

2 **Q** Now, you've been asked about prior
3 transcripts. I want to show you a transcript from
4 2007.

5 **BY MR. CARTER:** May I see it, Your Honor?

6 **BY MR. EVANS:** Page 422.

7 **BY THE COURT:** You may approach the
8 witness.

9 **BY MR. EVANS:** Thank you, Your Honor.

10 **BY MR. EVANS:**

11 **Q** I point you to line six and ask you if you
12 will read to yourself from line six down to line 16.

13 **A** (Witness complying) Yes, sir.

14 **Q** Who does it say in there asked you to lie
15 for him?

16 **A** Curtis Flowers.

17 **Q** And what does it say in there that Curtis
18 Flowers admitted to you?

19 **A** He admitted to me that he killed them
20 people.

21 **BY MR. EVANS:** Your Honor, I offer this
22 page into evidence.

23 **BY MR. CARTER:** No objection.

24 **BY THE COURT:** I'll allow it to be
25 admitted.

26 (STATE'S EXHIBIT NO. S-144 WAS RECEIVED
27 INTO EVIDENCE.)

28 **BY MR. EVANS:** I have no further questions
29 of this witness, Your Honor.

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1 **BY THE COURT:** Mr. Hallmon, you may step
2 down from the witness stand now.

3 (Witness Excused)

4 **BY THE COURT:** And who do you have next?

5 **BY MR. EVANS:** Jack Matthews.

6 **BY THE COURT:** If you'll come forward,
7 please, and raise your right hand and take the
8 oath. Do you solemnly swear or affirm that the
9 testimony you give in this case will be the
10 truth, the whole truth and nothing but the
11 truth, so help you God?

12 **BY THE WITNESS:** I do.

13 **BY THE COURT:** If you'll come around,
14 please, and have a seat. State your name,
15 please.

16 **BY THE WITNESS:** Jack Matthews.

17 **BY THE COURT:** You may proceed.

18 **BY MR. EVANS:** Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 **BY MR. EVANS:**

21 **Q** Good morning, Mr. Matthews.

22 **A** Good morning.

23 **Q** How are you presently employed?

24 **A** I'm the security director at the Greenwood
25 Leflore Hospital in Greenwood, Mississippi.

26 **Q** I want to direct your attention back to
27 July of 1996 at the time of the Tardy murders. How
28 were you employed at that time?

29 **A** I was a criminal investigator with the

MATTHEWS - DIRECT

1 Mississippi Highway Patrol.

2 Q What rank did you hold?

3 A I was a master sergeant.

4 Q Did you have an occasion to be called to
5 Winona, Mississippi to assist in the Tardy murders?

6 A Yes, I did.

7 Q Do you know about what time you arrived in
8 Winona?

9 A It was a little past eleven that morning.

10 Q What did you find when you first got to
11 the scene?

12 A Well, I met with Chief Johnny Hargrove.
13 He was out front of the store that morning when I
14 arrived. I talked with him, and he told me that
15 they had three --

16 BY MR. CARTER: I object to what he said,
17 Your Honor.

18 BY THE COURT: I don't believe he's
19 offering it for truth of the matter. I think
20 he's offering it to explain what he did as a
21 result of his being there so I'll overrule.

22 BY MR. EVANS:

23 Q You may continue.

24 A When I arrived, I met with Chief Hargrove,
25 and he told me that he had three victims that were
26 deceased in the store. One had been transferred to
27 the hospital by ambulance service.

28 Q All right. At that time, did you notice
29 whether or not the scene was secure?

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1 **A** Yes, it was. It was secure when I got
2 there.

3 **Q** What did you do next?

4 **A** I talked with Chief Hargrove and also
5 talked with Mr. Sam Jones who Chief Hargrove said
6 was the individual who discovered the bodies in the
7 store.

8 **Q** All right. After that did you have an
9 occasion to go into the store?

10 **A** Yes, sir, we did. Chief Hargrove and I
11 walked in the store.

12 **Q** All right. When you and Chief Hargrove
13 went in the store, what, if anything, did he point
14 out to you?

15 **A** Okay. You could see the three bodies
16 lying on the floor in the store. There were some
17 shell casings that were scattered near the counter
18 area of the store where the bodies were. There was
19 also a -- a tennis shoe or a shoe print in the -- in
20 some blood there on the floor.

21 **Q** All right. Were you advised whether or
22 not the crime lab had already been called or did you
23 attempt to call the crime lab?

24 **A** I had instructed the -- when I -- before I
25 left Greenwood, I instructed the radio dispatcher to
26 notify the crime lab and to get them on the way.
27 And after I got here and talked to Chief Hargrove, I
28 think his office had already done the same thing so
29 I knew they were on their way.

MATTHEWS - DIRECT

1 **Q** All right. Did the crime lab arrive at
2 the scene?

3 **A** Yes, they did.

4 **Q** Do you remember who came from the crime
5 scene unit?

6 **A** Melissa Schoene was there, and I believe
7 Debbie Hollowell.

8 **Q** What's the purpose of calling the crime
9 scene unit in?

10 **A** Well, they secure the crime -- after the
11 crime scene's been secured, they assist in taking
12 evidence and securing all the evidence, and they are
13 able to transport it back to the crime lab and make
14 comparisons or analysis of whatever is there at the
15 scene. They do a good job of photographing and --

16 **Q** All right.

17 **A** -- working the crime area.

18 **Q** And they were the ones that went through
19 the crime scene trying to recover evidence; is that
20 correct?

21 **A** That's correct.

22 **Q** At any point after they completed their
23 procedure, did you, in fact, recover anything that
24 you considered significant?

25 **A** Yes, I did.

26 **Q** What did you recover?

27 **A** I recovered some paperwork from the desk
28 area and also some paperwork from an office back in
29 the back of the building that I later learned

MATTHEWS - DIRECT

1 belonged to Ms. Tardy.

2 Q What was the paperwork that you recovered?

3 A It was a daily sheet that looked like they
4 recorded their transactions -- their cash box
5 transactions on that sheet. I also recovered a
6 check and time cards off of her desk.

7 (MR. EVANS SHOWS DOCUMENT TO COUNSEL
8 OPPOSITE)

9 BY MR. EVANS:

10 Q All right. I want to hand you Exhibit
11 S-42 for identification first, and I'll ask you if
12 you can identify what that exhibit is.

13 A That is the sheet I found there at the
14 counter, at Tardy Furniture Store that morning.

15 Q Now, is that the sheet that you've
16 discussed about what cash was on hand?

17 A Yes, sir.

18 BY MR. EVANS: Your Honor, I offer this
19 exhibit into evidence at this time.

20 BY MR. CARTER: No objection.

21 BY THE COURT: I'll allow it to be
22 admitted.

23 (STATE'S EXHIBIT NO. S-42 RECEIVED INTO
24 EVIDENCE.)

25 BY MR. EVANS:

26 Q Can you tell us what the total amount of
27 cash that that sheet shows would have been on hand
28 in the store at that time?

29 A It has total down here of \$300.

MATTHEWS - DIRECT

1 **Q** All right. I want to next hand you
2 Exhibits S-43 for identification and S-44 for
3 identification. Starting with 43, tell us what that
4 exhibit is.

5 **A** This is an index card with the name of
6 Curtis Flowers. It has a -- some figures on it.
7 Paid 30 cash on 6/29. Has -- it looks like some
8 times that possibly maybe that he had worked.

9 **Q** All right. And I'll hand you 44. Can you
10 tell us what that is?

11 **A** This is a check drawn on Tardy Furniture
12 Company, Union Planters bank check made out to
13 Curtis Flowers in this amount of \$82.58 on July the
14 5th of 1996 and signed by Bertha Marie Tardy.

15 **Q** All right. Do the hours on that check
16 correspond to the time card that is in 43?

17 **A** It says -- I believe 17 and on 11th and
18 12th and this would be 17.55, so I would assume that
19 that would be the same.

20 **Q** And both of these items you recovered off
21 of Ms. Tardy's desk?

22 **A** That's correct.

23 **BY MR. EVANS:** Your Honor, I offer 43 and
24 44 into evidence.

25 **BY MR. CARTER:** No objection.

26 **BY THE COURT:** I'll allow them to be
27 admitted.

28 (STATE'S EXHIBITS NO. S-43 AND S-44
29 RECEIVED INTO EVIDENCE.)

MATTHEWS - DIRECT

1 **BY MR. EVANS:** May the bailiff pass these
2 to the jury, Your Honor?

3 **BY THE COURT:** You may.

4 **BY MR. EVANS:**

5 **Q** Mr. Matthews, can you tell us at that
6 point basically what the investigators in this case
7 were doing?

8 **A** Well, I talked to Chief Hargrove when I
9 arrived and he advised me that he had officers that
10 were out searching around Tardy's garbage
11 containers, covers, ditches, anything, looking for
12 any evidence that might be out there we might find
13 that would connect someone to this crime. I had
14 some state troopers who were there that morning. I
15 talked with them and got them to canvass the area
16 around Front Street, the businesses that were
17 located in that area to see if anybody had seen any
18 unusual activity that morning down at Tardy's.

19 I talked with other investigators
20 that was with the highway patrol that arrived
21 shortly after that, Officer Miller -- Wayne Miller
22 and district attorney investigator John Johnson.
23 There were also some sheriff's deputies that were
24 there. Bill Thornburg was one, and we discussed
25 things about the case at that time.

26 **Q** All right. Did you have an occasion to
27 talk to Ms. Roxanne Ballard?

28 **A** I did.

29 **Q** And based upon talking to her, did you

MATTHEWS - DIRECT

1 find that it was necessary to talk to anyone else?

2 **A** Well, I talked to her about things in
3 the -- that had gone on at Tardy's that she was
4 aware of, and she did tell me about one incident
5 where they had recently let an employee go by the
6 name of Curtis Flowers. And she also told me about
7 some of the information that we saw a while ago, the
8 checks and what -- in some of that respect.

9 **Q** Okay. And after her explaining the
10 incident about Curtis Flowers, did you feel it was
11 necessary to interview him?

12 **A** Yes, sir. Yes, we did.

13 **Q** Where was he interviewed?

14 **A** At the Winona Police Department.

15 **Q** At approximately what time?

16 **A** It was approximately 1:30.

17 **Q** And this is the same day of the murders?

18 **A** Yes, sir.

19 **Q** Who was present for that interview?

20 **A** It was myself and the DA investigator,
21 John Johnson.

22 **BY MRS. STEINER:** Your Honor, may we
23 approach?

24 (ALL COUNSEL APPROACH THE BENCH FOR A
25 CONFERENCE HELD OUT OF THE HEARING OF THE
26 JURY, TO-WIT:)

27 **BY MRS. STEINER:** Your Honor, when we were
28 renewing motions in -- on April 10th, since you
29 did not originally rule on the suppression

MATTHEWS - DIRECT

1 motion on the statements, you had asked that I
2 renew it -- that it be renewed at trial. We
3 have nothing further to add on the record that
4 was made during -- I believe the -- either the
5 first or second trial. It was Judge Morgan
6 found the statement to be properly Mirandized
7 and fully voluntary, and I think you made a
8 residual finding that it was not even
9 custodial, this one that's coming up and -- but
10 I did want to renew and preserve that I have no
11 additional evidence to offer in support of the
12 motion but I wanted to preserve it for the
13 record.

14 **BY THE COURT:** Well, I reviewed the
15 proceedings that you're talking about, and I
16 found -- my conclusion on the motion is the
17 same as his. He -- I mean, I don't see that
18 there was any Miranda violation and everything
19 I read indicates that he was free to go at any
20 time he wanted to. So I did not see any --
21 I'll reaffirm that ruling.

22 **BY MRS. STEINER:** Your Honor, we would
23 anticipate the testimony about taking two
24 subsequent statements, interviews with him that
25 will also be the same and they were also the
26 subject of this suppression motion rather than
27 pop up every time we change subject matters.

28 **BY THE COURT:** Well, I'll just allow you a
29 continuing objection as to the statements.

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1 **BY MRS. STEINER:** Thank you.

2 **BY THE COURT:** Because, I mean, y'all --
3 not the last trial or this one other made
4 arguments on the issue made but I have reviewed
5 those issues from the previous trials, and I do
6 not see -- well, I just -- again, affirm Judge
7 Morgan's rulings on those.

8 And while we're here, I know -- I believe
9 he's going to testify that he took gunshot
10 residue test. You made a motion in limine
11 already on this issue so I will allow a
12 continuing objection on gunshot residue. I do
13 not see any need for you to have to jump up
14 when it's being testified to, either through
15 his testimony or the testimony from the crime
16 lab witness because I'm -- I mean, I'm
17 satisfied that you've reserved any issue on
18 gunshot residue for appeal if that point were
19 to ever come.

20 **BY MRS. STEINER:** Thank you, Your Honor.

21 (BENCH CONFERENCE CONCLUDED)

22 **BY MR. EVANS:**

23 **Q** Officer Matthews, I believe where I was,
24 we were talking about the fact that you decided it
25 was necessary to interview Curtis Flowers on the
26 16th and you interviewed him at around 1:30; is that
27 correct?

28 **A** That's correct.

29 **Q** Did you have occasion to advise him of

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1 what's normally called his Miranda rights before you
2 talked to him?

3 **A** Yes, we did.

4 **Q** And who was present when you advised him
5 of these rights?

6 **A** Mr. Johnson was.

7 **Q** And did he, in fact, at that time, make a
8 statement to you and Mr. Johnson?

9 **A** Yes, he did.

10 **Q** Were there notes taken of that statement?

11 **A** Yes, Mr. Johnson was taking notes.

12 **Q** And did you review these notes and both of
13 y'all initial them?

14 **A** Yes, sir.

15 **BY MR. EVANS:** Your Honor, at this point,
16 I would offer the Miranda waiver rights Exhibit
17 109 into evidence.

18 **BY MR. EVANS:**

19 **Q** Well, let me just ask you: Is this the
20 same Miranda rights that you advised him of?

21 **A** Yes, sir, it is.

22 **Q** And did he sign those rights?

23 **A** Yes, sir, he did.

24 **Q** And who witnessed them?

25 **A** John Johnson.

26 **Q** And who else?

27 **A** I did myself.

28 **BY MR. EVANS:** Your Honor, I offer this
29 into evidence.

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1 **BY MR. CARTER:** Let me just look at it.

2 No objection.

3 **BY THE COURT:** I'll allow it to be
4 admitted.

5 (STATE'S EXHIBIT NO. S-109 RECEIVED
6 INTO EVIDENCE.)

7 **BY MR. EVANS:**

8 **Q** All right. You need to speak a little bit
9 louder. It's kind of hard to hear in here.

10 **A** Yes, sir.

11 **Q** Can you tell the ladies and gentlemen of
12 the jury what he told you in that interview?

13 **A** Well, we asked him about his activities
14 that morning as to what he had been doing that
15 morning, what time he got up, where he went.

16 **Q** What did he tell you as far as what time
17 he got up?

18 **A** He told us he got up about 6:30 that
19 morning. His -- he was living with his girlfriend.
20 She had to get up and go to work that morning, and
21 he got up with her. He was babysitting her two
22 children and that he was at home that morning until
23 about 9:00, a little after 9:00. He had got up
24 about 9:00 and fixed them some breakfast and then he
25 sent the children to her mother's house. And then
26 he had gone sometime after nine o'clock -- had
27 walked over to, I believe his sister who lived on
28 Dennis Street -- had gone over there and been over
29 there for about 15 to 20 minutes. And then

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1 approximately 10:30, he said that he walked to a
2 store called Jeff's One Stop, which is right there
3 on Highway 51.

4 Q All right. So as far as times, he said he
5 got up at what time?

6 A Got up about 6:30.

7 Q And he went to his sister's house at what
8 time?

9 A Sometime after 9:00, about 9:00.

10 Q And is his sister's house on the east or
11 west side of 51?

12 A It's on the west side of 51.

13 Q And what time did he go to Jeff's store?

14 A Said he went there about 10:30.

15 Q All right. Did you have an occasion to
16 ask him specifically anything about being on the
17 east side of Highway 51 that morning?

18 A Well, I asked him had he been on the east
19 side, did he go across Highway 51 to the east side,
20 and he said that he had not.

21 Q He said he had not been on the east side
22 that entire day?

23 A That's correct.

24 Q Did you observe his body, anything about
25 his body that day?

26 A Yes, sir. He had on some blue knee-length
27 pants, short pants. He had on a pair of tennis
28 shoes, had a jersey-type blue shirt on. We did
29 notice that he had a scratch on his, I believe, left

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1 arm near his elbow.

2 Q Can you point out on your arm
3 approximately where that scratch was located?

4 A It was right along in here (indicating).

5 Q Okay.

6 BY MR. CARTER: One moment, I couldn't
7 see, Your Honor.

8 BY MR. EVANS: For the record, he's
9 showing below the elbow.

10 A Yeah. Between his elbow and the forearm
11 right in there.

12 BY MR. EVANS:

13 Q Did he make any comments about where that
14 scratch had come from?

15 A We asked him about it, and he said that he
16 had run into something.

17 Q What did he tell you about working at
18 Tardy Furniture?

19 A He told us that he had worked the
20 Saturday, which I believe was June the 29th. He had
21 worked that -- the partial day that day and then he
22 had worked the next week. He couldn't remember
23 whether he'd worked on Monday or maybe he went back
24 on Tuesday. But, anyway, he worked Tuesday and
25 Wednesday. And sometime that Wednesday they only
26 worked a half a day that day. The next day was the
27 4th of July and he did not work that day.

28 Q All right. Did you have an occasion to
29 see what size shoes he was wearing that day?

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1 **A** I don't know that I -- I noticed the size
2 that he wore. We did look at the prints on the
3 bottom of the shoes that he had on to see if they,
4 in fact, looked like the ones that were left in the
5 store.

6 **Q** All right. Did you have an occasion to
7 perform any type of tests on the Defendant that day?

8 **A** We asked him if he would submit to a
9 gunshot residue kit case -- test.

10 **Q** And why would you do that?

11 **A** Well, we were just -- we had -- it hadn't
12 been very long since those murders had taken place
13 there in the store, and we wanted to look and see if
14 it was possible there was any gunshot residue on
15 him.

16 **Q** All right. And did you, in fact, do a
17 gunshot residue test on the Defendant that day?

18 **A** We did.

19 **Q** I want to hand you Exhibit S-94 and ask if
20 you can identify that.

21 **A** Yes, sir, that's the kit that we used.

22 **Q** All right. You've got to speak loud.

23 **A** Okay. This is the kit that we used.

24 **Q** To do the gunshot residue?

25 **A** To do the gunshot residue, right.

26 **BY MR. EVANS:** Your Honor, I offer Exhibit
27 94 into evidence.

28 **BY MR. CARTER:** One moment, Your Honor.
29 No objection.

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1 **BY THE COURT:** I'll allow it to be
2 admitted.

3 (STATE'S EXHIBIT NO. S-94 RECEIVED INTO
4 EVIDENCE.)

5 **BY THE COURT:** It's marked now.

6 **BY MR. EVANS:**

7 **Q** All right. Now, can you tell us how you
8 used that kit?

9 **A** Well, this kit has an instruction sheet in
10 it. It also has four little plastic containers with
11 a dabbing-type apparatus that you -- the purpose of
12 the kit is to take a sample from the area right from
13 your index finger through your thumb, right in this
14 area right here to see if you came in contact -- if
15 you fired a weapon, then this would be the area of
16 the blowback from the gunpowder, would be in this
17 area. You do that on both hands, the backs of the
18 left and the right. You also have -- with the other
19 two vials you do the palms of both hands and the --
20 the backs with the other two to see if there's
21 any -- if you came in contact with any of that
22 residue.

23 **Q** All right. If you would, open that
24 package, please, and see if those vials are in
25 there.

26 **A** (Witness complies).

27 **Q** Is that the same four vials that you used?

28 **A** Yes, sir.

29 **Q** And do those vials tell you what area to

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1 test?

2 **A** Yes, sir.

3 **BY MR. EVANS:** Your Honor, may I have the
4 witness step down with one of those vials?

5 **BY THE COURT:** You may.

6 **BY MR. EVANS:**

7 **Q** If you would, take the one for the right
8 back of the hand. You can just step down if you
9 would. If you would, you don't have to open the
10 vial, but just pretend that the vial is open and
11 show the ladies and gentlemen of the jury on my hand
12 the procedure for taking that test.

13 **A** This -- it's hard to see, but it's a pad
14 there that you take it, and you take it and you daub
15 it all the way around this area of your hand, all
16 the way to the back, back of the wrist, all the way
17 down your hand. And, of course, you do that on both
18 hands, and you do that on both palms.

19 **Q** All right. You can take a seat again.
20 Before you did that test, did you take any steps to
21 make sure that the test would not be contaminated?

22 **A** I washed my hands and used gloves.

23 **Q** All right. And is that normal procedure?

24 **A** Yes, sir.

25 **Q** Once you took these four vials from the
26 Defendant, what did you do with them?

27 **A** I put them back in this envelope and
28 sealed them up and took them to the crime lab.

29 **Q** All right. And did you request any tests

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1 be performed on them?

2 A I just requested the gunshot residue test.

3 Q All right. Did you have an occasion to
4 interview the Defendant Curtis Flowers again?

5 A Yes, sir. We interviewed him again on
6 July the 18th.

7 Q And on that occasion did you also advise
8 him of his rights?

9 A Yes, sir, I did.

10 Q I want to hand you Exhibits S-110 and
11 S-111, and I'll ask that you examine both of those,
12 if you would.

13 A Okay. This is the waiver form that he
14 signed that day.

15 Q Now, which exhibit number is that?

16 A That's S-110.

17 Q And it's the same form that he was advised
18 of his rights?

19 A Yes, sir.

20 Q Who witnessed that form?

21 A H. W. Miller and myself.

22 Q And who is H. W. Miller?

23 A He was my immediate supervisor.

24 Q Okay. Is that the same Wayne Miller that
25 was at the scene with you?

26 A That's correct.

27 Q And S-111, what is it?

28 A That is a transcript of the -- appears to
29 be the transcript of the taped statement that we

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1 made.

2 Q And have you reviewed that transcript
3 before?

4 A Yes, sir, I have.

5 Q And is it as close as you could get it to
6 what was actually said by the Defendant that day?

7 A Yes, sir, it is.

8 BY MR. EVANS: Your Honor, I'd offer S-110
9 and S-111 into evidence.

10 BY MR. CARTER: No objection.

11 BY THE COURT: I'll allow them to be
12 admitted.

13 (STATE'S EXHIBITS NO. S-110 and S-111
14 RECEIVED INTO EVIDENCE.)

15 BY MR. EVANS:

16 Q Officer Matthews, if you would, read the
17 statement that the Defendant gave you on the 18th of
18 July and, if you would, you can just say what is
19 questions and what's the answers.

20 A Okay. This is an interview with Curtis G.
21 Flowers. The date is July the 18th, 1996. The time
22 is 1502 hours. Place, Winona Police Department.
23 Interview conducted by Master Sergeant Jack
24 Matthews. Others present, Lieutenant H. W. Miller
25 in reference to an armed robbery. Interview.
26 Matthews -- and I'm testing the microphone here.
27 Testing, one, two, three, test, end test. Question:
28 Today's date is 18 July 1996, the time is 1502 at
29 the Winona Police Department in Winona, Mississippi,

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1 interviewing Curtis, C-U-R-T-I-S, G. Flowers,
2 F-L-O-W-E-R-S. Curtis says date of birth is
3 5/29/70. Conducting this interview is Master
4 Sergeant Jack Matthews, investigator with the
5 Mississippi Highway Patrol. Also present is
6 Lieutenant H. W. Miller, investigator with the
7 Mississippi Highway Patrol. Today's date is 18
8 July. Question: Curtis, just a few minutes ago we
9 read you a statement of your rights and you
10 understand what your rights are and you signed a
11 waiver; is that correct? Answer: Yes, sir.
12 Question: Okay. And you agreed to talk with us
13 today about your employment at Tardy Furniture
14 Store? Answer: Yes, sir. Question: And -- some
15 details about that? Answer: Yes, sir. Question:
16 Okay. I need to talk back with you on the 16th --
17 July the 16th, and you indicated that around July
18 the 1st that you were employed at Tardy Furniture
19 Company. Answer: The 29th. Question: And you
20 worked there a few days? Question: Okay. The 29th
21 of July. Answer: Mmmm. Question: Okay. Answer:
22 That Saturday. Question: All right. That was on a
23 Saturday? Answer: Uh-huh. Question: Okay. That
24 was the first day that you worked; right? Answer:
25 Yes, sir. Question: All right. Tell us a little
26 about -- about the time you started to work with
27 them and why you left and some of the things we
28 talked about the day before. Answer: Well,
29 Saturday, my first day, worked Saturday, Monday,

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1 Tuesday, Wednesday and get off at twelve noon.
2 Worked half a day on Wednesday, and that was the
3 third. Supposed to come back the 5th and 6th. I
4 didn't show up. Question: You told us about an
5 incident that happened, I believe on the 3rd,
6 concerning some batteries that you were supposed to
7 pick up. Tell us about that. Answer: Yeah. She
8 told me to load up two mattresses that we had picked
9 up from a lady on 51 and take them up to -- behind
10 the tractor place right here on 51 and put them in a
11 warehouse. She told me when I got down loading
12 them, pull around to the Coast to Coast. We had six
13 batteries that her husband was going to get for a
14 tractor or something -- tractor batteries. Anyway,
15 I pulled around there and loaded them up. I pulled
16 off, three of them fell off. So when we got back
17 around there, I told her what happened. She called
18 around there and told -- told her to bring them back
19 so we could see if we could get some kind of deal on
20 them and evidently we couldn't or something. She
21 told me, Well, she said, you're responsible for the
22 batteries. You should have tied them down. And if
23 they can't do anything, you have to pay for them out
24 of your check. That was it. And she sent me up
25 there to put her mattresses in the warehouse and
26 sent me to Carrollton to take her mattresses.
27 Question: What did you -- did you pick up some more
28 batteries or take them around? Answer: No. She
29 just told me the ones I dropped to pick them up and

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1 put them back on the truck. Then we got back around
2 there and they took them off. Question: All right.
3 And this was on the 3rd, the 3rd of July? Answer:
4 I guess. Question: Okay. And the 4th of July was
5 a holiday, and y'all didn't open that day. The
6 answer was inaudible. Question: And you're
7 supposed to go in that Friday? Answer: That
8 Friday. Question: Was July the 5th? Answer: Yes,
9 sir. Question: And -- and -- Answer: I didn't go.
10 Question: You didn't go. Did you call in? Answer:
11 I called in Friday. I didn't call Saturday.
12 Question -- excuse me. The answer was I called
13 Friday. Question -- I didn't call Saturday.
14 Question: And you're supposed to work Friday?
15 Answer: And Saturday. Question: And Saturday?
16 Answer: Uh-huh. Question: The 6th? All right.
17 When did you find out that they had terminated you?
18 Answer: Tuesday. Tuesday that next week.
19 Question: And you didn't go to work Monday either?
20 Answer: If he responded, the respond was silent.
21 Question: Did you even call in? Answer: Uh-huh,
22 and then on that Tuesday I got up and I was going to
23 go. I got to my mama's house, and I called and I
24 asked her did Mike come back to work? She said no.
25 I asked her did I still have a job? She said no. I
26 said did I get a one-day paycheck? She told me my
27 check was pretty much covered up with them
28 batteries. That was it. Question: I understand
29 that before you got off on the 3rd that she loaned

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1 you some money, \$30. Question: \$30? Answer:
2 Uh-huh. Question: Did you have to pay that \$30
3 back? Answer: She told me my check was used up and
4 that was it. She told me I could pay the \$30 back
5 out of my check when she gave it to me. When I
6 called her, she said, well, my check was used up.
7 Question: Have you been back in the store since
8 that time? Answer: No, sir. Question: Have you
9 been working anywhere else since that time? Answer:
10 Nothing more than mowing yards and working on cars
11 and stuff like that. Question: Do you own a car?
12 Answer: Yes, sir, a Nissan pickup. Question: You
13 were telling me something the other day about that
14 car. It had some kind of mechanical problems.
15 Answer: Yes. I need a head for it. Question: A
16 heater? Answer: A head. Question: A head, so
17 it's not running at this time? Answer: No, sir.
18 I'm in my sister's car now. Question: When did --
19 when -- how long is it? Answer: It's been about
20 two and a half months now. Question: So you
21 haven't had a vehicle for two and a half months?
22 Answer: No. Question: When did you find out that
23 Ms. Tardy and her employees and the incident that
24 happened down there Tuesday? Answer: When I got
25 down here. Question: Yeah? Answer: Uh-huh.
26 Question: In other words, sometime around --
27 Answer: After 12:00 or something. Question: Yeah.
28 Sometime between 12:00 and 1:00. And we talked to
29 you about 1:30? Answer: Uh-huh. Question: That

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1 is the first you knew about it? Answer: Yeah, and
2 I stopped back by the store on my way home and then
3 my daddy told me. Question: What did you --
4 what -- what were your activities on that Tuesday?
5 Answer: Tuesday? Question: This past Tuesday.
6 Answer: Tuesday, babysitting. Question: Just give
7 me a rundown as to what you did that day. Answer:
8 I babysitted my girlfriend's kids. I left the house
9 twice. I went over to my sister's house, who stays
10 right there on the next street. And I went to
11 Jeff's store. Question: Where? Answer: Jeff's
12 Store right down 51, down to. Question: All right.
13 What time did you get up that morning? Answer: Oh,
14 sometime between probably 9:30, something 'til ten.
15 Question: Okay. You babysitted your girlfriend's
16 children. The answer was inaudible. The next
17 question is inaudible. The answer: She got two
18 right now. I'm staying with her. Question: How
19 old are they? Answer: Ooh, one of them two, the
20 other one I think 11. Question: Boy or a girl?
21 Answer: Boy, 11, the girl is two. Question: Two.
22 Okay. And what time did you get up that morning?
23 Answer: About 9:30 or something 'til ten.
24 Question: You were there in the house with the
25 children? Answer: Uh-huh. Question: Until about
26 9:30 or something 'til ten? Answer: Naw, I got up
27 about 9:30 or something 'til ten. Question: Were
28 the kids there in the house when you got up?
29 Answer: Yeah. Question: Okay. Where was your

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1 girlfriend? Answer: At work, Richardson Brothers.
2 Question: What time did she go to work? Answer:
3 7:00. Question: Did you -- you didn't get up
4 before she left? Answer: No. Question: She just
5 got up and -- Answer: I always just tell her bye
6 and keep staying there in the bed. Question:
7 During that period of time, did you talk to anybody
8 on the telephone? Answer: No, sir. Question: Did
9 you have a telephone? Answer: No, sir. Question:
10 There's not one in your girlfriend's house? The
11 answer was inaudible. Question: At what time did
12 you go to your sister's? Answer: About 11:00,
13 12:00, something. The last part of it was
14 inaudible. Question: Did you indicate that you
15 went to the store? Answer: Yeah, that was like --
16 question: What was the name of that store? Answer:
17 Kelly's Stop and Go. Question: Kelly's Stop and
18 Go. That's on U.S. 51? Answer: Uh-huh, south.
19 Question: What time did you go to the store?
20 Answer: It was about -- I imagine about 12:30,
21 12:45, something in there. Question: After you
22 went to your sister's? Answer: Yeah. I went and
23 got a -- went and got a six pack and a bag of chips,
24 pack of cigarettes, and that's it. Question: Is
25 that right before they -- they came and picked you
26 up to come down here? Answer: Yeah. I was
27 drinking then, yeah. I had just opened a beer when
28 Kenny knocked on the door. Question: Where did you
29 get the money to buy the beer? The other part of it

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1 was inaudible. Answer: Oh, I get unemployment.
2 Question: You get unemployment? When do you get
3 your check? Answer: It comes in on Wednesday.
4 This is Tuesday? Yeah, I still had some from the
5 week before that. Question: What was your
6 unemployment check? Answer: What is it? 119.
7 Question: 119? Answer: Uh-huh. Question: Was
8 that your first unemployment check? Answer: That
9 was my third. Last week was -- this week is the
10 only week I didn't get an unemployment check.
11 Question: Because you were working? Answer:
12 Uh-huh. Question: Okay. And you got up at about
13 9:30 that morning? Answer: Uh-huh. Question: All
14 right. And you stayed there at your girlfriend's
15 apartment. Where does she live and what's the
16 address? Answer: 702A McNutt Drive. Question:
17 Did you -- you didn't go anywhere until you went to
18 your sister's house and that was the first place you
19 went? Answer: First place I went. Question:
20 Okay. So you stayed there at the house from the
21 time you got up at 9:30? Answer: I couldn't -- and
22 the rest of it was inaudible. Question: Until
23 about what time that you went to your sister's?
24 Answer: It was about noon, about dinner, right in
25 there. Question: Okay. So you stayed over there
26 for how long? Answer: About 15 minutes. Question:
27 Where does she live in relationship to your
28 apartment that you and your girlfriend stay?
29 Answer: My girlfriend stay on McNutt Drive, and she

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1 stay on Dennis Street, which is the next street
2 over. Question: How far is that? Answer: Well,
3 walking around the street, it about a mile path go
4 straight up between two apartment houses to our
5 house. Question: How long does it take you to get
6 there? Answer: About five minutes. Question:
7 Where was the two-year-old when you were over at
8 your sister's house? Excuse me. Question: Where
9 was the two-year-old when you were over at your
10 sister's house? Answer: Up at their grandmama's.
11 Question: Huh? Answer: Up at their grandmama's.
12 Question: Did you take them over there? Answer:
13 Um-mmm. Answer: No, sir, we always just sent them
14 over the hill because their grandmama stays behind
15 us. You just go over the hill to the street and all
16 you do is cross so, you know. Question: And you
17 were keeping the children? Answer: Yes, sir.
18 Question: But when you went to your sister's house,
19 who kept the children? Answer: Their grandmother.
20 Question: Did she come over to the house? Answer:
21 No, I sent them over there. Question: You sent
22 them to your grandmother's house? Answer: Uh-huh,
23 sure did. Because when I left my sister's house, I
24 come back by the house and cut through the house and
25 went to Jeff's. Question: And you were at Jeff's
26 at sometime around what time? Answer: About 12:45.
27 Question: You bought a six-pack of beer? Answer:
28 A six pack and -- a six-pack of beer, a pack of
29 cigarettes and two bags of chips. Question: And

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1 that was on Tuesday? Answer: Uh-huh. Question:
2 The same day as when you came down here to talk with
3 us? Where did you go when you left the store?
4 Answer: To the house. Question: Back to the
5 apartment? Answer: Uh-huh. Question: Okay. Was
6 anybody there when you got back there? Answer:
7 Nope. When I come across the school campus, up the
8 street, like -- and that part was inaudible --
9 standing in the yard. I walked to the edge of the
10 hill and told them good morning, and we all went to
11 the house together. Question: You didn't go
12 anywhere that morning except to your sister's? And
13 what is your sister's name? Answer: Priscilla.
14 Question: And Priscilla lives on what street?
15 Answer: Dennis Street. Question: Dennis Street.
16 It took you about five minutes to -- from your
17 apartment to her house? Answer: About five
18 minutes, uh-huh. Question: You stayed there what?
19 Answer: About 15 or 20 minutes. Question: You
20 left there going to -- Answer: Kelly's Stop and Go.
21 Question: Kelly's Stop and Go. You didn't go by
22 your apartment? Answer: Yeah, I cut across. I had
23 to go through there. I got to go the path and the
24 path go behind the house. Question: Well, did you
25 go in your apartment or did you just -- Answer: No,
26 I didn't go in. Question: And on to the store?
27 Answer: On to the store. Question: And got your
28 beer, cigarettes and potato chips?

29 **BY THE COURT:** Mr. Matthews, I think we'll

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1 go ahead and recess now and resume the reading
2 of this after lunch.

3 Ladies and gentlemen of the jury, we'll
4 recess for the lunch hour, and I'll ask you
5 during this recess to not discuss the case with
6 anyone or among yourselves. We'll be in recess
7 until one o'clock.

8 (FOLLOWING THE LUNCH RECESS,
9 PROCEEDINGS CONTINUED IN OPEN COURT WITH
10 THE JURY PRESENT, TO-WIT:)

11 **BY MRS. STEINER:** We've been trying to
12 marshal our witnesses to be here for tomorrow.
13 We had had former highway patrol officer James
14 Taylor Williams served by the sheriff, and we
15 did not have direct contact information. I
16 could not find a -- he may have an unlisted
17 number. I do not know how to personally
18 contact him. He will be needed for tomorrow.
19 I don't even know if he reported. I don't
20 believe we have a phone number, and I would ask
21 that the Court request the sheriff's office
22 send him notification that he's needed, so they
23 are to serve him his subpoena to be here at
24 nine o'clock tomorrow morning.

25 **BY THE COURT:** And I know I have seen him
26 up here during some course of the proceedings.
27 I don't know if he's here today, but I know I
28 have seen him. But if y'all will, just walk
29 around and tell the sheriff that

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1 Mr. Williams -- to make sure that he knows to
2 be here in the morning at nine o'clock.

3 BY THE BAILIFF: I'll tell him, Your
4 Honor.

5 BY MRS. STEINER: Thank you, Your Honor.

6 BY THE COURT: If you'll bring
7 Mr. Matthews in.

8 (Witness Retakes the Stand)

9 BY THE COURT: I believe you were reading
10 an exhibit -- I'm sorry. The Court will come
11 back to order. And, Mr. Matthews, you may
12 continue the reading of the exhibit that you
13 had begun before lunch.

14 A The last question on page ten was, and
15 you -- Question: And you got beer, cigarettes and
16 potato chips? The answer was: Come back?
17 Question: Come back? And the other part was
18 inaudible. Answer: I got the kids from the top of
19 the hill and went back to the house. Question:
20 Okay. You stopped at your grandmother's and got
21 them? Answer: No, sir. From where their
22 grandmother stay and I stay, my girlfriend stay, you
23 can see all across there. When I come across the
24 school campus, got on Powell Street and crossed the
25 hill, they could see me. We went up the hill -- we
26 went up to the top of the hill and come to the
27 house.

28 Question: And if anybody says they
29 saw you at any other place but your apartment and

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1 your sister's house or Kelly's Store -- answer:

2 Kelly's store. Question: -- or walking in between
3 these places, then that wouldn't be the truth?

4 Answer: Walking between Kelly's, my house and my
5 sister's house? Question: Right, if they saw you
6 any other -- any other place other than those

7 places. Answer: Oh, yeah. Oh, yeah. He a lie.

8 Question: That'd be a lie? Answer: Uh-huh.

9 Question: Okay. Answer: Sure would.

10 Question: Can you think back, is
11 there any other place you went or anybody you talked
12 to during that time? Answer: Didn't go nowhere

13 else. Question: Who was at your sister's house

14 when you got there? Answer: Latoya Hardy, that's

15 my cousin. Question: She's your cousin? Answer:

16 She's staying with my sister. Question: You -- you
17 said your -- your girlfriend didn't have a

18 telephone? Answer: No, she don't. Question: Does

19 her mother have a phone? Answer: Yes, she has a

20 phone. Question: Okay. You didn't use it?

21 Answer: Unh-unh. She don't like -- even like me.

22 Question: How long -- what are your
23 girlfriend's hours? Answer: They was supposed to

24 work from 7:00 'til 3:30. Sometimes they work from

25 7:00 'til 5:30. Question: So she was at work.

26 Does she come home for lunch? Answer: No.

27 Question: She -- when she goes to work at 7:00,

28 she's usually there 'til 3:30 or 5:30? Answer: Or

29 5:30. Question: You didn't see her until later on

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1 that afternoon? Answer: When she got there,
2 Ms. Van Horn was pulling up. Question: That's who
3 you caught a ride with from here, Ms. Van Horn?
4 Answer: Unh-unh. I walked home. Question: Oh,
5 from here? Answer: Uh-huh.

6 Question: Do you have any more
7 questions? This is where -- that Officer Miller
8 asked the question. Question: Yeah. When you went
9 to work that day, who hired you? Answer: Ms.
10 Tardy. Question: Ms. Tardy? Answer: Uh-huh.
11 Question: Who referred you to that job? Answer:
12 Mike, Mike Martin. Question: Mike? Answer:
13 Uh-huh. Question: And Mike's the one that quit?
14 Answer: Yeah. He's going to truck driving school.
15 Question: Did she hire you the same day that you
16 went to work? Answer: No. I went down on that
17 Friday evening, and she told me that I could come
18 back Saturday morning. Question: Saturday morning?
19 Answer: Uh-huh.

20 Question: Did you and Ms. Tardy have
21 any problems? Answer: No. Question: I mean, we
22 know about the batteries -- and the rest of that was
23 inaudible. Answer: No, sir. Other than that, we
24 didn't have no problems. We didn't argue about
25 that, you know. She talked to me, and she told me.
26 I understood because I should have tied them down,
27 you know.

28 Question: How much was your check
29 that you had coming? Answer: I don't know. She

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1 was paying me \$5 an hour. Question: How many hours
2 did you have? Answer: Saturday, Monday, Tuesday,
3 Wednesday. Question: You never actually drew a
4 paycheck? Answer: No, sir. I didn't get that
5 check because -- Answer -- correction, question:
6 How many hours did you work on -- that other part
7 was inaudible. Answer: Told me. Question: Work
8 on seven? Answer: Seven, from 9:00 to 5:00.
9 Question: What did you do on Monday? Answer:
10 Monday? Question: That would be the first.
11 Answer: I think I came in that day. If I came in,
12 I worked seven. Question: And then Tuesday?
13 Answer: Tuesday I worked seven. Question: And you
14 got off at noon time -- the rest of that was
15 inaudible. The answer was inaudible, the last part
16 of it was Wednesday. Question: We're talking about
17 26 hours? Answer: Yeah, something like that. I
18 wouldn't know. Question: So your check you had
19 coming was running \$100 or a little more? Answer:
20 Yes, sir, somewhere in thereabouts.
21 Question: The first part was
22 inaudible. Oh, okay. And who fired you, you said?
23 Answer: She didn't fire me; she just told me she
24 just couldn't use me anymore. Question: Just
25 couldn't use you anymore but she told you that your
26 check had been used up? Answer: Yeah. Question:
27 Did that surprise you when she told you that?
28 Answer: No, sir, because she told me the same day,
29 the same day the battery was dropped off, if they

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1 didn't give her some kind of a deal on it, whoever
2 handled the battery was responsible. That was it.
3 Question: All right. Well, did you have anything
4 to say to her about that? Answer: No, sir. She
5 sent me to Carrollton.

6 Question: But something was started
7 to say but the answer was: The first part was
8 inaudible. She said she had gone -- she said she
9 was going to leave the store early and if -- if she
10 wasn't there when we got back to come over to her
11 house and just bring the key. But when we got back,
12 she was right there in front of the store, her and
13 her husband, just coming out and getting in the car.

14 Question: All right. What day was
15 it that you dropped the batteries? Answer:
16 Wednesday. Question: It was Wednesday morning?
17 Answer: Uh-huh. Question: What day was it that
18 you borrowed the \$30? Answer: Wednesday before we
19 left. Question: Which did you do first, borrow the
20 money or drop the batteries? Answer: Dropped the
21 batteries. Question: First? Answer: Uh-huh.
22 Question: And then she still loaned you \$30?
23 Answer: When we got ready to go home, she said have
24 a happy 4th. She said, Curtis, you had the
25 trouble -- inaudible -- pay first. She said, Well,
26 do you need to borrow anything? I said, Yes, ma'am,
27 I could use \$30 and she give me \$30.

28 Question: So there was really -- was
29 no big problem with you and Ms. Tardy? Answer: No,

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1 sir. We didn't exchange no words. Question: How
2 did you get along with Ms. Rigby? Answer:
3 Ms. Rigby? Question: The other lady. Answer: The
4 secretary? Oh, me and her cleaned up together.
5 Question: All right. On the 4th you took off
6 because it was a holiday? Answer: Uh-huh.
7 Question: Who all did you see on the
8 4th? Who were some of your buddies that you ran
9 around with? Answer: Oh, on the 4th. We had a big
10 get-together at my house, my mother's house.
11 Question: Name some of the people that was there.
12 Answer: Oh, Johnny Campbell, Roscoe Campbell, my
13 mother and my father. You need some more?
14 Question: Yeah. I mean, how many people are you
15 talking about? Answer: The first part is
16 inaudible, and then the family. Question: The
17 whole family large? Answer -- correction.
18 Question: The whole family large? Question: Who
19 outside the family? Answer: I can't think of
20 anybody outside the family.
21 Question: Well, what did you do on
22 Saturday? I mean on Friday? You didn't go to work.
23 So what did you do on Friday? Answer: Sat at the
24 house. Question: By yourself? Answer: My
25 girlfriend, she was off too. Question: Did you
26 argue with anyone, go any place? Answer: No.
27 Question: What did you do on Saturday? Answer:
28 Back over at my mama's house, and we sat around and
29 drank out there on the picnic tables and stuff.

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1 Question: Some of the same people that was there?

2 Answer: My uncle, Johnny Calhoun, Roscoe, Roger

3 Campbell. That's about it.

4 Question: And then Sunday you --

5 Answer: Nothing. Question: You didn't do anything

6 too much? Did you tell a lot of people the problems

7 that you had, had down there about dropping the

8 batteries? Answer: My girlfriend. Well, my uncle

9 and them they saw it, because we was between the

10 alley over there, at the alley over there and the

11 Coast to Coast, the front store. The answer was

12 inaudible -- the question was inaudible. The

13 answer: Robert Campbell. Question: Robert?

14 Answer: He came to work on the weekends anyway.

15 They was over there at the fish market over there,

16 and they was coming out of the parking lot when I

17 was coming up the alley.

18 Question: And they saw the battery

19 spilled? Answer: Uh-huh. Question: But you

20 didn't -- you didn't have a lot to say about the

21 fact that -- that they owed you some money? Answer:

22 No, sir. Question: After you were terminated?

23 Answer: No, sir. I asked was I supposed to be able

24 to receive a check, and she told me, remember, we

25 talked about the battery. And I said, yes, ma'am.

26 And she said, Well, your check was used up. That

27 was it. Question: Did you know about the store

28 being broken into? Answer: Ms. Tardy told me that,

29 told me how they came in and everything. She said

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1 that they come through the air shaft or something.
2 Question: Where did you see Ms. Tardy? Answer: At
3 the store when I was working. Question: This was
4 when? And the other part was inaudible. The answer
5 was: I know he was just telling me about the break
6 in that they had a while back. That was the day I
7 started.

8 Question: That was the same day you
9 started that he was telling you about the break in?
10 Answer: Yeah, he was telling me about the break in.
11 Question: But didn't they have one while you were
12 working down there? Answer: I don't know. She
13 never did bring it up because, you know, I never did
14 go back to work. When I called up there, she told
15 me that she couldn't use me anymore. I asked her
16 did I have any paycheck coming and she told me,
17 remember, we talked about the battery. She said it
18 was used up. I said okay. She said sorry things
19 didn't work out. I told her okay. That was it.

20 Question: And that was what day?
21 Answer: That Tuesday. Question: That Tuesday?
22 Answer: I think it was the 9th, 10th, I don't know.
23 Question: After the first Tuesday after the 4th?
24 Answer: Uh-huh, yeah. Question: So you didn't go
25 to work that Monday either? Answer: No, sir.
26 Question: You didn't call her? Answer: I called
27 her Saturday. I called her Friday, and I called her
28 Monday. And I didn't go in Tuesday but about
29 eleven-something Tuesday, I called her. I asked her

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1 did Mike come to work and she said no. I asked her
2 did I still have a job? She said, Well, she
3 couldn't use me because I'd missed too many days. I
4 asked her did I have a paycheck coming but she said
5 you remember we talked about the battery; you used
6 it up. Question: So that was on Tuesday? Answer:
7 Uh-huh. Question: When did you call? Answer:
8 About eleven something. Question: You called her?
9 Answer: Uh-huh.

10 Question: Have you had a lot to say
11 to different people about what happened there?
12 Answer: No, sir, nobody but Mike. I told Mike that
13 to deliver the mattress. She called Mike to help
14 me. Me and Mike was going to Carrollton. I just
15 told Mike that, man, she sent me around to the Coast
16 to Coast. I got some batteries and dropped them.
17 She said either if Jimmy don't give me some kind of
18 a deal, I had to pay for them. And he said, No, you
19 didn't, man. You know to tie them down. I said,
20 Yeah, I knew it. I said -- I told him, yeah. And
21 that was it. Question: What about -- what kind of
22 fellow is Mike? Answer: A good guy. Question:
23 Good guy? Answer: Uh-huh. Question: Okay. If
24 it'd be all right with you, when we want -- when we
25 leave here, we'll carry you back to your
26 girlfriend's house or either wherever you want to
27 go. Answer: I got the car. Question: Okay. Well
28 -- well, maybe before we do that then, we want you
29 to show us where you live and where your sister

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1 lives. Question: We'll bring you back. Question:
2 And we'll bring you back and show us what you did,
3 the places that you went because neither one of us
4 are from Winona and we're not familiar with, you
5 know, where exactly where you're talking about.
6 Answer: Uh-huh.

7 All right. This concludes the
8 interview with Curtis Flowers. The time is 1525.

9 **BY MR. EVANS:**

10 Q Did you notice any major inconsistencies
11 in the times that he gave you?

12 A Yes, sir, we did.

13 Q Between the two statements?

14 A Yes, sir.

15 Q In the first statement, what time did he
16 tell y'all he got up?

17 A He told us he got up about 6:30 that
18 morning.

19 Q This was on the 16th that he gave that
20 statement?

21 A Yes, sir.

22 Q On the 18th, just two days later, what had
23 he changed that to?

24 A Told us that he got up about 9:30,
25 something to ten.

26 Q And on the first statement I believe he
27 told you that he left the house about 9:15 the first
28 time?

29 A Yes, sir, about 9:15, 9:30.

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1 Q And in the second statement I believe it
2 was around noon?

3 A Yes, sir.

4 Q Did you think those times were pretty
5 significant?

6 A Yes, sir, we did.

7 Q I believe he told you that he had never
8 been on the east side of 51 at any time that day; is
9 that right?

10 A That's what he told us.

11 Q Did you have an occasion during the
12 investigation to go to the home of James Edward
13 McChristian?

14 A Yes, sir, I did.

15 Q Do you know which side of Highway 51 it's
16 located on?

17 A It's on the east side.

18 Q Did you have an occasion to go into
19 Angelica's during the investigation?

20 A Yes, sir, we did.

21 Q Which side of Highway 51 is it on?

22 **BY THE BAILIFF:** He needs to speak up for
23 the jury.

24 **BY MR. EVANS:**

25 Q Speak up.

26 A I'm sorry. On the east side.

27 Q Did you have an occasion to go to Edward
28 Lee McChristian's house?

29 A Yes, sir.

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1 Q Which side of Highway 51 is it located on?

2 A It's also on the east side.

3 Q Did you have occasion to go to Ms. Boniva
4 Henry's house?

5 A Yes, sir.

6 Q Which side of Highway 51 is it on?

7 A That's on the east side also.

8 Q Did you have an occasion to have Mary
9 Jeanette Flemming show you a location that she saw
10 the Defendant that same day?

11 A That's correct.

12 Q Which side of 51 is it located on?

13 A It's also on the east side.

14 Q Did you have occasion to see where Clemmie
15 Fleming said where she said him that day?

16 A Yes, sir.

17 Q Which side of Highway 51 is that located
18 on?

19 A It's on the east side of 51.

20 Q Did you have an occasion to see a location
21 where Porky Collins saw him that day?

22 A Yes, sir, I did.

23 Q Which side of Highway 51 is it located on?

24 A It's on the east side.

25 Q But he said he had never been on the east
26 side that day?

27 A Said in the statement if anybody said they
28 saw him over there, it would be a lie.

29 Q I want to show you Exhibit S-36 and ask

MATTHEWS - DIRECT

1 you if you can identify what this is.

2 **A** That's a bank bag we recovered from Tardy
3 Furniture store on August the 1st, 1996.

4 **Q** Where was it located?

5 **A** It was on a table on the side of the
6 counter area. They had a table or some kind of
7 small desk there that was -- had some carpet samples
8 or fabric samples on those tables, and we found this
9 bag under some of those carpet samples.

10 **Q** Was there any money located in the bag?

11 **A** No, it was not. It was --

12 **Q** What were the contents of the bag?

13 **A** There was a bank book in there.

14 **Q** Would you examine it and see if that bank
15 book is in there now?

16 **A** Yes, sir.

17 **Q** And what was the last deposit that was
18 made from that bank book? Well, let me stop right
19 there for a minute.

20 **BY MR. EVANS:** Your Honor. I offer this
21 exhibit into evidence.

22 **BY MR. CARTER:** No objection. Are you
23 offering the bag and the book?

24 **BY MR. EVANS:** Yes, sir, the book was
25 in the bag so I think it's a composite exhibit.

26 **BY THE COURT:** Okay. That will be fine.
27 It will be admitted.

28 (STATE'S EXHIBIT NO. S-36 RECEIVED INTO
29 EVIDENCE.)

MATTHEWS - DIRECT

1 **BY MR. EVANS:**

2 **Q** Let me see it for just a second. If you
3 would, examine that deposit bag and see if you can
4 tell what the last deposit that the store made was.

5 **BY MR. CARTER:** Only if he knows, Your
6 Honor. I'll object to any speculation.

7 **A** It's --

8 **BY THE COURT:** I'll let him. What he's
9 looking at is in evidence, so he can certainly
10 look at the evidence and tell in his opinion
11 what it shows.

12 **BY MR. EVANS:**

13 **Q** You may continue.

14 **A** It looks like a deposit for January (sic)
15 the 15th, 1996, of \$1,238.86. And there's a teller
16 mark on here from the Union Planters Bank in Winona
17 for July the 16th, 1996, from teller number six.

18 **Q** All right. Did you have an occasion
19 during your investigation to search through the
20 store to determine if there was any store money
21 located in the store?

22 **A** We looked for some money. There was some
23 change located in the change drawer but there was
24 not any currency in there.

25 **Q** There was no currency that appeared to
26 belong to the store anywhere in the store?

27 **A** No, sir.

28 **Q** I believe there's been described as a cash
29 drawer in that store. What was located in it?

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1 **A** There was some change in that cash drawer.

2 **Q** And no bills?

3 **A** But no bills.

4 **Q** I want to hand you Exhibit S-125 and ask
5 if you can identify what this is.

6 **A** That's a pair of Nike Flight tennis shoes
7 belonging to Curtis Flowers. They were taken on the
8 23rd of July by myself.

9 **Q** You say you took them from the Defendant?

10 **A** Yes, sir.

11 **Q** Did he have them on?

12 **A** Yes, sir.

13 **BY MR. EVANS:** Your Honor, I offer these
14 into evidence.

15 **BY MR. CARTER:** No objection.

16 **BY THE COURT:** I'll allow them to be
17 admitted.

18 (STATE'S EXHIBIT NO. S-125 RECEIVED
19 INTO EVIDENCE.)

20 **BY MR. EVANS:**

21 **Q** If you would, examine these tennis shoes
22 and see what size tennis shoe he had on his foot.

23 **A** They were ten and a half.

24 **Q** All right. You have talked about seeing a
25 bloody shoe track in the store. What, if any,
26 efforts did you or any of the other investigators
27 make to try to determine what type of shoe had made
28 these tracks?

29 **A** Well, I believe it was Lieutenant Miller

MATTHEWS - DIRECT

1 got some information from the crime lab that they
2 might have possibly have been Fila brand tennis
3 shoes.

4 Q All right. And at that point -- Well, let
5 me ask you this: Did you feel like the size of the
6 shoes would be important at some point?

7 A We felt like they would be.

8 Q Did you have an occasion to go to the
9 house that the Defendant was living in with anyone
10 to search the house?

11 A We did, yes, sir.

12 Q What did you find when you went to that
13 house?

14 A Well, we found some clothes that we
15 took -- we later took it to the crime lab. We also
16 found some currency in the headboard that the -- of
17 the bed there from the house.

18 Q Speak up, please.

19 A Found some currency in the headboard of
20 the bed there in the house.

21 Q How much currency -- cash was found in
22 this headboard?

23 A I believe it was around \$235.

24 Q All right. Now, the clothing that you
25 found, do you know when they were worn?

26 A No.

27 Q It was just some clothing that you found
28 and sent to the lab?

29 A That's right, yes, sir.

MATTHEWS - DIRECT

1 Q Were you even present when some officers
2 went back and recovered a Fila shoebox?

3 A No, sir, I was not.

4 Q All right. You were aware that a .380
5 automatic pistol was reported stolen the morning of
6 the murders; is that correct?

7 A Yes, sir.

8 Q Did you have occasion to go to Angelica's?

9 A Yes, sir, I did.

10 Q Did you talk with Doyle Simpson?

11 A I did.

12 Q Did you have an occasion at any time after
13 that to go to a house on Poor House Road to try to
14 recover any evidence?

15 A We got a search warrant from his mother to
16 search a post where he had told us that he had done
17 some target practicing with that weapon, and we went
18 out there to see if we could retrieve some
19 projectiles in that post.

20 Q All right. Explain that to us. What kind
21 of post is this and where is it located?

22 A It was a cedar post that's in the yard.

23 Q About what size post?

24 A It was about -- about the size of a
25 crosstie.

26 Q Okay.

27 A A railroad crosstie, about that size.

28 Q And what did Doyle Simpson tell you --
29 well, without going into what he told you, based

MATTHEWS - DIRECT

1 upon what he told you about where he had shot the
2 gun, what did you do?

3 **A** Well, we -- we went out there. He told us
4 that he had shot the gun into this post. They
5 usually set some cans up or bottles on the post and
6 he had done some target practicing out there at that
7 post, so that was the reason we went back and hoping
8 that we could find some -- either some hulls on the
9 ground or some projectiles in the post that we might
10 could compare to the ones that we had out of the
11 victims from this crime.

12 **Q** Okay. You were attempting to determine
13 what?

14 **A** To see if the gun that was stolen from
15 Doyle Simpson was that same gun that was used at
16 Tardy Furniture Company.

17 **Q** All right. And did you recover some
18 projectiles?

19 **A** Yes, we did.

20 **Q** All right. Explain how you recovered
21 them.

22 **A** Well, we took -- tried to take a -- a
23 little -- we used a little pocketknife to see if we
24 could make contact with any projectiles or holes
25 that were in there that might have a piece of --
26 piece of lead fragment or projectile fragment in
27 there. And then we just tried to cut away all of
28 the wood from it so that we could get it out there
29 as best we could.

MATTHEWS - DIRECT

1 Q Okay. The projectiles that were
2 recovered, what did you do with them?

3 A We took those -- we submitted those to
4 crime lab.

5 Q And for what purpose?

6 A To compare with the ones that they'd
7 already had down there.

8 Q Now, did you have an occasion to go back
9 to the crime scene with some officers in an attempt
10 to find another projectile?

11 A Yes, sir.

12 Q Explain that to the ladies and gentlemen
13 of the jury.

14 A After we received the autopsy report back,
15 we got to looking at the projectile that went
16 through Bertha Tardy. The area that her body was
17 laying in in the store, when we had been in the
18 store we noticed there was a nick on one of the
19 posts, on one of the columns in the store, on one of
20 the support columns. And we looked at the
21 projectile from the autopsy reports thinking that
22 maybe that that bullet had passed through her head
23 and struck the post. And there was a lot of
24 mattresses in that vicinity back there. It was a
25 lot of bedding displays back there and we thought
26 possible from the angle of where she was lying and
27 the angle of the post that we might could find that
28 other projectile, hoping that maybe we could find it
29 in one of those mattresses.

MATTHEWS - DIRECT

1 **Q** All right. Who went back to the store in
2 an attempt to do that?

3 **A** Okay. It was Lieutenant Wayne Miller,
4 myself, DA investigator John Johnson and DA
5 investigator Robert Jennings.

6 **Q** Okay. Were you successful?

7 **A** We were.

8 **Q** And you did recover what?

9 **A** We recovered a projectile inside one of
10 the mattresses.

11 **BY MR. EVANS:** Your Honor, may I have the
12 witness step down, please?

13 **BY THE COURT:** Wait a minute. Have these
14 already been agreed to? Have y'all agreed to
15 that, bringing these numbers in because I don't
16 recall that I ever --

17 **BY MR. EVANS:** This first one has one,
18 two, three, four, five pictures on it. They
19 are S-95A, S-96A, S-97A, S-98A and 41B and they
20 are marked into evidence. The next poster is
21 the S-95B; it is already marked into evidence.
22 And the next one is S-98B, which is already
23 marked into evidence.

24 **BY THE COURT:** You may proceed.

25 (WITNESS LEAVES STAND AND TAKE A PLACE
26 IN FRONT OF THE JURY)

27 **BY MR. EVANS:**

28 **Q** All right. Again, if you would, come
29 around to where you can see but don't block the

MATTHEWS - DIRECT

1 jury's view. Would you show us where the nick in
2 the post was that you had previously seen?

3 **A** We use this yardstick and placed it up
4 there. The yardstick was not there; we just used
5 that as the reference point and that's the spot, the
6 spot on the post where we noticed the nick in the
7 post.

8 **Q** All right. And what did you do after you
9 noticed the nick in the post?

10 **A** We started looking back at the mattresses
11 in this area to see if it had ricocheted off there
12 and went into the mattresses.

13 **Q** And did you find any place in the
14 mattresses?

15 **A** Yes, I did.

16 **Q** What did you find?

17 **A** We found a slit spot in the plastic on the
18 mattress, a hole, and we located it.

19 **Q** All right. I notice in the top picture up
20 here, top left-hand picture there is a pin stuck in
21 a mattress. What is the significance of that?

22 **A** Well, we put that pin because that was the
23 hole that was made in the mattress.

24 **Q** So that pin is marking where you found the
25 hole in the mattress?

26 **A** A hole in the mattress.

27 **Q** And do the other pictures show as you're
28 cutting these open?

29 **A** That shows us removing the projectile

MATTHEWS - DIRECT

1 from the mattress.

2 Q Okay. And is this the projectile that
3 you've described in the picture here?

4 A That's correct.

5 Q Exhibit 95B: Is this just an enlargement
6 that more clearly shows the nick in the wall and
7 where the hole was in the mattress?

8 A Yes, sir.

9 Q And 98 -- S-98B: Is this just a clear
10 enlargement showing the projectile as it was
11 laying -- resting in the mattress?

12 A That's correct.

13 BY MR. EVANS: You can have a seat again.

14 (WITNESS RETURNS TO STAND)

15 BY MR. EVANS:

16 Q I want to now show you Exhibit S-80 for
17 identification and ask if you can identify that.

18 A Yes. This was recovered from the mattress
19 from Tardy's Furniture Company.

20 Q And is that the same projectile that the
21 jury just saw in the photographs that you and other
22 officers recovered from the mattress?

23 A Yes, sir.

24 BY MR. EVANS: I offer Exhibit 80 into
25 evidence, Your Honor.

26 BY MR. CARTER: Let me see it.

27 BY THE COURT: Any objection?

28 BY MR. CARTER: No objection.

29 BY THE COURT: I'll allow it to be

MATTHEWS - DIRECT

1 admitted.

2 (STATE'S EXHIBIT NO. S-80 RECEIVED INTO
3 EVIDENCE.)

4 **BY MR. EVANS:**

5 Q Once that projectile was recovered, what
6 did you do with it?

7 A I -- I delivered it to the Mississippi
8 State Crime Lab.

9 **BY MR. EVANS:** One second, Your Honor.

10 **BY MR. EVANS:**

11 Q Did you have an occasion during your
12 investigation to check any other people's shoe
13 sizes?

14 A Yes, sir. When we got to the scene that
15 day, I checked with Chief Hargrove as to who had
16 been in the scene while he was there. And he told
17 me that he had been in and Kenny Townsend had been
18 in, and those are the first two officers that
19 arrived at the scene. And also Sam Jones who had
20 found the bodies, we knew he had been in there also
21 that morning. And also the ambulance crew who had
22 had been in and picked up one of the victims.

23 Q Did you have an occasion during your
24 investigations to see a person that you found out to
25 be known as Lamarcus Moore?

26 A Lamarcus Moore?

27 Q Lamarcus.

28 A Connie Moore had a son. I don't whether
29 his name was Lamarcus.

MATTHEWS - DIRECT

1 Q Okay. Her younger son, did you have an
2 occasion to see him?

3 A The 11-year-old, I did, yes, sir.

4 Q All right. Did you check his shoe size?

5 A Yes, we did.

6 Q What was that shoe size?

7 A Seven.

8 Q During your investigations, did you have
9 an occasion to either include or exclude Doyle
10 Simpson as a suspect?

11 A Well, we excluded him as a suspect.

12 Q All right. And based upon your
13 investigation, did you do any -- were you able to do
14 anything that excluded him as a suspect?

15 A Well, we interviewed his supervisors at
16 the factory he worked in that morning to make sure
17 that he was at work, that he had an alibi at the
18 time of the crimes. And we were able to determine
19 that he was, in fact, working at Angelica that
20 morning.

21 Q Okay.

22 BY MR. EVANS: May I have the Court's
23 indulgence for just a minute?

24 BY THE COURT: Sure.

25 BY MR. EVANS:

26 Q All right. You were saying a while ago
27 that you checked shoes of people that were there at
28 the store?

29 A Yes, sir.

MATTHEWS - DIRECT

1 Q Were any of those shoes anywhere similar
2 to the shoe impression that you had seen?

3 A No.

4 BY MR. EVANS: Your Honor, I'll tender the
5 witness.

6 CROSS-EXAMINATION

7 BY MR. CARTER:

8 Q Mr. Matthews, first of all, I want to
9 applaud you on the good work you did of going back
10 to the store and making a record of this projectile
11 that you found in the mattress. And whose request
12 was it to take all these nice pictures that make
13 sure that you could document it?

14 A I don't remember who decided to.

15 Q You didn't take them, did you?

16 A I don't remember that I did.

17 Q Okay. Did you authorize anybody to take
18 them?

19 A Well, one of the four that were there took
20 them. I don't know. I don't remember exactly who
21 it was.

22 Q Did you authorize anybody to take them?
23 Did you personally authorize them?

24 A Well, we talked about the people that were
25 there. I don't know that I authorized them.

26 Q Okay. That's my question. You were there
27 when they were taking them; is that correct?

28 A That's correct.

29 Q And when was the first time you saw them?

MATTHEWS - CROSS

1 Did you do it with a Polaroid camera so you could
2 see it almost instantly?

3 A No, I don't think we had a Polaroid.

4 Q You didn't have a camera with you that
5 day, did you?

6 A I don't remember that I did.

7 Q Now, who all you say was there? Who was
8 all present when this went down?

9 A Mr. Miller was there, myself, Mr. Johnson
10 and Mr. Jenkins.

11 Q Okay. What's the point of doing that?
12 Because you really could have just testified about
13 what you found, and you really didn't have to take
14 pictures. What's the point in taking pictures in a
15 situation like that?

16 A Well, we probably needed to document it.

17 Q Needed to document it. Photograph it and
18 documenting?

19 A That's correct.

20 Q Now, you also went to Doyle's mother's
21 house out on Poor House; is that correct?

22 A That's correct.

23 Q And before you went, Mr. Thornton had
24 gone; is that correct?

25 A He had.

26 Q In fact, Mr. Thornton had gone twice; is
27 that correct?

28 A Well, I don't know how many times he went
29 before that. I know he went one time before that,

MATTHEWS - CROSS

1 and I know he went with me one time.

2 Q Okay. Now, could you explain to us why no
3 pictures were taken of there, no photographs?

4 A That was probably something we just forgot
5 to do that day.

6 Q No picture of this cedar post that you're
7 talking about; right?

8 A No.

9 Q No picture of the projectile in the log;
10 is that correct?

11 A That's correct.

12 Q No picture of the hull on the ground; is
13 that correct?

14 A That's correct.

15 Q And would you agree with me if it's not
16 documented, it didn't happen?

17 A No.

18 BY MR. EVANS: Your Honor.

19 A No.

20 BY MR. CARTER:

21 Q Now, you do agree that taking pictures and
22 writing reports can serve as a permanent record for
23 an indefinite period of time that something did, in
24 fact, occur. Do you agree with that?

25 A That's correct.

26 Q Would you also agree that if -- would you
27 also agree that memories are -- it's not like a
28 video recorder but it fades over a period of time
29 and that applies to everybody?

MATTHEWS - CROSS

1 **A** Some things, yes.

2 **Q** Yeah. Now, you went to Connie Moore's
3 house -- is that correct -- at least on one
4 occasion?

5 **A** I did.

6 **Q** How many times did you go?

7 **A** I went the one time.

8 **Q** One time. Now, if you walk out the back
9 door of Connie Moore's house and go straight for as
10 far as you want to go, will you ever reach
11 Angelica's?

12 **A** If you went out the back door?

13 **Q** Out the back door.

14 **A** No.

15 **Q** So you can't go out the back door and go
16 straight and go to Angelica's?

17 **A** Well, you'll have to make a few turns.

18 **Q** Right. So if anybody said that, it
19 would -- well, it's just not possible. Okay.

20 Now, I noticed you said something
21 about neighborhood canvassing. Now, is your
22 testimony that you saw someone canvassing the
23 neighborhood on that particular day?

24 **A** My statement was I talked to Chief
25 Hargrove, and he said that he had some of his
26 officers were out there looking through some garbage
27 containers, receptacles, looking along and surveying
28 the area around Tardy Furniture Store.

29 **Q** Okay. He told you that earlier. He

MATTHEWS - CROSS

1 didn't give you any written report with that in it,
2 did he?

3 **A** No, he didn't give me a written report.

4 **Q** And you didn't --

5 **A** He said they were out doing it that
6 morning.

7 **Q** And you didn't make a written report
8 saying that Chief Hargrove told you that?

9 **A** No, I didn't.

10 **Q** And you didn't personally see anybody out
11 canvassing the neighborhood while you were there,
12 did you?

13 **A** No.

14 **Q** Now, you made some reference about why
15 Mr. Flowers -- and correct me if I'm wrong. I'm
16 certainly not trying to put words in your mouth --
17 about Mr. Flowers being let go at Tardy's. Now, is
18 it your testimony Mr. Flowers was fired?

19 **A** He told us that he was let go.

20 **Q** And what did you take that to mean?

21 **A** Well, I took it to mean that they didn't
22 need him anymore. They let him go. He wasn't
23 working there any more.

24 **Q** Okay. Is that in conflict with quitting
25 and not going back or could that mean that?

26 **A** Well, I think when they let you go, they
27 let you go; they fired you or you're -- it's about
28 the same thing as being fired.

29 **Q** Right. And Mr. Flowers said they let him

MATTHEWS - CROSS

1 go. Did you ask him to explain that and make you
2 understand exactly what he was talking about?

3 A Well, I pretty much knew that let go means
4 you were let go. You're not working there anymore.

5 Q But does that mean you're fired for some
6 kind of misconduct?

7 A Well, I don't know if it was misconduct,
8 but he told us that when he talked to her on the
9 telephone that she told him that he didn't have a
10 job there anymore.

11 Q Right. Didn't have a job because he
12 didn't come back after the 3rd of July?

13 A That's right.

14 Q Now, did you follow up and talk to anyone
15 else at Tardy's about whether or not Mr. Flowers was
16 fired or didn't go back?

17 A Well, there wasn't anybody left at Tardy's
18 for me to be talking to.

19 Q Did you talk to Ms. Ballard -- Ms. Roxanne
20 about that?

21 A I didn't talk to her about that.

22 Q Okay. And you didn't talk to Mr. Tardy,
23 the son, about that either, did you? Or did you? I
24 don't know.

25 A No.

26 Q Okay. Now, this first time you talked to
27 Mr. Flowers you made some notes.

28 A Right.

29 Q Now, did you ask Mr. Flowers on the 16th

MATTHEWS - CROSS

1 to write out a statement?

2 A No.

3 Q Did you record a statement?

4 A No.

5 Q So those notes you're referring to are
6 just some notes you wrote out?

7 A No. Mr. Johnson wrote those notes.

8 Q Now, how long did you work on this case?
9 Were you just -- did you just work on it temporarily
10 such as on July the 16th, 1996?

11 A No, worked on it for a while.

12 Q Okay. And is it a fact that Mr. Hargrove
13 released the crime scene to you?

14 A He didn't release to us, no.

15 Q Okay. I'm not talking about to us; I'm
16 talking about to you.

17 A Well, to me? No, he did not release it to
18 me.

19 Q Okay. So if he said he did -- and when I
20 say release the crime scene, let's make sure we're
21 talking about the same thing. What does releasing a
22 crime scene mean to you?

23 A Turn it back over to whoever it belongs
24 to, that would be releasing it, I would think.

25 Q You got there at the crime scene.
26 Mr. Hargrove was there. Who else was there?

27 A Mr. Hargrove was there, and I don't
28 remember everybody else that was there. Sam Jones
29 was there. There were a number of people out in

MATTHEWS - CROSS

1 the -- around the area, out in the street and all.

2 Q Now, isn't it a fact that Mr. Hargrove
3 called the Mississippi Highway Patrol because he
4 felt inadequate to handle a major homicide like
5 that?

6 A I think he called us because he needed
7 some assistance that day.

8 Q He needed some assistance. Why did he
9 need assistance in it? If he didn't feel
10 inadequate, why did he need it?

11 A Well, I don't know if he felt inadequate,
12 but he felt like he needed some more expertise.

13 Q Yeah, more expertise. And you and
14 Mr. Miller had the expertise?

15 A Well, I hope so.

16 Q And you arrived upon the scene, what was
17 Mr. Hargrove -- where was he at and what was he
18 doing?

19 A He was right there at front door.

20 Q At the front door. And he told you three
21 people were certainly dead and another one had been
22 injured and was in the hospital?

23 A That's correct.

24 Q And he told you that, you know, there's no
25 proof, that some people were out canvassing the
26 neighborhood; is that correct?

27 A He did.

28 Q And did he tell you that he had called the
29 crime -- CSI people from Jackson?

MATTHEWS - CROSS

1 **A** Right. I had done that before I left the
2 patrol station in Greenwood, and he told me when I
3 got over here that he had already done that also.

4 **Q** Right. He called for you all because he
5 thought y'all had more expertise, and when you got
6 there -- now, would you consider it briefing about
7 what he found?

8 **A** Uh-huh.

9 **Q** So he's briefing you about what -- what
10 had occurred. Isn't it a fact he was briefing you
11 because he called for your help and he's
12 releasing -- what did Mr. Hargrove do that day after
13 he give you this information?

14 **A** He stayed there around the scene and was
15 taking care of stuff.

16 **Q** What was he doing the rest of the day?

17 **A** Well, I don't know what he was doing the
18 whole rest of the day. I mean, you'll have to ask
19 him that.

20 **Q** Okay. You didn't see him do anything?

21 **A** Yeah. I saw him.

22 **Q** You saw him down there at Tardy's; is that
23 correct?

24 **A** I saw him at Tardy's. I saw him at the
25 police department and then later on.

26 **Q** What did he do at Tardy's for the rest of
27 the day?

28 **A** Well, he was taking care of the crime
29 scene while the crime lab was there.

MATTHEWS - CROSS

1 Q Okay. The crime lab got there like one
2 something; is that correct?

3 A I don't remember exactly what time they
4 got there.

5 Q It was after -- a little after one, wasn't
6 it?

7 A They got to the scene probably --

8 Q What did Mr. Hargrove do at Tardy's? What
9 time did he get there, 11:00?

10 A I got there, and Mr. Hargrove was just a
11 little after 11:00.

12 Q And so the crime scene got there at 1:00.
13 So it was a couple hours of time that you and
14 Mr. Hargrove was at Tardy's. And is it your
15 testimony -- you can't really tell me what
16 Mr. Hargrove was doing for that couple of hours?

17 A I think they were securing the crime
18 scene.

19 Q Securing the crime scene. What does that
20 mean?

21 A Well, they were not letting anybody in
22 there until the crime lab got there.

23 Q Okay. Now, did you see him make a list of
24 who was coming in and who was going out?

25 A I don't know.

26 Q Okay. You didn't see it though?

27 A I haven't seen a list.

28 Q Did you make a list?

29 A No. I wasn't there the whole time.

MATTHEWS - CROSS

1 Q Okay. For the period of time you were
2 there, did you make a list of who came in and went
3 out?

4 A I made a list of the people that I talked
5 to and the ambulance people that I talked to.

6 Q Oh, you made a list of the people you
7 talked to. I accept that. But did you make a list
8 of the folks that you saw come in?

9 A It wasn't anybody coming in. It wasn't
10 anybody coming --

11 Q Nobody came in?

12 A We didn't let anybody come in there.

13 Q Okay. Did you make a list of people
14 you -- you were briefed on and told who had come in
15 and who had left?

16 A Yes, sir, just on those.

17 Q You did?

18 A Just like I say, the ambulance crew and
19 Mr. Jones. And the two police officers and
20 Mr. Hargrove and Mr. Townsend.

21 Q Okay. Now, are you telling me this is in
22 a report or you made a list?

23 A I just made a list that day, a note. I
24 may have jotted a note down, you know, that they
25 came, but I didn't make a detailed list.

26 Q Okay. Now, is there any particular reason
27 you didn't record the first conversation you had
28 with Mr. Flowers or make him write out a statement?

29 A Well, that was just a fact-finding

MATTHEWS - CROSS

1 interview to see what he'd been doing that day.

2 Q Right. Now, isn't it -- how long you been
3 a police officer? At that time, how long had you
4 been with the Mississippi Highway Patrol?

5 A I've been about -- must have been about
6 23 -- 23 or 22 years.

7 Q And how long had you been an investigator?

8 A About nine years.

9 Q About nine years. Now, is Mr. Flowers the
10 first and only person who has ever changed something
11 from what they said from one statement to another
12 one? It's really not all that unusual for a person
13 being interviewed to say one thing one time and say
14 something different another time, is it?

15 A I didn't understand the question. I'm
16 sorry.

17 Q You're saying -- you testified earlier
18 that Mr. Flowers said some things different in the
19 second statement than he did in the first one;
20 wasn't that correct?

21 A That's correct.

22 Q Now, I said having been an investigator
23 for as long as you have been one, Mr. Flowers is not
24 the only person to ever do that; is that correct?

25 A That's correct.

26 Q So it's really kind of common that you get
27 different stories from people at different times; is
28 that correct?

29 A You get -- yeah, it could be true.

MATTHEWS - CROSS

1 Q Now, Mr. Flowers willingly came in, as far
2 as you know, and talked to y'all; is that correct?
3 He didn't resist, as far as you know?

4 A Which time now?

5 Q The first time.

6 A Yes.

7 Q I didn't know that he resisted any time.
8 Do you have any proof that he resisted coming in and
9 talking to you either time?

10 A No.

11 Q And when you asked for the gunshot residue
12 test, he didn't resist that, did he?

13 A No, that's correct.

14 Q When you asked for his shoes and clothing,
15 he didn't resist any of that either, did he?

16 A No, sir.

17 Q Now, did you say earlier -- strike that.
18 Now, you don't know whether Mr. Flowers washed his
19 hands before coming to see you, do you?

20 A I don't know.

21 Q Now, did Mr. Flowers have to -- he had to
22 sign a waiver of rights form; is that correct? He
23 had to sign a -- you Mirandized him, and he had to
24 sign this document just like you did; is that
25 correct?

26 A That's correct.

27 Q And where did he get the pen from to sign
28 it with?

29 A I don't remember.

MATTHEWS - CROSS

1 Q Do you know -- you don't think you gave it
2 to him?

3 A I could have.

4 Q Now, where did this conversation take
5 place, in the -- now, I have no idea where the
6 police department was back then. Is it at the same
7 place now as back then?

8 A No, sir. It's at a different place.

9 Q Is it kind of on the other side of Summit
10 back over there where the probation office is
11 located now?

12 A I'm not familiar with the probation
13 office.

14 Q Now, this room that you interviewed
15 Mr. Flowers in, is this the room that -- describe
16 this room. What's in this room?

17 A Oh, it was a table, some chairs in there.

18 Q Okay. And is this a room where interviews
19 commonly take place?

20 A That's the first time I'd been in it.

21 Q First time you'd been in it?

22 A I don't know what was done before I got in
23 there.

24 Q Now, if there is a -- if a police officer
25 has fired a gun, now, the pen -- let's put it this
26 way: Do you know if Mr. Flowers is right handed or
27 left handed?

28 A I believe he said he was right handed.

29 Q And we do know that he had to write to

MATTHEWS - CROSS

1 sign the form. And do you know the --

2 **BY THE COURT:** Mr. Carter, I understand
3 the jury's ready for a break, so we'll take a
4 ten-minute recess at this time.

5 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
6 CONTINUED IN OPEN COURT WITH THE JURY
7 PRESENT, TO-WIT:)

8 **BY THE COURT:** Court will come back to
9 order. Mr. Carter, you may resume.

10 **BY MR. CARTER:** Thank you, Your Honor.

11 **BY MR. CARTER:**

12 **Q** Mr. Matthews, who got to the crime scene
13 first, you or Mr. Miller?

14 **A** I did.

15 **Q** So you did. And upon getting there, Chief
16 Hargrove briefed you about the scene; is that
17 correct?

18 **A** That's correct.

19 **Q** And at that point -- and you're an
20 investigator; is that correct?

21 **A** That's correct.

22 **Q** And yet you don't consider that releasing
23 the crime scene to you?

24 **A** No. I wouldn't say he released the crime
25 scene to me. He was in charge of the crime scene
26 until the crime lab got there.

27 **Q** You were never in charge?

28 **A** I wasn't the one in charge, no. No, I'm
29 not in charge of that, no, sir.

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT # : 2003-0071-CR

MATTHEWS - CROSS

1 Q Isn't it a fact that Mr. Thornburg and
2 Mr. Miller went to Angelica's and interviewed Doyle
3 Simpson and Emmett Simpson, then came back and
4 reported to you what they found at Tardy's -- I
5 mean, what they found at Angelica's?

6 A I think they went down there.

7 Q They went down there, and they came back,
8 and they reported to you and not Chief Hargrove; is
9 that correct?

10 A I don't know what they told Chief
11 Hargrove. I can't answer that.

12 Q That's not what they told you?

13 A Mr. Hargrove and -- they told me what, you
14 know, what they were doing. I was down there with
15 them.

16 Q You were down at Angelica's, also?

17 A That's correct.

18 Q Okay. And what time did you go to
19 Angelica's?

20 A Sometime after the call came in.

21 Q Were you down there when they interviewed
22 Emmett and Doyle?

23 A I was down there when we talked to Doyle,
24 and I was down there later when we talked to Emmett.

25 Q So did you get there before Mr. Thornburg
26 and --

27 A No.

28 Q -- Mr. Williams?

29 A No.

MATTHEWS - CROSS

1 Q Now, was Porky Collins brought down to
2 Tardy's Furniture and asked to talk to you? Did you
3 interview Porky Collins?

4 A No. I didn't talk to him at Tardy
5 Furniture, no.

6 Q You didn't talk to him at Tardy's. Where
7 did you talk to him at?

8 A At the Winona Police Department.

9 Q Winona Police Department. Wasn't that on
10 July the 16th?

11 A Yes, sir.

12 Q Why did you talk to him?

13 A He came down there to the police
14 department and -- and I think he was asked to come
15 down there, and he come down there and talked to us.

16 Q And he came down there and talked to you?

17 A Came down and talked to me, yes, sir. I
18 was one of them that he was talking to.

19 Q Okay. Let me ask you something else: You
20 said Mr. Flowers had a scratch on his hand, on his
21 shoulder, I believe. Didn't you say that?

22 A Not his shoulder.

23 Q On his arm?

24 A His arm.

25 Q Okay. Could you help me find a picture of
26 that? I'm sure you took a picture of that, didn't
27 you?

28 A I don't think we took a picture of that;
29 we just noted it.

MATTHEWS - CROSS

1 Q What you noting it for then?

2 A Just looking at the suspect.

3 Q And that's -- you don't think that's worth
4 taking a picture of?

5 A Well, we just noted it at the time. It
6 didn't look like -- it was just a slight scratch on
7 his arm and we noted that.

8 Q It didn't have any significance then; is
9 that correct?

10 A I don't think it did at the time.

11 Q Okay. Thank you. Now, besides Doyle
12 Simpson and Mr. Flowers, are there any other
13 suspects?

14 A No, sir.

15 Q Now, you say you eliminated Doyle Simpson
16 as a suspect. Is that what you're saying?

17 A We talked to the supervisors down there
18 and also talked to -- with some of his coworkers
19 down there.

20 Q Okay. What did you do down there at
21 Angelica's?

22 A I talked to his supervisors.

23 Q What's the supervisor's name?

24 A It was a female. I don't remember. A
25 Doris, I believe was her first name. I can't
26 remember the last name.

27 Q Did you make a report of that?

28 A We may have.

29 Q Not we. Did you make a report?

MATTHEWS - CROSS

1 **A** I don't know whether I did or didn't. I
2 can't remember.

3 **Q** Okay. If you got one, can you search
4 through your records and let us have it?

5 **A** I don't have the records with me today.

6 **Q** Okay. Now, who else did you talk to down
7 there?

8 **A** We talked to some of his coworkers.

9 **Q** Not we. Who else did you talk to?

10 **A** Well, I talked with his co-workers down
11 there.

12 **Q** Okay. You got any report of that?

13 **A** No.

14 **Q** And they told you that he had been there
15 all day and he never left. Is that -- is that what
16 you testified to earlier?

17 **A** That's correct.

18 **Q** And what time did they say they got there?

19 **A** I think it was sometime early morning,
20 like 6:30 or so.

21 **Q** Okay. And what time did he leave? What
22 time did he leave?

23 **A** He left sometime around a little bit
24 before 11:00 to pick up some lunches.

25 **Q** Okay. Now, is that memorialized -- is
26 that statement right there memorialized in any
27 written document that you know of?

28 **A** Could have been. Could have been, but I
29 don't know. I don't have any with me right now.

MATTHEWS - CROSS

1 Q Did you memorialize it in any document?

2 A No, sir.

3 Q You personally, not anybody else?

4 A No.

5 Q Okay. And aren't you just right now
6 relying on memory as best it can be summonsed?

7 A Yes, sir.

8 Q And I'm sure you had -- well, I know you
9 didn't. You certainly didn't think it would last
10 this long, did you, this case would going on for
11 several years now, did you?

12 A No, sir.

13 Q Now, when you talked to Doyle down there
14 at Angelica's, did you make any report of what Doyle
15 Simpson said? Is there a written report of what he
16 said he did that morning and how the gun got in his
17 car or anything that you might have discovered in
18 the process of talking with Mr. Simpson?

19 A No, sir.

20 Q Now, as far as the crime scene, now, when
21 you find a hull at a crime scene or a projectile, is
22 it a good idea to take a sharp object and poke in
23 there and scratch that and touch that projectile?

24 A That's not a good idea to do that, no,
25 sir.

26 Q Because you could possibly make
27 indentations or scratches that would make it hard to
28 make the -- the necessary comparison; is that
29 correct?

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1 **A** This's correct.

2 **Q** So using a knife was not a good idea at
3 that time?

4 **BY MR. EVANS:** Your Honor, I object.

5 There's nothing in the testimony about a knife
6 being used to pick up a projectile.

7 **BY MR. CARTER:**

8 **Q** Strike that. A knife being used to
9 actually get the projectile out of the cedar log.
10 Did you actually see that happen? Did you actually
11 see Mr. Thornburg get the projectile out of the --

12 **A** We didn't pry the projectile out. We cut
13 the wood away from it so the projectile would come
14 out. We didn't actually scar the projectile. We
15 knew better than that.

16 **Q** Okay. Were you out there when the -- I
17 take it you saw -- I don't remember -- I take it you
18 saw Mr. Thornburg when he actually did that?

19 **A** When we got the second one out. I was not
20 there on the first one.

21 **Q** You saw him when he got the second one.
22 And what did you say he did? Tell us again how he
23 got it out.

24 **A** Well, once we located a hole in the post
25 and located that there was a projectile in the
26 there -- we thought there was a projectile in
27 there -- we cut the wood away as far as we can --
28 could and cut around it so that we could get the
29 projectile out of there without scarring it up any

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1 further than it was.

2 Q Okay. And who cut it out? Did you do it?
3 Of the post? Did you play any role in cutting the
4 wood?

5 A I believe Mr. Thornburg did that.

6 Q You were there, Mr. Thornburg. Who else
7 was there?

8 A That's only the two that I know of,
9 Mr. Thornburg and myself.

10 Q Now, did you make a record of that, of him
11 cutting the wood and sort of --

12 A I didn't make a record of that but I made
13 a record when I turned it in to the crime lab on the
14 submission form.

15 Q Okay. The submission form was your
16 record?

17 A Yes, sir.

18 Q Now, is that standard protocol? Is that
19 how you're supposed to make records of
20 investigations and is that how it's normally done?

21 A Well, that's all we -- you know, we knew
22 what we did, and we knew what day that was on, and
23 what time we did it, and we turned it in to the
24 crime lab on that.

25 Q Mr. Matthews, haven't you been to a --
26 what's called a police academy at some point?

27 A I've been to the police academy, yes, sir.

28 Q And weren't you taught in the police
29 academy making records, documentation is critical

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1 and important to investigating a case, any case?

2 **A** Yes, sir.

3 **Q** Okay. Now, it's very important not to
4 contaminate a crime scene; is that fair to say?

5 **A** That's fair to say.

6 **Q** And one of the ways you don't contaminate
7 it is by marking it off and not letting anybody in
8 and out unnecessarily; is that fair to say?

9 **A** That's correct.

10 **Q** And if anybody goes in and out, you make a
11 record of it so you know exactly who went in. And
12 if there's something in there that's real sensitive,
13 you inform the person before they go in to not step
14 within certain places or to not move evidence until
15 it's photographed, videotaped or whatever? Is all
16 of that fair to say?

17 **A** That's fair to say.

18 **Q** And before you got there, you were made
19 aware that at least four or five people had been
20 within the crime scene; is that fair to say?

21 **A** That's fair to say.

22 **Q** And while you were there, before the CSI
23 people from Jackson got there, how many went in and
24 out? How many people went in and out?

25 **A** Before I got there?

26 **Q** Yes, sir. How many went in and out after
27 you got there, that you --

28 **A** I don't remember exactly how many, but it
29 wasn't anybody went up to the front of the crime

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1 scene after we got there because we sealed that off.

2 Q Right. Now, how long were you inside that
3 store that day before the crime scene people got
4 there, and tell us exactly what you did.

5 A Well, they interviewed Mr. Sam Jones. And
6 the ambulance crew came by, and we checked their
7 shoe prints while we were there that morning. And
8 then shortly after that is when we got the call that
9 the gun was missing down at Angelica's, and we went
10 down there.

11 Q That's the extent of what you did that
12 day?

13 A That was pretty -- you asked me about what
14 we did when I first got there. That's pretty much
15 it, yes, sir.

16 Q And I really asked you what you did that
17 day. That's the extent of what you did, though?

18 A Yes, sir.

19 Q Okay. And let me ask you this. This
20 really is puzzling me. At the time you went back
21 and you found the bullet in the mattress, had the
22 crime scene been cleaned up?

23 A Yes, sir.

24 Q In fact, the crime scene was cleaned up
25 the same day as the crime occurred?

26 A I think later on in the afternoon.

27 Q Later on that afternoon? And why didn't
28 you call the crime scene technicians to come back to
29 look for that projectile that you suspected might

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1 have been in the building somewhere?

2 A Well, we thought that we could find it in
3 there. It wasn't any need in calling them back.

4 Q That's the only reason you didn't call the
5 crime scene people to go out to Poor House Road?

6 A We didn't need them for that.

7 Q You didn't need them for that? You didn't
8 need the crime scene people, and you didn't need to
9 photograph it either, did you, apparently, or
10 videotape it?

11 A What?

12 Q I said and you didn't need to photograph
13 what occurred at Poor House Road; is that fair to
14 say, too?

15 A We didn't. Yes, sir.

16 Q And you didn't need to videotape it,
17 because your memory and your word is -- it's
18 sufficient. Is that the position you're taking on
19 that?

20 A Well, that's exactly what happened. And
21 that's what I testified to today, yes, sir.

22 Q I understand that's what happened.

23 A Yes, sir.

24 Q Now, Mr. Flowers -- at what point can you
25 say Mr. Flowers became a suspect?

26 A Probably after the second interview.

27 Q On the 18th. And first of all, Doyle
28 Simpson got eliminated because, and only because, no
29 one said he left Tardy's (sic) that morning. Is

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1 that pretty much what you based it on?

2 **A** I don't think he'd been seen at Tardy's
3 that morning.

4 **Q** Strike that misstatement. Doyle Simpson
5 got eliminated as a suspect because you went to
6 Angelica's and you talked to some unnamed person and
7 some unnamed supervisor and some unnamed
8 co-employees?

9 **A** Well, Randy King was one of them. He was
10 working with him that day. He said that -- I talked
11 to him that day down there. And the other man by
12 the name of Johnson down there I talked to that day
13 that said they were working with him that day. They
14 took a break with him that morning at the time that
15 the crimes were occurring in close proximity. And
16 they were all on break down there, and they were all
17 together, so we pretty much eliminated him that
18 morning down there. We knew where he was that
19 morning.

20 **Q** Okay. And you talked to Charles "Porky"
21 Collins later that day who said he saw two people at
22 Tardy's. What time did he say he saw them?

23 **A** Saw them in the morning.

24 **Q** Saw them that morning. And he said that
25 was like a brown car; is that correct?

26 **A** I don't remember exactly what he said.

27 **Q** And you didn't write down what he said, or
28 did you?

29 **A** No, I didn't.

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1 Q And you never gave -- Doyle actually came
2 to the police department that day, I believe, didn't
3 he?

4 A He could have.

5 Q Did you see him at the police department
6 that day?

7 A I don't remember whether I did or didn't.

8 Q But you do know that you didn't give
9 Mr. Simpson any gunshot residue test; is that
10 correct?

11 A No, I didn't.

12 Q And you do know that you didn't go search
13 his house; is that fair to say?

14 A That's fair to say.

15 Q You say you went there twice, went there
16 once and somebody come -- even though you went to
17 his house, his mother's house once and you didn't
18 search either his mother's house or any other place
19 that he might have been living; isn't that correct?

20 A I believe we did search his mother's
21 house.

22 Q Okay. When?

23 A I don't remember exactly what day it was.

24 Q Have you got any record of it?

25 A It should be a consent form.

26 Q Okay. So are you saying you went there
27 and searched yourself?

28 A I was there, yes.

29 Q What did you take?

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1 **A** I don't think we took anything.

2 **Q** Didn't take any clothing, didn't -- what
3 size shoes Mr. Simpson wear?

4 **A** I believe it was a size 12, I believe.

5 **Q** Size twelve? Did you make any report of
6 that?

7 **A** I may have. I made a mental note of it.

8 **Q** Made a mental note of it? But you didn't
9 make a written report of it?

10 **A** No. We did check the soles of his shoes,
11 though, while we were down there that day.

12 **Q** Did you make a written report of it?

13 **A** No, sir, I probably didn't.

14 **Q** And when you got down to Angelica's that
15 day, the same day of the murders, you were told that
16 Emmett Simpson was seen running around the building;
17 is that correct? Running around the front of
18 Angelica's, around the west side and went back to
19 the back at -- where there was another company back
20 there. Weren't you told that by Mr. Thornburg and
21 Mr. Williams?

22 **A** I remember something about Emmett Simpson,
23 but I don't remember what the situation was.

24 **Q** And did you -- was Emmett Simpson ever
25 considered a suspect?

26 **A** No.

27 **Q** And since he wasn't a suspect, he was --
28 so he was never ruled in or ruled out?

29 **A** Well, we ruled him out because he was at

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1 work that day, also.

2 Q He was at work that day, also?

3 A Yes, sir.

4 Q And who did you talk to to rule out?

5 A We talked to his supervisors.

6 Q And who are they?

7 A I don't remember their names. I didn't
8 actually talk to them myself. I think one of the
9 other officers did.

10 Q And did you or the other officer make a
11 record of that?

12 A Not that I've seen. He may have, but I
13 haven't seen it.

14 Q Now, when you was inside Tardy's that day,
15 did you note any disheveled appearance or the
16 furniture turned over or anything that would
17 indicate that somebody had ransacked the place or
18 anything like that?

19 A I didn't notice any of that, no.

20 Q Did you videotape the crime scene?

21 A I believe there was a videotape made of
22 it.

23 Q Did you videotape the crime scene?

24 A No, I did not.

25 Q Now, as far as going back to -- to look
26 for a projectile at Tardy's at some later day, I
27 believe you testified earlier that you didn't
28 authorize that. I think that's your testimony; is
29 that correct?

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1 **A** I didn't request it.

2 **Q** When you went back and found the
3 projectile in the mattress and took the good
4 pictures and all that kind of stuff, who authorized
5 that? Did you authorize it or do you know who
6 authorized it?

7 **A** I think we just -- after we looked at
8 the -- I don't remember who exactly. We were
9 looking at the autopsy reports, and we determined
10 that possibly in looking at that and looking at some
11 of the photographs that possibly that projectile was
12 in that mattress because that's the location that
13 Ms. Tardy was in.

14 **Q** Who did the autopsy report come to? Who
15 looked at that and said, Oh, man, we might be able
16 to tell. Whose idea was that?

17 **A** I can't remember.

18 **Q** Okay. But you got a call from somebody
19 saying let's do it?

20 **A** No. I think we were just discussing it.
21 All the investigators met together, and we were just
22 discussing it.

23 **Q** So all y'all had a meeting. Where did
24 this meeting take place?

25 **A** Probably in Winona.

26 **Q** Okay. Now, you --

27 **A** I don't remember exactly what it is, but
28 we were having a meeting and we looked at those
29 things, and we came up with that determination. We

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1 decided to see if we couldn't go back down there and
2 see if we could locate it.

3 Q Well, that's -- and probably some good
4 work. Who is we? You said we was having a meeting.
5 Now who?

6 A The same four folks that were down there.

7 Q Okay. You're not sure where y'all were
8 meeting but you were probably in Winona?

9 A We were probably at the Winona Police
10 Department; that's where we usually met.

11 Q Okay. And somebody had the good idea,
12 don't know exactly who it was, but you all agreed to
13 let's go do it?

14 A Yes.

15 Q Now, Mr. Matthews, now, isn't it a fact
16 that people hold pens in their hands in different
17 ways? For instance, I hold it like this
18 (indicating). I've seen people do this
19 (indicating). Now, how many gunshot residue tests
20 have you given over the years?

21 A I wouldn't know exactly.

22 Q Now, is it your testimony that everybody
23 who signs their name does it this way here with the
24 pen resting on their --

25 A You can't get gunshot residue from a pen.

26 Q Well, if gunshot residue is on a pen, you
27 could get it?

28 A That's a possibility.

29 Q Because if it's on there you could get it

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1 on your hand?

2 **A** That could be possible.

3 **Q** Okay. Now, if gunshot residue is actually
4 on -- somehow is on a table and a person puts their
5 hand on the table, you can get it; isn't that fair
6 to say?

7 **A** I'm sure it would be possible. I'm not a
8 firearms expert. I don't know.

9 **Q** I'm just talking about gunshot residue
10 now. And if somebody actually had it on their
11 clothing and you touched their clothing, you could
12 possibly get some on your hands; isn't that fair to
13 say?

14 **A** I wouldn't know for sure. I couldn't say
15 that.

16 **Q** Mr. Matthews, if you put your hand -- if
17 your hand is in a location where gunshot residue is
18 at, you --

19 **BY MR. EVANS:** Your Honor, I think he's
20 testified he's not an expert in that field --

21 **BY MR. CARTER:** I'm not asking --

22 **BY MR. EVANS:** -- and he can't answer the
23 question.

24 **BY MR. CARTER:** I'm not asking him to be
25 expert in that. I'm just asking him to use his
26 common sense and having been a police officer
27 all these years, knowing -- giving gunshot
28 residue tests and knowing how easily it could
29 be transferred from one thing to another. I'm

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1 just asking was it common that it happen.

2 That's all I'm asking.

3 A Would you repeat the question then?

4 BY MR. CARTER:

5 Q If there's -- let's assume just for a
6 second, if there is some gunshot residue on a
7 desk -- a desk in a police station, if it's present
8 and you put your hand there, it could be
9 transferred; is that fair to say?

10 A I'm assuming.

11 Q I don't know -- I'm not going to say it
12 was present, but if it is present --

13 BY MR. EVANS: Your Honor, this is
14 complete speculation. I think he's going to
15 have to give speculation opinion at least.
16 It's going to have to be an expert testifying.

17 BY THE COURT: I think this witness can
18 answer, you know --

19 BY MR. EVANS: Okay. I don't have any
20 problem if the Court --

21 BY THE COURT: -- if he's got an opinion.

22 BY MR. CARTER:

23 Q Now, let's see if -- Mr. Matthews, I think
24 we can agree that you can get gunshot residue from
25 shooting a gun. I mean, I don't dispute that. But
26 you can also get it if you're close to where a gun
27 is shot; is that correct?

28 A I would think that's possible.

29 Q Right. And now let's assume somebody got

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1 some gunshot residue on their clothing and you
2 touched their clothing. Couldn't it be transferred
3 that way, you think? Possible?

4 **A** I don't know. I mean, it may be possible,
5 but I don't know.

6 **Q** All right. Now, do you know -- now, how
7 much gunshot residue was found on Mr. Flowers?
8 Isn't it one particle?

9 **A** I believe that's right.

10 **Q** And the one particle is the smallest
11 amount that can be --

12 **BY MR. EVANS:** Your Honor, again, the
13 expert is going to be here. This is not proper
14 questioning for this witness.

15 **BY THE COURT:** I'll sustain unless you can
16 build a foundation for him having a knowledge
17 in this area.

18 **BY MR. CARTER:**

19 **Q** Mr. Matthews, how long have you been
20 giving that gunshot residue test? How long had you
21 been giving them prior to that, prior to the
22 incident at Tardy's?

23 **A** Well, I had been in the -- in the
24 investigative division for nine years before this
25 crime occurred.

26 **Q** And had you ever had the occasion to read
27 manuals on gunshot residue -- had you had the
28 occasion to be -- to receive continuing law
29 enforcement education and, if so, did that ever

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1 include articles on gunshot residue?

2 **A** No. I don't remember taking any course on
3 that.

4 **Q** Did you remember doing -- do you ever
5 remember doing any scientific reading or peer
6 reviews or forensic articles that involved gunshot
7 residue tests?

8 **A** No, sir. I don't remember that.

9 **Q** None of that? Now, let me ask you
10 something. I've always been bothered by this. Now,
11 you were told that Curtis Flowers worked at Tardy's,
12 and he never came back, and he broke some batteries.
13 And you wanted to talk to him as a result of having
14 worked there and that kind of thing; is that
15 correct?

16 **A** That's correct.

17 **Q** Now, Mr. Flowers is not the only person
18 that worked at Tardy's at this time; is that
19 correct? Obviously it is. Did you make any effort
20 to interview any other employees, past employees of
21 Tardy's Furniture Store?

22 **A** I believe that -- I didn't personally, but
23 I believe that someone talked with an individual by
24 the name of Mike that was referred to in his -- in
25 his statement, but I didn't talk to him personally
26 myself.

27 **Q** Okay. So isn't it fair to say that you --
28 y'all pretty much focused on one employee, one
29 ex-employee, and you did not objectively also check

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1 into the background situation and reasons for
2 departure as it respects other employees who had
3 worked there?

4 **A** I don't know how many other employees had
5 worked there.

6 **Q** I know. And you didn't ask either, did
7 you?

8 **A** Yes, we asked.

9 **Q** You asked who else had worked there the
10 last couple of years and those kind of things?

11 **A** Well, we asked if there was anybody that
12 they'd had any problem with or anybody that had been
13 fired from there, and that was the -- Curtis was the
14 only one.

15 **Q** Where is that report? Did you make a
16 written report of that?

17 **A** We just asked that question to
18 Ms. Ballard.

19 **Q** Just asked that question of Ms. Ballard,
20 and you didn't memorialize it anywhere --

21 **A** No.

22 **Q** -- as a permanent and final record?

23 **A** No, sir.

24 **Q** And Mr. Flowers told you that when he
25 left, she loaned him some money and he left on
26 pretty much good terms. Is that what he said?

27 **A** He said that when he left that day on the
28 3rd, she asked him if he needed some money and she
29 gave him \$30.

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1 **Q** All right. Did you make any kind of
2 investigation to see if maybe somebody had been
3 casing the place to rob it or -- or somebody had
4 some problems with the employees, the current
5 employees of the furniture store and those kind of
6 things?

7 **A** We talked to some individuals about that,
8 but we didn't come up with any information that
9 indicated that anybody had had that problem.

10 **Q** And not only did you not come up with
11 anything, I bet you didn't even make a record of
12 even talking to anybody about that, did you?

13 **A** We didn't have anybody to talk to. Nobody
14 came up with having a problem.

15 **Q** Right. And you didn't make a record of
16 even making those inquiries, did you? You did not
17 make a record?

18 **A** We didn't make an inquiry of anybody other
19 than just talked to Ms. Ballard to see if there was
20 a -- had been a problem with anybody.

21 **Q** Did you set forth that conversation with
22 Ms. Ballard in writing?

23 **A** No.

24 **Q** Now, you also knew that somebody had
25 burglarized the place a week earlier; is that
26 correct? You learned that -- you discerned that
27 somehow?

28 **A** Yes.

29 **Q** And that you do -- and you also learned

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1 that whoever came in possibly came through the roof
2 through some air vent or something. Was that air
3 vent in the roof or was it in the back of the
4 building, side of the building, on the ground?

5 A I think it was a skylight.

6 Q Skylight?

7 A Or something. They come through there.

8 Q Did anybody go up there and take pictures
9 and dust for fingerprints?

10 A No. We talked to the police department
11 and got a copy of the report that they had made on
12 it.

13 Q All right. And did that report set forth
14 that the place had been dusted for prints and
15 anything like that?

16 A No, sir. I don't think so.

17 Q So there was -- as far as you know, there
18 was no real effort to connect the two incidents?

19 A I don't know what was done, but I don't
20 know that there was an effort.

21 Q All right. You didn't do anything?

22 A I didn't do anything, no, sir.

23 Q Now, you say you went to Connie's house,
24 and you found some money. And, now, you don't have
25 any information that that money was wrongfully
26 there, do you?

27 A No, sir.

28 Q Okay. Now, at what point did you stop
29 working on this case? At what point did y'all --

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1 strike that. At what point did you stop
2 participating in the investigation of this case?

3 A Up until the time of the -- that we
4 brought it to a conclusion.

5 Q At what point did that happen?

6 A It hadn't happened yet.

7 Q At what point did -- at what point did you
8 become sure and definite and resolved that you had
9 the right person?

10 A Well, after we -- witnesses started coming
11 forward and testifying that they had seen him. We
12 got the gunshot residue information. We also had
13 the projectiles from this case, and we got those and
14 one of those matched the gun that was stolen from --

15 Q Are you finished?

16 A -- Mr. Simpson.

17 BY MR. EVANS: Your Honor, may he finish?
18 He asked him a question, and he has a right to
19 finish it.

20 BY MR. CARTER: Your Honor, Mr. Evans, I
21 mean, I just asked him had he finished. How is
22 that offensive?

23 BY THE COURT: I think you asked him --
24 were you finished?

25 A No, sir.

26 BY MR. CARTER:

27 Q Go ahead.

28 A After we got all of that evidence and had
29 the witnesses come forward and testify as to the

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1 fact that they'd seen him on the east side of
2 Highway 51 during those times, then I was pretty
3 much convinced we had the right person.

4 Q How many folks came forward before with
5 those identifications of having seen him and that
6 kind of thing before the reward was out?

7 A I don't know.

8 Q Now, you started telling me -- you're not
9 telling me that -- let me ask you this: When a
10 reward is offered, isn't it incumbent upon the
11 police department to do something to ensure that
12 people are not coming forth for the reward and that
13 they are coming forth for -- because they actually
14 saw something and the reward -- yes or no?

15 A I didn't understand that question. Would
16 you repeat it, please?

17 Q What do you do to make sure that the
18 investigation is done with integrity and that people
19 aren't coming forward and claiming that they saw
20 things just because a reward is offered? What is it
21 that a good police officer would do?

22 A At no time did I ever mention there was
23 even a reward. I really didn't know that there was
24 even one. I had heard some speculation that there
25 might have been one, but I didn't know any.

26 Q Oh, you don't read the Greenwood
27 Commonwealth?

28 A Well, I read it, but I don't know what --
29 they never did talk to me who -- about who was

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1 offering a reward or who was giving that reward.

2 Q Did you read the Winona Times back in
3 those days?

4 A I probably did some, but I don't know that
5 I read every issue.

6 Q And you as an investigator, one of the
7 investigators, your testimony is that you didn't
8 know there was a reward. Is that it?

9 A No, no, not that. I knew there was a
10 reward out there. Someone had offered a reward. I
11 didn't know if it had ever been substantiated or --
12 and I didn't know who was offering it.

13 Q All you heard was rumors. How many were
14 there?

15 A I don't know.

16 Q And since you knew very little about the
17 reward and you wasn't even sure if a reward was an
18 actuality, I take that to mean that you did nothing
19 to ensure that a reward wasn't luring people to come
20 forth; is that fair to say?

21 A I didn't have any information that anybody
22 had been offered a reward or that there was a reward
23 being offered to anybody.

24 Q Okay. And if you didn't know that, then
25 isn't it fair to say you couldn't take any measures
26 with respect to ensuring that a reward wasn't an
27 inducement?

28 A I didn't think it was, and I didn't ever
29 have any information that it was to anyone. As far

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1 as I know, nobody has come forward wanting a reward.

2 Q Now, you have said -- have you ever worked
3 on cases when -- have you ever worked on a case
4 where there was, in fact, a reward existed and you
5 knew it existed?

6 A I don't believe so.

7 Q Now, when you collected this gunshot
8 residue test, who was present?

9 A I believe John Johnson was there that day
10 and Officer Wayne Miller.

11 Q Now, you interviewed Katherine Snow; is
12 that correct?

13 A I did.

14 Q And what did she give you as a description
15 for the person she saw?

16 A I don't remember exactly.

17 Q Now, can you dispute that on one occasion
18 she described a man with dark skin, aged 25 to 30,
19 short hair, 5'10", stocky build. Does that sound
20 like a -- I mean, you're relying on your memory, I
21 understand. But does that sound like what she might
22 have said on the 16th or she did say on the 16th?

23 A It's possible. I don't have anything in
24 front of me.

25 Q Right. And did you write down what she
26 told you?

27 A No, I didn't. No, sir.

28 Q Shouldn't you have?

29 A Well, probably should have. And I'm not

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1 so sure that somebody in the office that day did.

2 Q Should you have?

3 A I probably should have, yes, sir.

4 Q And that you repute that she also said on
5 the 19th that the man she saw was dark skinned, he
6 had no hair or he was shaved low, and he was about
7 5'6". You dispute that?

8 A No, I can't, if that's what she said.

9 Q Now, wouldn't you agree that that is a
10 conflict? If she said both of these things that
11 that's a conflict and that should have been cleared
12 up, if it could be cleared up?

13 A It's a possibility.

14 Q Now -- and descriptions or -- of a suspect
15 is important, isn't it?

16 A Exactly.

17 Q And it's important to write the
18 description down that a person gives you, isn't it?

19 Now, do you know whether or not when
20 Mr. Flowers came to the police station that day
21 whether he shook the hands of any police officers or
22 even you?

23 A What day was that?

24 Q The day on the 16th.

25 A No, he didn't shake hands with me. But,
26 now, what he did with other officers I don't know.

27 Q And do you know whether or not he shook
28 hands with you on the 19th?

29 A 19th?

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1 Q 18th, two days later.

2 A No, sir.

3 Q And do you have a practice or a custom of
4 greeting and shaking hands with the defendants when
5 they come in to your office?

6 A No, sir.

7 Q Okay. Let's see. When you went into the
8 Tardy's Furniture that day and started doing your
9 job as an investigator, what did you do to ensure
10 that there was no contamination on your part?

11 A Contamination of the crime scene?

12 Q Right.

13 A That was already pretty much taken care
14 of. They had -- they had that pretty much -- all of
15 that was secure by the time I got there.

16 Q And you got there, and you went inside
17 Tardy's; is that correct?

18 A Right.

19 Q And you start fumbling, touching papers
20 and things; is that correct?

21 A No, I didn't do that right then. I waited
22 'til the crime lab got there before we did all that.

23 Q So you went into Tardy's before the crime
24 lab got there. And is it your testimony you didn't
25 touch anything?

26 A Sure didn't.

27 Q Okay. Did you even go all the way back to
28 Ms. Tardy's office before the crime scene got there?

29 A No, I did not.

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1 Q So what did you do?

2 A I went through the front door until we
3 could see, went all the way down to -- down the
4 aisle there where I could see the bodies laying at
5 the front of the counter. There was some -- there
6 was some hulls on the floor there. There was a
7 bloodstain all over the front of that counter, front
8 counter area and the floor, and that's as far as I
9 went.

10 Q Okay.

11 A And the scene was secure; the police
12 department had it secure. And we backed out of
13 there and left there and waited for the crime lab.

14 Q Who's we?

15 A Mr. Hargrove and myself.

16 Q Okay. And you didn't go back into the
17 crime lab (sic) after that?

18 A No, sir.

19 Q Okay. Now, at what point did you see the
20 bloody footprint?

21 A At that time.

22 Q The time you went with Mr. Hargrove?

23 A Yes.

24 Q Did you go all the way up to it?

25 A No.

26 Q Did you bend down to get a good look?

27 A I got close enough to where I could see.

28 Q Did you --

29 A I tried to see the pattern in the --

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1 in the print, but that's as close as I got.

2 Q Okay.

3 BY MR. CARTER: One moment.

4 BY MR. CARTER:

5 Q Now, Doyle Simpson lied about where he got
6 the gun from; is that correct?

7 A That's correct.

8 Q And you confronted him about that at some
9 point; is that correct?

10 A I did.

11 Q And he was quite agitated and displeased
12 by it; is that fair to say?

13 A Well, he wasn't happy about it.

14 Q Wasn't happy about it. And as a result of
15 that, he became less cooperative -- is that fair to
16 say -- for a period of time?

17 A I'd -- maybe.

18 Q Okay. Now, at the time that you
19 confronted him about lying about the gun, had you
20 already gone to the Poor House Road and found the
21 projectiles in the post?

22 A Without looking at a copy of the report, I
23 don't remember whether -- what time it was.

24 Q Let's establish, first of all, whether
25 there is a report.

26 A Yes. There's a report from the -- from
27 the individual that I got to go meet his cousin down
28 in New Orleans and talk to him about the gun.

29 Q Okay. All right. But is there a report

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1 of your confronting Doyle and how he reacted and
2 whether he become less accommodating? Is there a
3 report of that, written report?

4 A I don't remember that Doyle became less
5 accommodating.

6 Q Well, how would you describe his reaction?
7 I won't put words in your mouth.

8 A Well, he was upset that we found out where
9 he got the gun from.

10 Q And he -- as a result of being asked why
11 he lied, he said -- and correct me if I'm wrong --
12 that he did it to protect Mr. Flowers. Is that what
13 he told you?

14 A Well --

15 Q Or what did he tell you?

16 A He just told us that he had gotten the
17 gun, and he didn't want to implicate anybody. He
18 got the gun from someone here in town, and he didn't
19 want us to know who he got it from.

20 Q And tried to get his brother to lie?

21 A Yes.

22 Q And you had somebody talk to his brother?

23 A That's correct.

24 Q And his brother denied that?

25 A I don't remember if it was his brother. I
26 think it was an uncle or cousin or somebody, yes,
27 sir.

28 Q Now, is there --

29 BY MR. CARTER: One moment.

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1 **BY MR. CARTER:**

2 **Q** Now, Mr. Matthews, you testified earlier
3 that Emmett was ruled out because you talked to some
4 unnamed supervisor that said that he was at IBP, a
5 place he worked. Now, wasn't you actually told that
6 instead or also that Emmett actually left and went
7 to Wal-Mart that morning?

8 **A** I could have been. I don't remember.

9 **Q** Now, when this conversation -- are you
10 familiar with somebody by the name of Irving Bailey?

11 **A** I'm not. I don't remember him.

12 **Q** Do you remember talking to somebody named
13 Ervie Bays?

14 **A** Unh-unh.

15 **BY MR. CARTER:** May I approach the
16 witness, Your Honor?

17 **BY THE COURT:** You may.

18 **BY MR. CARTER:**

19 **Q** Can you look at this and tell me whether
20 you recognize it and is it your writing or is it
21 something you made or --

22 **A** It's not my writing.

23 **Q** Do you even know what it is?

24 **A** It looks like some notes that John Johnson
25 made down at IBP. And that's my initials up there
26 too, so I may have been there also but I don't
27 remember the name. But it's a possibility.

28 **Q** And it's a possibility it could have
29 happened, and it didn't happen, and this is one of

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1 the reasons why we need to make records of something
2 that happened; is that fair to say?

3 A Well, I believe that is a record of it.

4 Q Okay. And you looked at the record and
5 you still can't say definitely -- oh, so you're
6 saying definitely now that you were there and that
7 you --

8 A I believe I said earlier I was there. I
9 didn't remember that -- what was said in the
10 conversation and who the exact person -- people
11 were that we talked to. But I remember that we did
12 eliminate Emmett as being a suspect.

13 Q Okay. After seeing this, these notes, are
14 you now able to say that you were, in fact, there
15 and that you did, in fact, hear Ervie Bays say that
16 Emmett left and went to Wal-Mart?

17 A That's a possibility. I don't remember
18 the conversation, but that could have happened.

19 Q Okay. So -- now, the gun was never
20 recovered, was it? The gun that was used in this
21 crime was never recovered; is that fair to say?

22 A Yes, sir, that's correct.

23 Q Did Mr. Miller ever compile any kind of
24 report of his involvement in this case and turn it
25 over to you?

26 A Not that I remember.

27 Q Now -- and you're denying that you were
28 the leader in this case, the lead investigator. Are
29 you denying that?

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1 **A** Well, I don't think anybody was the lead
2 investigator in this case. In these kind of cases
3 in small towns like this, the sheriff's department
4 or police department will call you in to assist and
5 that's what we are. We're assisting these agencies;
6 we don't come in and take over. But in a case like
7 this where you don't live in a town that the crime
8 occurs, you have to have as much assistance as you
9 can and you get that from the police department and
10 the sheriff's department in these small rural areas
11 like this town is, and you have to rely on them
12 to -- to help and you assist them as best you can.
13 And that's the role that we took in this case, and
14 that's the role that we continue to take. And then
15 we funneled all of our information through the
16 D.A.'s office.

17 **Q** Right. So it's possible to do a thorough
18 and complete and admirable investigation of a
19 quadruple homicide without a leader?

20 **A** Well, I don't know that you got one person
21 that's sitting up there on a white horse leading
22 you, but --

23 **Q** In fact, we didn't have a person leading
24 at all in this one. Is that your position?

25 **A** I think everybody worked together and did
26 comply on the job.

27 **Q** And everybody led. Now, where was these
28 people that were working on this -- this case?
29 Where did you report back to and submit your

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1 findings? Was there some final place that you could
2 take your findings back and have a review and where
3 you received further instructions on what else to do
4 and there would be some sign of assessment about
5 whether the investigation was complete or what was
6 lacking. Where was this location? Was that at the
7 Winona Police Department?

8 **A** Correct.

9 **Q** Now, was Chief Hargrove involved in this
10 investigation from the beginning to end?

11 **A** Yes.

12 **Q** And what role did he play 'til the end?

13 **A** I can't answer all that. I don't know
14 everything that he did. You'd have to ask Chief
15 Hargrove that. But now we consulted him on a lot of
16 different matters, especially when names would come
17 up and things like that or people that had
18 information or anything of that information would
19 come through, yes, we would run it by him and we
20 used the police department and we used the sheriff's
21 department.

22 **Q** Did you make a record of those things that
23 you ran by him, those things you discussed with him?
24 Is there a record of that?

25 **A** I didn't write it down every time we asked
26 him a question. I didn't write down what question I
27 asked Chief Hargrove. No.

28 **Q** I take that to mean there is a record; is
29 that fair to say?

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1 **A** I don't think it would be a record of
2 that, no, sir.

3 **Q** Okay. Now, was there any check made to
4 see if there were similar crimes going around or
5 taking place in Mississippi around the same time?

6 **A** We did check into that.

7 **Q** And did you discover any similarly
8 committed criminal acts to the one that occurred
9 down there at Tardy's?

10 **A** No, we didn't run across anything.

11 **Q** And how did you check into that? What did
12 you do?

13 **A** Well, it was pretty much on the news
14 in the area, and we didn't have anybody that had
15 anything of this magnitude anywhere else around at
16 that time.

17 **Q** And where did you check, Mr. Matthews?

18 **A** Well, we checked NCIC's information. We
19 get that daily at the station.

20 **Q** And you didn't hear about some crimes
21 taking place in Decatur, Mississippi involving -- I
22 think it might have been a gentleman by the name
23 Prestidge, P-R-E-S-T-I-D-G-E and Gamble?

24 **A** I don't remember that, no.

25 **Q** Did you hear about any similar crimes
26 taking place in Alabama involving a guy by the name
27 of Prestidge and Gamble?

28 **A** I did not. I don't remember at that time.

29 **Q** All right. Okay. Now, you also

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1 interviewed Clemmie Fleming, or did you?

2 A That's correct.

3 Q She came forward April of 1997 about eight
4 months later or so. Did you make any effort to
5 ensure -- to make sure that she wasn't coming forth
6 because there was a reward out?

7 A She didn't mention that when we
8 interviewed her. She didn't say anything about the
9 reward.

10 Q Okay. She didn't mention it. But did you
11 ask her if she was aware that a reward was out, and
12 did you?

13 A No, sir. I don't remember whether I asked
14 her, no, sir.

15 Q Now, when you interviewed her and got the
16 statement, is that the same statement that
17 Mr. Johnson was at or is that a different one?

18 A Without looking at the statement, I don't
19 know. You got a copy of it?

20 Q No, I don't. I'm just asking you on your
21 memory.

22 A Well, I know I've got a statement of hers
23 that I made, but I don't know.

24 Q Now, you also interviewed James Kennedy;
25 is that correct? Do you remember James Kennedy?

26 A I don't believe I interviewed him, no,
27 sir.

28 Q You didn't interview Katherine Snow?

29 A I did talk to Katherine Snow.

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1 Q Okay. Did you make a report of your
2 interview with her?

3 A No, I didn't.

4 Q Did you interview Mary Jeanette Flemming?

5 A Mary Jeanette Flemming, yeah, I did.

6 Q Did you make a report of that?

7 A Yeah. I got a copy of a taped statement
8 with her.

9 Q Okay. And how did you determine when to
10 take a statement and when not to take one? What was
11 the rule on that? What's your policy, protocol on
12 that?

13 A After I talked to Mary Jeanette -- she was
14 working one day at the factory over in Kilmichael.
15 I went over there while she was on break, and I took
16 a statement from her.

17 Q Was it a statement that she wrote out and
18 signed?

19 A No, it was a taped statement.

20 Q A taped statement.

21 **BY MR. CARTER:** One moment.

22 **BY MR. CARTER:**

23 Q Now, did you follow up and talk to
24 Mr. Flowers' sister and check and see if he went to
25 Jeff's store like he said he went and those kind of
26 things?

27 A Yes, sir, I believe we did. We did make
28 sure.

29 Q Did you, Mr. Matthews?

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1 **A** Yes, sir. I went to Jeff's Store.

2 **Q** And you talked to Mr. Flowers' sister?

3 **A** I did not talk to her because she
4 wasn't -- he said she wasn't present at the house
5 when he got there.

6 **Q** Did you make a report of going to Jeff's
7 Store?

8 **A** No, I didn't.

9 **Q** Now, did you ever take any pictures of
10 Mr. Flowers on the 16th or the 18th?

11 **A** I think we took one on the 23rd.

12 **Q** On the 23rd?

13 **A** Uh-huh.

14 **Q** Again, you say you think we. Who took it?

15 **A** It would either be Lieutenant Miller or
16 myself.

17 **Q** Okay. And you know you did; is that what
18 you're saying?

19 **A** I'm saying either he took it or I took it.
20 I don't remember which.

21 **Q** Okay. Now, is it any -- and you should
22 have made a record; is that fair to say?

23 **A** Well, we took fingerprints and fingerprint
24 copies and that kind of stuff. We may have took
25 some pictures at that time.

26 **Q** Yeah. But you can't be sure whether you
27 took them or Mr. Miller took them?

28 **A** I don't remember exactly who took them.

29 **Q** Now, this gunshot residue test, are you

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1 the only person who made an effort to give
2 Mr. Flowers a gunshot residue test or did Mr. Miller
3 also make an effort and run into some problems and
4 you came in?

5 A No. We only gave one gunshot residue kit,
6 and I gave it.

7 Q Now, I'm puzzled by why you needed to
8 check Mr. Sam Jones' shoes. Hadn't you been told
9 that Chief Hargrove had already done it or were you
10 told that?

11 A I wasn't told that. And he may have
12 already done it. I just checked them when I talked
13 to him.

14 Q Did you make a record of checking his
15 shoes?

16 A Yeah, I made a note of it.

17 Q And did you participate in checking the
18 EMT's shoes?

19 A I did.

20 Q You was involved in that? Okay. Now, why
21 did you take just a portion of Mr. Flowers' clothes
22 and not a larger collection? How did you determine
23 what to take?

24 A Well, I think we took all that was there
25 on that day.

26 Q You took all that was there?

27 A That was there, yes, sir.

28 Q Didn't leave any of his clothes?

29 A Well, we may have. I don't know. But

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1 these were some dirty clothes over in a pile, and
2 those are the ones that we took. These are the ones
3 that we determined that --

4 Q Where was Mr. Flowers at the time? Was he
5 there?

6 A I don't believe he was there that day. I
7 don't know where he was.

8 Q Now, at the time that you took the
9 clothes, you didn't know what kind of shoes had left
10 the tracks; is that correct?

11 A I don't remember.

12 Q But I think it's fair to say that you all
13 didn't know what kind of shoe left the track until
14 you got some information back from the crime lab; is
15 that fair to say?

16 A I think that's correct.

17 Q In fact, you took some shoes from
18 Mr. Flowers more than once; is that correct?

19 A I did, yes, sir.

20 Q And he never resisted or tried to prevent
21 you from taking them; is that correct?

22 A No, sir.

23 Q Now, with respect to the -- to Ms. Snow,
24 did she ever admit to you that she knew who the
25 person was prior to seeing the lineup?

26 A Not to me.

27 Q And how many times did you talk to
28 Ms. Snow?

MATTHEWS - CROSS

1 Q And correct me if I'm wrong -- I
2 apologize -- did you take any clothes -- I might
3 have asked you this -- from Emmett Simpson or Doyle?

4 A No.

5 Q Okay. Now, after you found out Doyle had
6 lied about where he got the gun, did he become a
7 suspect again?

8 A Not really, no. We didn't know why he had
9 lied, but he wasn't -- we had pretty much ruled him
10 out as a suspect in the case.

11 Q Do you know why he lied now?

12 A I think he was trying to protect somebody.

13 Q Okay. And you're sure he wasn't trying to
14 protect himself? It was his gun from his car at his
15 job location; is that correct?

16 A Well, I don't know why he would have tried
17 to protect himself. I don't know that he was a --
18 he wasn't a suspect at the time, so I don't know why
19 he would have been trying to protect himself.

20 Q So --

21 A He pretty much alibied out at the crime
22 scene. But now, I don't know if he was trying to
23 protect himself or someone else, but I would think
24 he was trying to protect someone else.

25 Q And I believe you were told he was trying
26 to protect somebody else; is that correct?

27 A I think so.

28 BY MR. CARTER: One moment. I think I'm
29 finished.

MATTHEWS - CROSS

1 **BY MR. CARTER:**

2 **Q** Now, I'm a little -- Mr. Matthews, y'all
3 took such a liberty to take the pictures of the
4 crime scene at Tardy's, and I'm -- and Ms. Schoene
5 was actually -- I mean, I don't know how you can see
6 the job she did and not be -- not be impressed, to
7 be quite frank. And y'all went back down later and
8 found another projectile, and you needed to take
9 pictures and to document exactly what you did. But
10 I can't get over my bewilderment of why anyone would
11 go out to Doyle Simpson's house -- mother's house
12 twice and not document what you found in any kind of
13 way.

14 **BY MR. EVANS:** Your Honor, I object to him
15 trying to comment. He can ask questions.

16 **BY THE COURT:** I agree. Your comments are
17 not proper.

18 **BY MR. CARTER:** I agree with Your Honor.
19 I agree with that.

20 **BY MR. CARTER:**

21 **Q** What's the explanation for that of not
22 taking pictures out there and making a written
23 report?

24 **A** We did. We made a submission form for the
25 objects that we took from that post out there and
26 turned those over to the crime lab. Those are --
27 that's documentation in itself.

28 **Q** But photographs is documentation also,
29 isn't it?

MATTHEWS - CROSS

1 **A** And I told you a while ago that we
2 probably should have took a photograph of that post
3 but we didn't.

4 **BY MR. CARTER:** Okay. I think I'm
5 finished now. Wait just one second.

6 **BY MR. CARTER:**

7 **Q** Mr. Matthews, did you ever come across the
8 name of Willie Hemphill in your investigation of
9 this case?

10 **A** Yes, we did.

11 **Q** And how did his name come up?

12 **A** Best I remember is somebody brought it to
13 the attention of the investigators that they wanted
14 us to talk to him, and he came in and we talked to
15 him. After a short time, we realized that he didn't
16 know anything about the case.

17 **Q** Okay. And you ruled him out by that
18 conversation you had with him?

19 **A** That's correct.

20 **Q** And in ruling him out, he's telling you
21 that he -- he told you where he was and what he was
22 doing at the time that these occurred, I assume. Is
23 that what happened?

24 **A** I think so.

25 **Q** And did you follow up with the people he
26 said he was with? Did you also go to the places he
27 said he was to see if, in fact, he was there and if
28 he did, in fact -- if he was, in fact, with the
29 people he claimed he was with?

MATTHEWS - CROSS

1 **A** I don't remember that we did. I think we
2 pretty much ruled him out from the get-go.

3 **Q** From the conversation?

4 **A** From the conversation, yes, sir.

5 **Q** His conversation and no follow up?

6 **A** That's correct.

7 **Q** Okay. Now, are you also familiar with a
8 gentleman by the name of Jeffrey Hudson?

9 **A** No, sir.

10 **Q** Did that name come up?

11 **A** No, sir, not that I know anything about.

12 **Q** Okay. Not that you know about. Now, I
13 believe your interview with Mr. Flowers started
14 around at or near 1:30; is that fair to say?

15 **A** Close to that, yes, sir.

16 **Q** And the crime lab got there around one
17 something as well; is that your understanding?

18 **A** Sometime before that, yes, sir.

19 **Q** Sometime before that. And how long did
20 you stay at the scene after the crime lab got there?

21 **A** I wasn't there very long, no, sir.

22 **Q** Okay. So as soon as they got there, you
23 pretty much left?

24 **A** That's correct. Right.

25 **Q** And what did you do with respect to them
26 before you left? Did you talk to Ms. Schoene or
27 anybody?

28 **A** No, I don't believe we did. I don't
29 believe we did.

MATTHEWS - CROSS

1 **Q** Okay. And at what point did you know you
2 needed to talk to Mr. Flowers and that Mr. Flowers
3 would be brought to the police department?

4 **A** Well, it was sometime after that that we
5 had -- after I had got to the scene that I had
6 talked to Ms. Ballard and she relayed this
7 information about Mr. Flowers. So we decided
8 that -- that we should get him in and try to
9 interview him if we could.

10 **Q** So you asked some particular police
11 officers to go get Mr. Flowers and bring him in?

12 **A** I don't know that it was me. I don't
13 remember who actually asked them to, but that was
14 the gist of it.

15 **Q** Okay. You --

16 **A** Either myself or Investigator Johnson.

17 **Q** Or Investigator Johnson. Thank you,
18 Mr. Matthews.

19 **BY MR. CARTER:** No further questions.

20 **BY THE COURT:** Redirect?

21 **BY MR. EVANS:** Thank you, Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MR. EVANS:**

24 **Q** Mr. Matthews, I've got a few areas I'd
25 like to go back through with you.

26 You were asked about believing what
27 Chief Hargrove told you when you arrived at the
28 scene. Did you have any reason not to believe what
29 the police chief of Winona would tell you he found?

MATTHEWS - REDIRECT

1 **A** No, sir.

2 **Q** Is there anything unusual about the
3 investigators with the highway patrol working with
4 the police department, sheriff's department, D.A.'s
5 office? Is there any of that unusual?

6 **A** No, sir.

7 **Q** Is there anything unusual about different
8 agencies working together to try to solve a crime?

9 **A** No, sir.

10 **Q** As an investigator that's taken
11 statements, you were asked about it being unusual
12 for a person to lie and give inconsistent
13 statements. Why would the main reason be for
14 somebody to lie and say they were at places that
15 they weren't at different times?

16 **BY MR. CARTER:** Your Honor, I object to
17 that. Why is the main reason.

18 **BY THE COURT:** I'll sustain the objection.

19 **BY MR. EVANS:**

20 **Q** Based on upon your experience, do you have
21 an opinion of that?

22 **BY MR. CARTER:** Same objection, Your
23 Honor.

24 **BY THE COURT:** I'll sustain it. I don't
25 think that's an appropriate question.

26 **BY MR. EVANS:** I'll withdraw it, Your
27 Honor.

28 **BY MR. EVANS:**

29 **Q** You were questioned about cutting the wood

MATTHEWS - REDIRECT

1 away from the projectiles. Did y'all do anything to
2 mess the projectiles up?

3 **A** No.

4 **Q** You were accused of not documenting it.
5 Did you document that y'all removed those
6 projectiles?

7 **A** I did.

8 **BY MR. EVANS:** May I have the Court's
9 indulgence for just a minute?

10 **BY THE COURT:** Sure.

11 **BY MR. EVANS:**

12 **Q** I want to hand you Exhibits 81 and 82 and
13 ask you if that is, in fact, the exhibits that were
14 dug out of those posts?

15 **A** Yes, sir.

16 **Q** And did you prepare a submission to the
17 crime lab showing where they came from?

18 **A** Yes, sir.

19 **Q** So it was documented?

20 **A** Yes, sir.

21 **Q** You were asked about interviewing other
22 people that had worked there. Other than the
23 Defendant Curtis Flowers, did you find out anybody
24 else that had been fired that they'd had problems
25 with?

26 **A** No, sir.

27 **Q** You were also asked about why and when you
28 considered him to be the suspect. Did any evidence
29 ever point to anybody other than him?

MATTHEWS - REDIRECT

1 **A** No, sir.

2 **Q** Did you or anyone else ever offer anybody
3 a reward?

4 **A** No.

5 **Q** Did any of those witnesses -- or who, if
6 any of those witnesses, ever came to you and say,
7 I'd like to give you a statement but I want some
8 money?

9 **A** No, sir.

10 **Q** Was there ever any question about a
11 reward?

12 **A** No.

13 **Q** Did Doyle ever stop cooperating with you?

14 **A** No, sir.

15 **BY MR. EVANS:** Your Honor, I have nothing
16 further.

17 **BY THE COURT:** You may step down.

18 Ladies and gentlemen, we'll take a
19 ten-minute recess to allow you to stretch and
20 move around. He's finally excused, is he not?

21 **BY MR. CARTER:** Yes, sir.

22 **BY MR. EVANS:** Yes, sir, but we would ask
23 that he not come in the courtroom just in case
24 we need to call him in rebuttal.

25 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
26 CONTINUED IN OPEN COURT OUTSIDE THE
27 HEARING AND PRESENCE OF THE JURY, TO-WIT:)

28 **BY MRS. STEINER:** , Your Honor, during the
29 break. Mr. Carter had released Mr. Matthews.

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1 But upon reviewing the notes, we may need to
2 call him very briefly on our case in chief.

3 BY MR. EVANS: He was asked to stay out of
4 the courtroom. He was asked not to sit in the
5 courtroom because the State had said the same
6 thing about possibly calling him for rebuttal.

7 BY MRS. STEINER: We didn't want to
8 release him. We had a defense subpoena on him
9 as well. He's still waiting.

10 BY THE COURT: Have you told Mr. Matthews?

11 BY MRS. STEINER: I have not. I haven't
12 seen him during the break.

13 BY THE COURT: You might need to go back
14 where he is and tell him that because after the
15 State told him they were through with him, I
16 think he was going to leave.

17 BY MRS. STEINER: I mean, if he can stay
18 on call with the professional law enforcement.

19 BY MR. EVANS: I think he's over at
20 Greenwood to where -- I don't think there's any
21 trouble -- too much trouble finding
22 Mr. Matthews if he's needed.

23 (THE FOLLOWING PROCEEDINGS WERE HAD IN
24 OPEN COURT WITH THE JURY PRESENT, TO-WIT:)

25 BY THE COURT: The Court will come back to
26 order. Who will be the State's next witness?

27 BY MR. EVANS: Joe Andrews, Your Honor.

28 BY THE COURT: If you'll come forward,
29 please, and raise your right hand and take the

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1 oath. Do you solemnly swear or affirm that the
2 testimony you give in this case to be the
3 truth, the whole truth and nothing but the
4 truth, so help you God?

5 **BY THE WITNESS:** I do.

6 **BY THE COURT:** Have a seat, please. For
7 the benefit of the record, state your name,
8 please.

9 **BY THE WITNESS:** Joe Andrews.

10 **BY THE COURT:** You may proceed.

11 **BY MR. EVANS:** Thank you, Your Honor.

12 **DIRECT EXAMINATION**

13 **BY MR. EVANS:**

14 **Q** Good evening, Mr. Andrews.

15 **A** Good afternoon.

16 **Q** Are you employed at this time?

17 **A** I'm retired from the state crime
18 laboratory in Jackson.

19 **Q** How long have you been retired from the
20 state crime lab?

21 **A** Since 2000- -- since February of 2006.

22 **Q** And while you were at the state crime lab,
23 what was your position there when you left?

24 **A** I was a forensic scientist specializing
25 in the area of trace evidence examination. Trace
26 evidence in our -- at our laboratory included the
27 analysis of such things as hairs, textile fibers,
28 paint, glass, gunshot residue and footwear and tire
29 track impressions.

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1 **Q** How long were you employed with the state
2 crime lab in Jackson?

3 **A** A little over 28 years.

4 **Q** Would you tell the ladies and gentlemen of
5 the jury a little bit about your educational
6 background and your experience that allowed you to
7 do trace evidence comparisons?

8 **A** Yes, sir. I received a bachelor of
9 science degree from the University of Mississippi in
10 forensic science. At my employment at the state
11 crime laboratory, I had the opportunity to receive
12 on-the-job training at the crime lab, plus attended
13 numerous forensic seminars and training schools over
14 the 28 years of my career in all different aspects
15 of trace evidence examination.

16 **Q** Have you had an occasion to be accepted
17 in the courts as an expert in the field of trace
18 evidence examination?

19 **A** Yes, sir, I have.

20 **Q** Approximately how many times?

21 **A** Somewhere between 3- and 400 times.

22 **BY MR. EVANS:** Your Honor, at this point,
23 I would offer Mr. Andrews as an expert in the
24 field of trace evidence examination.

25 **BY MRS. STEINER:** No questions, Your
26 Honor. No objection.

27 **BY THE COURT:** I'll allow him to testify
28 as an expert in that field.

29 **BY MR. EVANS:** Thank you, Your Honor.

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1 **BY MR. EVANS:**

2 **Q** Mr. Andrews, in your official capacity at
3 the state crime lab, did you have an occasion to
4 perform some tests that you were requested to in the
5 case that we're here on today?

6 **A** Yes, sir, I was.

7 **Q** Did one of those cases have to do with
8 some bloody tracks that were found in the store?

9 **A** Yes, sir, they did.

10 **Q** What were you presented in that case?

11 **A** In that -- in that particular situation,
12 there were photographs taken of what were believed
13 to be bloody shoe print impressions taken from
14 inside the furniture store. Those were collected by
15 our crime scene response team, and they were
16 submitted to the laboratory along with a pair of
17 shoes recovered from the Defendant to do an
18 examination as to whether or not those shoes could
19 have made that impression.

20 **Q** All right. I want to -- I want to hand
21 you first Exhibits S-47, 48, 49 and 50 and ask you
22 if you have ever seen these.

23 **BY MRS. STEINER:** May I have a --

24 **A** Yes, sir, I have. These are photographic
25 enlargements of the original photographs that were
26 collected at the crime scene. I can recognize them
27 by the Mississippi Crime Laboratory case number,
28 exhibit number and my initials on the corner of each
29 photograph.

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1 **BY MR. EVANS:**

2 **Q** What can you tell us about those
3 photographs?

4 **A** These are black and white photographs. As
5 I said, these -- the original photographs were
6 35-millimeter photographs and what were originally
7 submitted were just regular size 35-millimeter
8 prints. In order to do forensic comparisons, what
9 we will do is take the original negatives and have
10 the images blown back up to life size or to scale.
11 Anytime you're taking footwear impression-type
12 photographs, you always include a scale in the
13 photograph so that you can use that scale to
14 reproduce that image back up to life size. In this
15 particular case, these are black and white
16 photographs taken of three different impressions
17 that were photographed at the crime scene.

18 **Q** All right. And by doing that, using the
19 scale, does that get that photograph to the actual
20 size that that track would have been?

21 **A** Yes, sir. This is the actual size of the
22 impression located on the floor inside the crime
23 scene.

24 **Q** And I think you were also -- said you were
25 sent a pair of shoes that had been taken from the
26 Defendant. Did you determine what size those shoes
27 were?

28 **A** The pair of shoes when I examined them,
29 the label on the inside of the shoes indicated that

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1 they were size ten-and-a-half's.

2 Q All right. I'll hand you 125 -- S-125 and
3 ask you if this is the pair of shoes that were sent
4 to you.

5 A Yes, they are. The bag is marked as one
6 pair of Nike Flight tennis shoes belonging to Curtis
7 Flowers. I can recognize the exhibit by the
8 Mississippi Crime Laboratory case number, exhibit
9 number and my initials on one of the taped seals.

10 Q All right. And I believe you were able to
11 tell by just looking at those shoes that that pair
12 of shoes didn't make the impressions; is that
13 correct?

14 A Yes, sir, the -- if I can --

15 Q Sure.

16 A You look at the -- at the design on the
17 bottom of the sole, and it's basically a series of
18 swirly lines. If you look at the photographs you
19 can see that the photographs are clearly an
20 impression with a -- what is called a chevron
21 pattern or a series of "V" patterns, it's obviously
22 a different design than what's on the bottom of
23 these shoes.

24 Q What size are the shoes that were taken
25 from the Defendant?

26 A 10 1/2's.

27 Q All right. Now, going back to the four
28 photographs that are up there, what can you tell by
29 looking at those photographs?

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1 **A** Once again, it is a series of three
2 different impressions. There was a -- an impression
3 marked with the letter A. There is an impression
4 marked with the letter C, and then there are two
5 photos of the same impression that appear to be the
6 exact same impression. So there are three different
7 photographs that all appear to have the same design,
8 and they're the same part of the -- of the footwear
9 impression. It appears to be a heel impression just
10 looking at the photograph. The reason there are
11 slight differences, it appears that these
12 photographs were taken -- were made in some type of
13 foreign material which, at the time, was suspected
14 to be blood on the floor inside the furniture store.
15 And the reason that there are differences in the
16 photographs, the first impression has a lot of
17 excess material in the impression.

18 It's kind of like if you take a
19 rubber stamp and stamp it on a ink pad, sometimes
20 that first impression has too much ink on it. And
21 when you make the second impression, it's a slightly
22 better impression. If you make a third impression,
23 it's even got less material on it. And eventually,
24 if you keep making impressions, the impression will
25 fade out because there's no material left to be
26 transferred.

27 In this particular case, you have one
28 extremely heavy impression that has a lot of excess
29 material on it. You've got the second impression

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1 that has still slight excess amount of material
2 around the edges of the impression. And when you
3 get to the third impression, you can actually see
4 much more detail in the impression because you've
5 removed a lot of that excess material.

6 Q All right. Thank you. Next I want to
7 hand you Exhibit 70- -- S-79A and ask if you have
8 examined that before.

9 A Yes, sir, I have. This is a shoebox with
10 the Fila brand on it, marked as being M's Grant
11 Hill, two mid, size ten-and-a-half. This was
12 submitted to the crime lab as having been recovered.
13 I don't recall exactly where it was recovered, but
14 it was from a residence that the Defendant had
15 access to.

16 Q What, if any, types of tests or procedures
17 were you asked to do in relationship to those
18 pictures and that shoebox?

19 A The shoebox was submitted to the lab for
20 several different examinations but one of the
21 questions that was asked -- that was posed to the
22 laboratory was could the shoes that were originally
23 packaged in this particular shoebox, could they have
24 left the impression found at the crime scene.

25 Q Okay. So the attempt was to see if the
26 bloody shoe tracks could have been left by the same
27 type of shoes that would have originally come in
28 that box?

29 A That is correct, yes, sir.

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1 **Q** I'll next show you Exhibits S-119A and
2 S-119B and ask you to examine these, if you would.

3 **A** Yes, sir. This is a pair of outsoles. I
4 can identify them by the Mississippi Crime
5 Laboratory case number, exhibit number and my
6 initials that I placed on them at the time that I
7 conducted my examination.

8 **Q** What are those two exhibits, 119A and
9 119B? Where did they come from?

10 **A** Based on the information that we obtained
11 from the end of the shoe box in State's Exhibit
12 S-79A, we contacted Fila and asked them to provide
13 us a set of outsoles that would have been used or
14 would have been consistent with those used on the
15 shoes that were originally packaged in that box. At
16 that time, Fila actually sent us a pair of the
17 outsoles with the same pattern of the same size that
18 would have been originally packaged in that box.

19 **Q** Okay. So what you're saying is, the soles
20 of those outsoles would have been identical to the
21 size and design that would have been in that box; is
22 that correct?

23 **A** They are the same size and the same design
24 as what would have been used on the shoes that were
25 in that box, yes, sir.

26 **Q** Okay. I want to hand you Exhibits 122 for
27 identification, 121 for identification and 120 for
28 identification, and I'll ask you if you can identify
29 what each of these are.

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1 **BY MRS. STEINER:** Your Honor, may I look
2 at them?

3 **BY THE COURT:** You may.

4 **BY MRS. STEINER:** Your Honor, as to 120
5 for identification, assuming it is admitted, I
6 would like the jury instructed that it is for
7 the purpose of supporting what this witness did
8 and not for the truth of the assertions in it.

9 **BY THE COURT:** Well, I don't know what
10 exhibits you've got that you're referring to
11 right now.

12 **BY MR. EVANS:** May I proceed, Your Honor?

13 **BY THE COURT:** Well, I mean, I -- and what
14 is your --

15 **BY MRS. STEINER:** Never mind, Your Honor.
16 I'll withdraw the objection.

17 **BY THE COURT:** Okay.

18 **BY MR. EVANS:**

19 **Q** All right. Mr. Andrews, if you would
20 examine those and, for purposes of the record, if
21 you would, take each one and tell us which exhibit
22 number it is and what it is.

23 **A** Okay. State's Exhibit S-120 for ID is a
24 letter submitted with the outsoles from Mark Cain,
25 who is vice president of Reglobal Footwear Marketing
26 Lifestyles for Fila. It was addressed to Clyde
27 Hill, assistant district attorney, Grenada,
28 Mississippi. It says, "As we have discussed, please
29 find included the outsoles of the M Grant Hill, two

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1 mid, size ten-and-a-half." All it is, is just
2 basically a letter confirming that the outsoles that
3 were sent to the D.A.'s office are consistent with
4 the outsoles that would have been used on the Grant
5 Hill two mid.

6 Q All right. And the next exhibit.

7 A The next exhibit, State's 121 for ID is a
8 photocopy of the catalog page which shows what a
9 Grant Hill two mid looked like. That which would
10 have been the shoe that would have been originally
11 packaged inside the box.

12 Q All right. And the next exhibit.

13 A And State's Exhibit 122 for ID is a
14 manufacturer's -- basically, a design drawing of
15 what the pattern on the bottom of a Grant Hill two
16 mid was drawn up by the person that did the design
17 and was used to make the mold that the outsoles were
18 produced by.

19 Q So that's actually the design pattern to
20 produce these molds?

21 A Yes, sir.

22 BY MR. EVANS: Your Honor, at this time, I
23 would offer Exhibits S-119A, S-119B, S-120,
24 S-121 and 122 into evidence.

25 BY THE COURT: Any objection?

26 BY MRS. STEINER: Your Honor, I would
27 object to S-119A and 119B going into evidence
28 at this time as I believe the chain of custody
29 has not yet been established on that. I had

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1 understood the witness to testify that he had
2 personally obtained these outsoles from Fila.
3 And I understand his own testimony now, there
4 was an intermediary through the district
5 attorney's office.

6 **BY MR. EVANS:** Your Honor, I'll be glad to
7 ask one addition question.

8 **BY THE COURT:** You may.

9 **BY MR. EVANS:**

10 **Q** Was this box still sealed when you
11 received it? Was the box from -- the box that
12 contained the soles still sealed when you received
13 it from Fila?

14 **A** Yes, sir, it was.

15 **BY MR. EVANS:** Again, I offer these into
16 evidence, Your Honor.

17 **BY MRS. STEINER:** Your Honor, I don't
18 think that cures my chain of custody objection.

19 **BY THE COURT:** I'll overrule the objection
20 and allow it to be admitted.

21 (STATE'S EXHIBITS NO. S-119A, S-119B,
22 S-120, S-121 and S-122 RECEIVED INTO
23 EVIDENCE.)

24 **BY MR. EVANS:**

25 **Q** I'd like for you to look at S-123 for
26 identification and ask you to see if you can
27 identify what that is.

28 **A** Yes, sir. This is a transparency of
29 the --

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1 **Q** At this point, since it's not in evidence,
2 just tell us what it is before we show it to the
3 jury.

4 **A** Okay. This is a transparency of a
5 footwear impression I had made using the outsoles
6 that were submitted in State's 119B.

7 **Q** All right. And you prepared that
8 yourself?

9 **A** Yes, sir.

10 **BY MR. EVANS:** Your Honor, I offer this
11 exhibit into evidence.

12 **BY THE COURT:** I'll allow it to be
13 admitted.

14 **BY MRS. STEINER:** No objection, Your
15 Honor.

16 (STATE'S EXHIBIT NO. S-123 RECEIVED
17 INTO EVIDENCE.)

18 **BY MR. EVANS:**

19 **Q** That was 123; is that correct?

20 **A** Yes, sir.

21 **Q** All right. Now that it's in evidence, if
22 you would, explain to the ladies and gentlemen of
23 the jury what it is.

24 **A** This is a -- a clear transparency. In
25 order to conduct footwear impression comparisons, we
26 can do some comparisons directly from the shoe
27 outsole against the mark or the cast or whatever is
28 submitted to the laboratory. But in order to
29 sometimes assist us in making the examination, we

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1 will actually use the shoe or the outsole to produce
2 impressions that we -- then we will make a
3 transparency of the impression and that transparency
4 can be used to exactly overlay over the question
5 impression or the question cast to look for
6 similarities or differences between the impressions
7 found at a crime scene and the -- and the
8 impressions made in the lab.

9 Q All right. And were you asked as an
10 expert to make a determination if the shoes that had
11 originally been purchased in that box that's in
12 front of you found at Curtis Flowers's house could
13 have left the bloody shoe tracks?

14 A Yes, sir.

15 Q What steps did you use to make that
16 determination?

17 A As I stated earlier, I took the outsole
18 that was submitted as having been the same type,
19 design and size as what would have originally been
20 packaged inside the shoe box to produce test
21 impressions in the lab. Those test impressions were
22 then converted into a clear transparency that I then
23 used to compare against the photographs that were
24 made of the impressions at the crime scene.

25 Q Were you able to make a determination if
26 the size and type shoes that were purchased in that
27 box could have left those impressions?

28 A Yes, sir, I was.

29 Q What was that determination?

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1 **A** Just to explain briefly, when you're doing
2 footwear comparisons you're basically looking at two
3 different types of comparisons or characteristics.
4 You first of all look for what are known as class
5 characteristics. These are characteristics that are
6 produced by any shoe of a particular size and
7 design. Because you may have hundreds, even
8 thousands of the shoe made from the same mold, at
9 the time that those shoes are brand new, they would
10 all have the same class characteristics. The
11 design, the pattern, the spacing of the design and
12 the impression would be consistent for all of these
13 shoes made by that same mold and that same process.

14 If you can say that your question
15 impression has the same class characteristics as a
16 known pair of shoes, then you will go to the next
17 step of the examination, which is to look for
18 individual characteristics. Individual
19 characteristics are added to the shoe through normal
20 wear and tear, and they can include such things as
21 cuts, nicks, tears, rocks jammed in the bottom of
22 the shoe, and these things allow the shoe to make
23 detail in the impression that would be unique to
24 that pair of shoes. If you can identify individual
25 characteristics, it allows you to positively
26 identify a particular shoe as having made an
27 impression to the exclusion of all other shoes.

28 In this case, since we never actually
29 had a pair of -- the original pair of shoes, the

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1 question became if you have an outsole for the same
2 type of shoe that would have been included in that
3 box, can you use that outsole to look to see if it
4 has the same class characteristics. In this
5 particular case, the impressions that I produced
6 from the outsoles in State's Exhibit 119B are
7 consistent in design and size with the bloody
8 impressions in the photographs in State's Exhibits
9 47, 49, 48 and 50.

10 Q And that was with the right outsole?

11 A Yes, sir.

12 Q Would you hold that --

13 A It would be the right heel impression.

14 Q Would you hold that outsole up at this
15 point? I'm going to get you to step down here in a
16 minute, but just kind of point out what area.

17 A Yes, sir. We're talking the heel area
18 from about where the F is in the name Fila, all the
19 way to the back edge of the shoe.

20 Q All right. And are you saying that the
21 bloody shoe tracks that were made -- the bloody shoe
22 tracks were found made by the right shoe of the
23 exact same type of shoes that came out of that box?

24 A The impressions found at the scene are
25 consistent in being a right shoe impression of the
26 same size and design as this outsole in State's
27 Exhibit 119B.

28 Q And that is a Fila Grant Hill size
29 ten-and-a-half?

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1 **A** Yes, sir, that's correct.

2 **BY MR. EVANS:** Your Honor, may I have the
3 witness step down? If you would, bring --
4 well, first may I have --

5 **BY THE COURT:** You may step down.

6 (WITNESS LEAVES STAND AND TAKES A PLACE
7 IN FRONT OF THE JURY)

8 **BY MR. EVANS:**

9 **Q** And if you would, bring that right outsole
10 first. Well, bring it, the best photograph, the one
11 that you used and the overlay. Let me hold those
12 for you. And if you would, show the ladies and
13 gentlemen of the jury what part of the right Fila
14 Grant Hill ten-and-a-half left those bloody
15 impressions.

16 **A** Okay. As I stated earlier, about from the
17 letter F in the word Fila downward, the main portion
18 of the impression is this design in the center of
19 the heel, which appears to be like an A-shaped
20 design with a squiggly two on top of it. Then
21 you've got the chevron pattern in the design that
22 has several different components. You have a deeper
23 chevron line at the bottom. So these are the main
24 portions of the detail in the class characteristics
25 for this particular portion of the shoe.

26 **Q** All right. And if you would, Mr. Andrews,
27 I want to hand you back Exhibits S-47 and S-123 and,
28 if you would, demonstrate for the ladies and
29 gentlemen of the jury how you were able to match

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1 this right shoe with that bloody impression.

2 **A** Okay. Just to show you from the start.
3 This is a clear transparency made from the bottom of
4 the shoe, and the reason you use the transparency is
5 that you can actually overlay it over and see how
6 the individual detail matches up. But once you
7 produce the individual -- the clear transparency,
8 then you can use it on the photograph in State's
9 Exhibit 47. Even without the transparency, you can
10 immediately see the chevron design; you can see the
11 portion of the A impression with the squiggly two on
12 top of it. But you would use the -- the overlay to
13 show that the size of the design matches up. You
14 may have shoes that range anywhere from a six up to
15 a 14 that have the same design on it. And different
16 manufacturers will use different techniques so that
17 they can use that same design all the way from a
18 size six to a 14.

19 They'll normally -- to get it all to
20 fit, they'll either increase the size of the design
21 as the size of the shoe goes up; they'll decrease
22 the spacing in the design; they'll make the space
23 between the gaps or they'll make the space out
24 toward the edges expand on out so that that design
25 carries over in all sizes of that shoe. So one of
26 the things you look at is the spacing of the
27 characteristics consistent between your impression
28 and your known test impression on the shoe. And you
29 can do that with the overlay very easily by

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1 overlaying it over the top, and everything within
2 that design area matches up between the test
3 impression and the impression at the crime scene.

4 **BY MR. EVANS:** All right. Thank you, sir.

5 And if you would, you can take a seat again.

6 (WITNESS RETURNS TO THE STAND)

7 **BY MR. EVANS:**

8 **Q** Mr. Andrews, as an expert in the field of
9 trace evidence, can you say to a degree of
10 scientific certainty that in your opinion, it's a
11 100 percent probably that the bloody shoe
12 impressions that were left by the same type shoe
13 that would have been purchased in that box?

14 **A** They are consistent in design and size
15 with, according to the outsole that was submitted,
16 to the shoes that would have been originally
17 purchased in that box.

18 **Q** And there is nothing inconsistent?

19 **A** No, sir.

20 **BY MR. EVANS:** Your Honor, may I pass
21 these to the jury?

22 **BY THE COURT:** You may.

23 **BY MR. EVANS:**

24 **Q** Mr. Andrews, were you also in this same
25 case asked to do any tests in relationship to
26 gunshot residue?

27 **A** Yes, sir, I was.

28 **Q** I want to hand you Exhibit S-94 and ask
29 you to examine that, if you would, please, sir.

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1 **A** Yes, sir. This is a standard gunshot
2 residue evidence collection kit marked with the
3 name -- suspect's name Curtis G. Flowers.
4 Collected, investigating officer's name is Jack
5 Matthews. I can recognize it by the Mississippi
6 Crime Laboratory case number, exhibit number. It
7 has my initials on the sole bottom.

8 **Q** Okay. And what would be the purpose of
9 using a gunshot residue test kit?

10 **A** A gunshot residue test kit is used to
11 collect samples from a person who has -- who is
12 believed to have been in the environment of a
13 discharged weapon.

14 **Q** All right. And, now, procedurally, is
15 there any accepted standard in your field about how
16 long after a person fires a gun you would expect to
17 still find gunshot residue on their hand?

18 **A** Several different studies have been
19 conducted, specifically on hand samples. And the
20 normal accepted cutoff time for collecting samples
21 from the suspect is up to four hours after the
22 suspected time of the shooting.

23 **Q** If a person holds a .380 automatic in a
24 normal position when they fire it, where would you
25 more than likely expect to find gunshot primer
26 residue on their hands?

27 **A** If they are right-handed and they hold the
28 gun in a normal fashion in their right hand, you
29 would expect to find gunshot residue deposited on

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1 the back side of their first finger/thumb area, the
2 top of the thumb and the top of the first finger.

3 Q All right, sir. If you would, look at
4 that test kit that is there and just tell us what --
5 explain what it is and how the proper procedure for
6 using it is.

7 A Yes, sir. This is the standard kit used
8 by the Mississippi Crime Laboratory. It contains
9 four sample vials. If I can open it?

10 Q Yes, sir.

11 A There are four vials that are routinely
12 collected on sam- -- suspects or individuals in the
13 State of Mississippi are two from each hand, one
14 from the back of the right hand, one from the palm
15 of the right hand, the back of the left hand and the
16 palm of the left hand. Each vial is marked with the
17 designation of the area that is used to be sampled
18 for.

19 The procedure we use to analyze
20 gunshot residue at the Mississippi Crime Laboratory
21 is a procedure called scanning electron microscopy
22 with energy dispersive x-ray analysis. And what it
23 basically does is that you have a small aluminum
24 stub inside the container that has a sticky adhesive
25 surface on the top of the stub. To collect a sample
26 from the suspect, you would open the stub and gently
27 pat that adhesive surface against the area to be
28 sampled. The point being that any small microscopic
29 particles of the gunshot residue will adhere to the

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1 adhesive portion of the stub.

2 Once you collect from that specific
3 area, you package the stub back; you place it in the
4 container. You collect the other samples in the
5 kit. You seal the kit, and you submit to the crime
6 laboratory.

7 When we get the samples at the crime
8 laboratory, we first of all carbon coat the stubs.
9 The carbon coating that we put on the samples are
10 essentially invisible to the x-ray analyzer because
11 carbon has such a low atomic number. But it makes
12 the stub completely conductive, which makes for a
13 better microscopic energy in the scanning electron
14 microscope. We then place the sample inside the
15 microscope. And instead of focusing a beam of light
16 to get an image of the sample, the scanning electron
17 microscope focuses a beam of electrons on the sample
18 and this produces very high magnification. You can
19 actually go up to 200,000 times magnification with
20 the scanning electron microscope. One of the
21 byproducts of focusing a beam of electrons on a
22 sample is that you cause it -- the sample to produce
23 x-rays which are characteristic of the elemental
24 composition of the sample. This is very good for if
25 you're looking for some of the heavier metallic
26 elements, especially for things that are common in
27 gunshot residue particles. The three elements that
28 have been found to be unique to gunshot residue
29 particles are the elements lead, barium and

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1 antimony. So if you can scan the sample looking for
2 microscopic particles that have the correct
3 morphology, which is size, shape and appearance, and
4 have the correct elemental composition, it allows
5 you to identify that particle as a particle of
6 gunshot residue to the exclusion of all other
7 environmental sources.

8 Q All right. Is there any other source in
9 the universe other than gunshot residue that is in
10 the elements of lead, barium and antimony that has
11 the same morphology or size and appearance?

12 A The -- the size, shape and morphology and
13 elemental composition of gunshot residue particles
14 are unique to gunshot residue. There have been no
15 other single source of material anywhere that have
16 all of those combination of characteristics. So
17 therefore, if you find those characteristics, it
18 allows you to positively identify a particle as
19 gunshot residue.

20 Q And did you, in fact, perform those tests
21 on the four vials that were in that package?

22 A Yes, sir, I did.

23 Q Did you find gunshot residue?

24 A Yes, sir, I did.

25 Q On which vial?

26 A I found a single gunshot residue particle
27 on the sample submitted as being taken from the back
28 of the right hand.

29 Q And if a person were right-handed, where

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1 would you expect to have found gunshot residue if
2 they had fired a weapon?

3 **A** If they were firing a weapon or in close
4 proximity or if they had actually had the weapon in
5 their hand when it was discharged, that would be the
6 area that you would normally expect to find gunshot
7 residue is on the back of the right hand.

8 **Q** And that container that you found the
9 gunshot residue in that showed the back of the right
10 hand, whose hand does it show that came from?

11 **A** Curtis G. Flowers.

12 **Q** Can you say that you are 100 percent
13 certain that there was gunshot residue on the back
14 of the right hand of Curtis Flowers from that test?

15 **A** Yes, sir.

16 **BY MR. EVANS:** Your Honor, I tender the
17 witness.

18 **CROSS-EXAMINATION**

19 **BY MRS. STEINER:**

20 **Q** Good afternoon, Mr. Andrews.

21 **A** Good afternoon.

22 **Q** Is it because you're retired and no longer
23 in the profession that when I phoned to see if you
24 and I could have a conversation about this evidence
25 a couple of weeks ago you said you weren't available
26 to do so?

27 **A** That's correct.

28 **Q** All right. And you have not been at --
29 you don't have a consulting business in retirement;

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1 you're not doing this anymore?

2 A No, ma'am.

3 Q Have you kept up on either of these areas
4 of trace evidence you've testified here today?

5 A No, ma'am.

6 Q With developing literature or standards
7 with respect to footwear impressions?

8 A No, ma'am.

9 Q So you don't know if the techniques you
10 employed in performing this test, if they were to
11 have been updated or the standard changed after
12 your -- at some point after your retirement. I
13 think you said in what month in 2006?

14 A February 2006.

15 Q February of 2006. Then you can't say that
16 what you did was in conformance with the standards
17 that exist today; all you can say is you performed
18 these in conformance with the standards that you
19 knew and followed and were in existence in, I
20 believe, at the latest, 2003 when you performed the
21 last test on this; is that correct?

22 A I can say they were the standard in 2006,
23 also.

24 Q 2003 and 2006?

25 A Yes, ma'am.

26 Q And similarly on gunshot residue --

27 A Yes, ma'am.

28 Q -- you've not -- similarly, you have not
29 kept up with any changes in 2006 -- since you

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1 retired in February of 2006?

2 **A** That is correct.

3 **Q** And that was a little bit before the FBI
4 lab in Quantico, Virginia elected to --

5 **BY MR. EVANS:** Your Honor, I object. He's
6 stated he doesn't know anything about any
7 priors. And we have covered both sides of what
8 that said. That's improper.

9 **BY THE COURT:** I'll sustain. He said he
10 hadn't kept up, so obviously you can't ask him
11 about something he hasn't read or kept up with.

12 **BY MRS. STEINER:**

13 **Q** Okay. Now, on -- you were using -- with a
14 footwear identification, it is possible if you have
15 an actual shoe to -- to make more than a consistent
16 or a class characteristics. You can, at times, with
17 an actual shoe that has been worn and collected at a
18 crime scene actually go beyond just class
19 characteristics; you can get the individual
20 characteristics?

21 **A** Yes, ma'am. If there are individual
22 characteristics visible in the impression that line
23 up with the same impressions on the bottom of the
24 shoe, it allows you to positively identify that shoe
25 as having made that impression.

26 **Q** But you are not saying you are positively
27 identifying any particular shoe as having made this
28 impression?

29 **A** No, ma'am. No -- no actual shoe was ever

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1 submitted for comparison.

2 Q Okay. Now, you were submitted --

3 BY MRS. STEINER: May I approach, Your
4 Honor?

5 BY THE COURT: You may.

6 BY MRS. STEINER:

7 Q Well, it's certainly no actual shoe that
8 anybody ever said this was on Mr. Flowers' foot and
9 recovered from his foot on or near the crime scene?

10 A Yes, ma'am, that's correct.

11 Q And by contrast, you've inspected S-125A
12 and B, which is a pair of Nike shoes. And those
13 were submitted to you with a chain of custody
14 indicating they had actually been recovered from
15 Mr. Curtis Flowers and had been worn by him prior to
16 their recovery from him?

17 A They're marked on the bag as having been
18 belonging to Curtis Flowers, yes, ma'am.

19 Q So the only pair of shoes you actually
20 looked at and examined and compared to these
21 photographs are a pair of shoes you could
22 conclusively rule out as having made the impression
23 shown in this photograph; is that fair to say?

24 A Yes, ma'am, that's correct.

25 Q All right. So you could make a positive
26 rule-out identification on that pair of shoes?

27 A Yes, ma'am.

28 Q Okay. I believe in the course of
29 preparing to make a comparison without an actual

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1 shoe to use, you learned that -- the make and model
2 of shoe that came in that box that the manufacturer
3 had distributed over a million pairs of such shoes;
4 is that correct?

5 **A** If I can refer to my notes real quick.

6 **Q** Please do.

7 **A** During the course of my examination, I
8 contacted Mr. Andrew Grauf, who at that time was in
9 marketing at Fila, and he provided me with a list of
10 the different models of Grant Hill II's on which
11 that particular style of design outsole which was
12 used by Fila. He submitted a list of all the
13 different models, the total number of each one of
14 those models that was shipped, and he broke it down
15 into size tens, ten-and-a-half's and 11s. Overall,
16 all the different models and all the sizes from
17 six-and-a-half to 16, there were 1,200,000 --
18 1,927,447 pairs of shoes by Fila with that outsole
19 design.

20 **Q** That's closer to two million, huh?

21 **A** Yeah. If you break it down to sizes ten,
22 ten-and-a-half's and 11s -- size tens, there were
23 221,393. Size ten and a halves, there were 221,189.
24 And size 11s, there were 200,199.

25 **Q** So there -- this insole that is consistent
26 with the mark on the floor of Tardy Furniture, you
27 testified that it's a ten-and-a-half. There are
28 221,189 such insoles out there in the world, and you
29 have but one of them; is that correct?

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1 **A** According to the information I got from
2 Fila, that's how many were produced and how many
3 were shipped.

4 **Q** All right. Now, did you -- as I
5 understand it, there is -- what you learned is there
6 is somewhat -- somewhat less than a quarter of an
7 inch difference in size.

8 (CELL PHONE RINGING)

9 **BY MRS. STEINER:** Your Honor, may I turn
10 off my phone?

11 **BY THE COURT:** You may.

12 **BY MRS. STEINER:** My apologies, Your
13 Honor.

14 **BY THE COURT:** That's fine.

15 **BY MS. STEINER:**

16 **Q** There is less than a quarter of an inch
17 difference as you from progress from a ten to a
18 ten-and-a-half and then three-sixteenth of an inch
19 difference in overall length on the outsoles?

20 **A** According to Fila, their -- they produce
21 shoes in half size molds and their average
22 difference in size for each half size is
23 three-sixteenth of an inch. So there were -- you
24 would expect a three-sixteenth inch difference in
25 the overall size of the impression from, say, a ten
26 and a ten-and-a-half.

27 **Q** All right. Now, did you ascertain on
28 these particular shoes whether that three-sixteenth
29 of an inch was distributed across the whole insole

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1 or did you just assume that?

2 **A** I -- based on the way the shoe is made, if
3 you -- if you were making the heel separate from the
4 rest of the shoe, then you could maybe consider that
5 the differences is just in the heel. But because of
6 the way the shoe -- the molds are made and the way
7 Fila explained it, it's three-sixteenth over the
8 overall length, which means the difference in the
9 heel part would be significantly less than that.

10 **Q** Significantly less. So we're talking --

11 **A** You could figure maybe a third of that.

12 **Q** A third of that. And if what they decided
13 to do with their mold was only to extend the toe end
14 of it but leave the heel end the same, just extend
15 the length in the toe, then there would be no change
16 in the heel?

17 **A** If that's what they did.

18 **Q** You don't know that they did not?

19 **A** I don't know for sure, no, ma'am.

20 **Q** So you can't say that the three-sixteenth
21 of an inch difference between is less in a -- less
22 on a ten or more on an 11 isn't entirely in the toe
23 based on the information you have before you?

24 **A** I did not request that specific
25 information from Fila, but it would be unusual for
26 them to use that technique. As you can tell from
27 the design drawing, most major manufacturers now use
28 computer assistance design drawings to produce their
29 molds --

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1 Q This is 1996.

2 BY MR. EVANS: Your Honor, may he finish
3 his answer?

4 BY MRS. STEINER:

5 Q Are you talking about 1996?

6 A Yes, ma'am. And as far as I know, it's
7 still in use today. But they actually -- a lot of
8 the molds are produced by computers. So if they go
9 from a size six to a size ten, they basically
10 increase the size equally amongst the whole design.

11 Q So you don't -- did not ascertain for
12 certain that is how they did it in this case?

13 A I did not specifically ask them that
14 question, no, ma'am.

15 Q So you can't tell this jury they didn't do
16 it the other way?

17 A I can't say that, no, ma'am.

18 Q All right. Now, did you like request a
19 ten and an 11 and do comparisons with those two
20 sizes of insoles just to make sure that, in fact,
21 the heels were distinct from each other?

22 A No, ma'am, I did not.

23 Q So if they hadn't actually run the whole
24 thing up, as you think they may have, if the heel --
25 if they had just extended the toe and kept the heel
26 size the same, the heel from the ten or the 11 would
27 have made the same impression as the heel from the
28 ten-and-a-half; is that correct?

29 A If they did that, yes, ma'am.

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1 Q All right. And as you sit here today, you
2 cannot say they did not?

3 A No, ma'am, I can't.

4 Q All right. Now, were you given any shoes
5 purporting to come from a Mr. Will Hemphill in
6 connection with the examinations you performed in
7 comparison to these insoles?

8 A No, ma'am.

9 Q Were you given any shoes purporting to
10 come from a Doyle Simpson --

11 A No, ma'am.

12 Q -- to compare?

13 A No, ma'am.

14 Q What about an Emmett Simpson?

15 A No, ma'am.

16 Q What about a Mr. Presley or Mr. Gamble?

17 A No, ma'am.

18 Q And a Jeffrey Hudson?

19 A No, ma'am.

20 Q In fact, you weren't given any shoes said
21 to come from Mr. Flowers that had any class
22 characteristics consistent with these insoles as
23 well?

24 A The only shoes that were submitted to the
25 laboratory was the pair of Nikes that were submitted
26 as being from Mr. Flowers.

27 Q All right. Now, these photographs, we
28 heard last week about how carefully Ms. Schoene set
29 these up on the floor and set her camera at the

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1 right angle and put these measurements down here and
2 when she took her picture it was small. And then I
3 believe you said you ordered these blown up?

4 **A** Yes, ma'am.

5 **Q** All right. And did you do that in house
6 in the lab under your personal supervision or did
7 you send them out and trust that the people you sent
8 them to were skilled enough to do a scale
9 enlargement?

10 **A** They were sent out to an outside source.
11 It was a source at that time that we used solely for
12 producing any type of prints or impressions that we
13 did. I also sent them -- as part of sending the
14 negative to be produced, I sent a copy of the scale.
15 Once I got the photographs back, I actually used
16 that same scale to make sure that the copies had
17 been produced correctly.

18 **Q** All right. And because you knew you were
19 not dealing with any pair of actual shoes that had
20 been submitted, except the Nikes which you could
21 rule out without having to make these transparencies
22 and such, you didn't -- there were no -- I think you
23 talked about individualized characteristics that
24 might come from wear patterns and those sort of
25 things. You didn't even look for those?

26 **A** With very few exceptions, it's next to
27 impossible to look at an impression and identify
28 something as an individual characteristic just from
29 the impression. It's not impossible. Sometimes

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1 it's such a big defect or whatever you can tell
2 right away. But because the impression can vary so
3 much depending on what type of pressure was applied
4 to make the impression, what type of surface the
5 impression is on, what type of material the
6 impression is made out of, it's next to impossible
7 to -- especially to look at a photograph and
8 identify something on a photograph as an individual
9 characteristic just from a photograph.

10 Q Okay. And I believe that in your
11 profession, those of you -- at least at the time you
12 retired, those of you in the main stream were very
13 hesitant to say you can match that exactly as a
14 fingerprint or that sort of thing?

15 A If you see enough individual
16 characteristics, it is possible to positively
17 identify it as being made by a particular shoe.

18 Q But that -- in your experience through the
19 time you retired in 2006, that was not customarily
20 what any -- what your lab -- what your examinations
21 were generally able to do? I got tangled up. I'll
22 strike that question. Now, you -- about how many
23 pairs of footwear have you examined -- actual
24 footwear have you examined in the course of doing
25 these kind of identifications over the years, in 25
26 years?

27 A It would be well into the thousands of
28 pairs of footwear.

29 Q All right. And you have come to know that

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1 a Nike shoe -- shoe manufactured by Nike may have
2 different shapes and dimensions in how its -- in how
3 its insoles are put on in a shoe manufactured by
4 Fila or by Adidas or New Balance or anything. Each
5 manufacturer has its own specifications for what the
6 shape of that insole should be; is that correct?

7 **A** Most of the major shoe manufacturers spend
8 an incredible amount of money developing outsole
9 designs and so -- and they are copyrighted and
10 protected and they are very protective of their
11 designs. That's not to say that it's not possible.
12 I think all the major footwear manufacturers have
13 reported cases where their outsole design was copied
14 as a knock off and then used to produce shoes and
15 the different brand or whatever, but they -- it's my
16 understanding that they prosecute those cases
17 vigorously to protect their investment, so it would
18 be highly unusual to find the same design on the
19 bottom of a pair of Nikes that you find on the
20 bottom of a pair of Filas or something like any
21 other.

22 **Q** I appreciate that. I was just talking
23 about what Nike considers the appropriate size of
24 the shoebox of the shoe -- of the boot part of the
25 shoe for a ten-and-a-half. It may not be the same
26 as what -- same exact number of centimeters as Fila
27 considers for the boot size.

28 **A** There could be some slight differences,
29 yes, ma'am.

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1 Q I mean, I -- in some brands I wear one
2 size and I wear another in another size.

3 A Yes, ma'am. And if some of the major
4 manufacturers maybe don't separate the outsoles by
5 half sizes, they use full sizes and they'll produce
6 half sizes by changing the size of the upper, not
7 the sole.

8 Q So the fact that this shoe -- this Nike
9 shoe that we do know came off of Curtis Flowers'
10 foot is a ten-and-a-half doesn't mean that his foot
11 would have been comfortable in a size ten-and-a-half
12 Fila?

13 A As you stated earlier, sometimes the
14 difference between one manufacturer and another's
15 shoe -- the same size shoe in a different
16 manufacturer won't feel the same.

17 Q All right. Now, with -- nothing you have
18 said about matching that -- the insoles that are in
19 evidence, whichever one is the right one that's
20 S-119B -- to, and in your opinion that it is
21 consistent with the -- what was photographed.
22 Nothing says whose foot was in the actual shoe that
23 left that impression that Ms. Schoene photographed
24 and you compared this insole to; is that correct?

25 A Yes, ma'am, that's correct.

26 Q Now, at the time, you were about a year
27 before you retired, maybe eight months before you
28 retired, from the Mississippi Crime Lab. Were you
29 aware that the FBI -- excuse me -- laboratory, the

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1 FBI at its Quantico, Virginia laboratory actually
2 convened a conference, a symposium -- I don't know
3 what they call it exactly -- on -- on the science
4 and art of gunshot residue analysis, someone with
5 the FBI laboratory, gunshot residue symposium, were
6 you aware that had been convened in May of 2005?

7 **A** No, ma'am.

8 **Q** All right. So you don't know how, if at
9 all, the -- that has altered --

10 **BY MR. EVANS:** Your Honor, I object. He
11 said he didn't know anything about it.

12 **BY THE COURT:** He can follow up her
13 question.

14 **BY MRS. STEINER:**

15 **Q** So you can't tell this jury anything about
16 how, if at all, that has altered any of the findings
17 you made; is that correct?

18 **A** No. It would not alter the findings that
19 I reported --

20 **Q** Okay.

21 **A** -- regardless of what was said.

22 **Q** All right. Or altered the standards by
23 which you performed the testing you did?

24 **A** That is correct, yes, ma'am.

25 **Q** Now, you are not telling the jury, are
26 you, that finding a single particle of gunshot
27 residue says that any individual actually pulled the
28 trigger on a firearm, are you?

29 **A** No, ma'am. The conclusions you can draw

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1 from finding and identifying the gunshot residue on
2 the hands of the person are one of three
3 conclusions: That person has discharged a weapon.
4 That person has been in close proximity to a
5 discharged weapon or that person has handled an
6 object that has gunshot residue on it. Those are
7 the three conclusions you can draw from a positive
8 gunshot residue identification.

9 Q And nothing -- your finding that there was
10 a single particle of gunshot residue, which you say
11 had both the clinical and morpho- -- is it --

12 A Morphological.

13 Q Morphological. It's a big word. It was a
14 fear and it had these three elements in it?

15 A Yes, ma'am.

16 Q The fact that you found that single
17 particle does not bring this jury or us one step
18 closer to knowing which one of these three means
19 that gunshot residue particle got on Mr. Flowers'
20 hand; is that correct?

21 A Yes, ma'am, that's correct.

22 Q And if he had ridden in this police car in
23 which a suspect who had just discharged a firearm
24 had ridden previously or an officer who had just
25 been at the firing range had put -- had handled and
26 had not washed his hands and put his stuff back in
27 the back seat, if he rode in the car, there could be
28 gunshot residue particles on that back seat in the
29 police car in which he rode; is that correct?

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1 **A** Yes, ma'am, that's possible.

2 **Q** And if he were interrogated by police who
3 had an interview room where officers who had been to
4 firing ranges routinely congregated or sat and had
5 discharged firearms, those officers could have left
6 particles of gunshot residue on a table in that room
7 if they had not washed their hands or cleaned their
8 weapons between the time they'd been to the range or
9 had to discharge their firearm in the line of duty;
10 is that correct?

11 **A** That's possible, yes, ma'am.

12 **Q** All right. And it's possible that if a
13 piece of paper such as a Miranda waiver had sat on
14 that table and was handed to a defendant to read, he
15 read it and there was gunshot residue on that
16 Miranda waiver, that could have been how that single
17 particle could get on the hand of someone who held
18 that Miranda waiver?

19 **A** From just handling the Miranda waiver, you
20 really wouldn't expect it to be on the back of the
21 hand. But if --

22 **Q** But if you had --

23 **A** -- the waiver, if you had contact between
24 something that had residue on it with the back of
25 the hand, it could have been transferred that way.

26 **Q** And if someone held the pen in a customary
27 fashion that had had contact gunshot residue on it,
28 that would actually be right there in the web?

29 **A** Yes, ma'am, that's possible.

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1 Q A person who's right-handed who is
2 discharging a weapon is probably also right-handed
3 for holding a pen or pencil while signing a Miranda
4 waiver; is that correct?

5 A Yes, ma'am.

6 Q Typically, when an officer who has trained
7 on a firing range and has discharged his or her
8 weapon into a target, leaves that firing range, if
9 you swabbed his or her shooting hand, you would find
10 probably hundreds of particles of gunshot residue if
11 they -- as they came off the range having just
12 discharged a firearm; is that correct?

13 A Oh, yes, ma'am.

14 BY MRS. STEINER: One moment, Your Honor.

15 BY MRS. STEINER:

16 Q And of course, finding a single -- finding
17 any gunshot residue -- Well, strike that.

18 BY MRS. STEINER: That's all I have, Your
19 Honor.

20 BY THE COURT: Okay. Mr. Evans, you may
21 redirect.

22 BY MR. EVANS: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. EVANS:

25 Q All right. You've been asked about
26 someone that had just fired a firearm having
27 hundreds of particles. What starts happening to
28 those particles right after they fire that gun?

29 A As I said, several different studies have

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1 been conducted specifically on hand samples that
2 show that almost immediately after particles are
3 deposited on the hands, any type of normal activity
4 starts removing those particles and that's why the
5 general time limit is considered four hours. It
6 would be unusual to find gunshot residue on the
7 hands of a living individual who's up moving around
8 after four hours.

9 **Q** Okay. What happens to those particles?
10 Do they fall off?

11 **A** To explain a little bit what these
12 particles are, gunshot residue particles are
13 produced during the discharge of the weapon from
14 components in the primer cup in a modern cartridge.
15 The firing pin strikes the primer cup, which ignites
16 the material inside the primer cup, which then
17 ignites the gunpowder inside the cartridge that then
18 forces the projectile out the end of the barrel.

19 During that process, you have a lot
20 of gaseous material being created during that
21 explosion that is forced out of any opening in the
22 weapon, specifically out the end of the barrel where
23 the projectile is going. But in the case of a
24 handgun, it can be forced out around the cylinder
25 gap on a revolver or out of the ejection port on an
26 automatic. These gases, as they escape to the
27 cooler surrounding air, condense back into
28 microscopic particles that are then deposited on any
29 surfaces in close proximity to that weapon. These

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1 particles, while microscopic in size, are much like
2 if you took face powder and patted it on the back of
3 your hand and then walk around for a few hours.
4 After a few hours, you look down and you won't see
5 any of the face powder on your hand.

6 So any type of normal activity or
7 washing your hands or putting your hands in your
8 pocket, running your hands through your hair, any
9 type of normal activity where you brush against the
10 surface of your hands is going to remove these
11 particles just through normal activity.

12 Q And they basically just fall away?

13 A Yes, sir.

14 Q And that's why the time frame is around
15 four to six hours, something like that, that you
16 would expect to find them?

17 A Every study that I've ever shown at four
18 hours there's a precipitous drop in the quantity of
19 particles that can be found on a sample. So most
20 kits say don't collect after four hours.

21 Q Okay. And if you were advised that this
22 test was done approximately three-and-a-half hours
23 after the expected time of the crime, you wouldn't
24 expect to find any particles, would you?

25 A As I stated, as you approach that
26 four-hour limit, you really don't expect to find
27 particles after four hours. And that's not say that
28 I haven't found particles after four hours. I have
29 found particles on person's hands after eight hours.

ANDREWS - REDIRECT

1 But as the general rule, after four hours, the odds
2 of you finding particles go way down.

3 Q And there's nothing surprising about only
4 finding one particle after three-and-a-half hours?

5 BY MRS. STEINER: I'm going to object to
6 the form of that question. I don't think he
7 said that. I'm just objecting to form.

8 BY THE COURT: I don't see anything
9 improper about the form. I'll overrule the
10 objection.

11 A I can't say it would be unusual to only
12 find one after that length of time.

13 BY MR. EVANS:

14 Q And you -- are you saying, based upon your
15 expertise and your training, that the particle that
16 you found on the back of the right hand of Curtis
17 Flowers was, in fact, gunshot residue to the
18 exclusion of every other type substance in the
19 world?

20 A That's correct. Yes, sir.

21 Q And the area that you would expect to find
22 gunshot residue on a right-handed person that fired
23 a pistol would be where?

24 BY MRS. STEINER: Ob- --

25 A You would normally expect that residue to
26 be deposited on the back of the right hand.

27 BY MR. EVANS:

28 Q All right. Let's go to the shoes again
29 for just a moment. It would have been nice if we'd

ANDREWS - REDIRECT

1 been able to recover the actual shoes that were
2 in that box. That would have helped, wouldn't it?

3 **A** It would have given an actual pair of
4 shoes to compare to, yes.

5 **Q** But since we didn't have it, you were
6 asked to compare the original type of shoes that
7 came in that box; is that correct?

8 **A** I was --

9 **BY MRS. STEINER:** Object to leading.

10 **BY THE COURT:** Overruled.

11 **A** Since there wasn't an actual pair of shoes
12 submitted, the question became would the shoes that
13 were submitted -- that were originally purchased in
14 that box, could they have produced the impressions
15 found at the crime scene. And based on that, the
16 only examination that could be conducted was a
17 comparison of an outsole which was reported as being
18 the same type and design outsole that would have
19 been on that pair of shoes to compare to see if it
20 had the same class characteristics.

21 **BY MR. EVANS:**

22 **Q** And they did, in fact, have that; is that
23 correct?

24 **A** Yes, sir, that's correct.

25 **Q** Now, the form from Fila, I believe, said
26 that there were three-sixteenths of an inch
27 difference between each half size; is that right?

28 **A** Yes, sir.

29 **Q** And you were asked about some type of

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1 shoes that may increase the size of the upper and
2 things like that. But Fila says that they produced
3 the GH II style using full and half size models; is
4 that correct?

5 A Yes, sir.

6 Q So that means that they weren't just
7 enlarging the uppers; is that correct? They were
8 actually producing the full and half size molds?

9 A They actually have a mold for each half
10 size and each whole size.

11 Q And there's nothing in what they sent you
12 to indicate that they would have just increased the
13 toes and left the heel the same size on all shoes,
14 is there?

15 A As I said, based on the fact -- what I
16 know about computer assistance design, it would be
17 unusual for them to do it that way. There are some
18 shoes that they increase the size that way, but it's
19 not on a molded outsole like that.

20 Q All right. And the size, the Fila -- I
21 mean, the Nike shoes that came off of Curtis
22 Flowers' feet were a size ten-and-a-half; is that
23 correct?

24 A Yes, sir, that's correct.

25 Q The Fila shoes that were in that box were
26 size ten-and-a-half; is that correct?

27 A That is correct, yes, sir.

28 Q Is there anything about the questions that
29 you've been asked on cross-examination that changes

ANDREWS - REDIRECT

1 your opinion of whether or not the bloody shoe
2 tracks were consistent with having been made by a
3 size ten-and-a-half Fila Grant Hill?

4 **A** No, sir.

5 **Q** The same type of shoes that would have
6 originally been in the box that was recovered from
7 Curtis Flowers?

8 **A** Yes, sir, that's correct.

9 **BY MR. EVANS:** Nothing further, Your
10 Honor.

11 **BY THE COURT:** Is he finally excused?

12 **BY MR. EVANS:** Yes, sir.

13 **BY THE COURT:** I assume you don't need
14 him, Mrs. Steiner?

15 **BY MRS. STEINER:** Yes, sir.

16 **BY THE COURT:** Mr. Andrews, you may step
17 down. You're free to go and you're finally
18 excused.

19 Ladies and gentlemen of the jury, we're
20 going to recess for the day. At this time, I
21 will ask you like I always do not to discuss
22 this case with anyone or among yourselves. If
23 you were to accidentally walk past a newspaper
24 rack, I want you to look the other direction
25 and not pay any attention to any outside
26 influences at all.

27 If you'll just all step in the jury room.

28 (THE COURT RECESSED FOR THE DAY)
29

1 (COURT WAS DULY OPENED ON THE JUNE 16, 2010.)

2 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
3 AND THE DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS
4 WERE AS FOLLOWS:)

5 THE COURT: Good morning. You can bring the
6 jury in.

7 (THE JURY ENTERED THE COURTROOM.)

8 Good morning, ladies and gentlemen. Court will come
9 back to order.

10 Who would be the State's next witness?

11 MR. EVANS: Your Honor, the next witness would
12 be Miss Beneva Henry, and this is another one that we are
13 going to have to read the transcript from.

14 THE COURT: I am going to have to get a copy of
15 it if there is things I have to read, because I don't
16 have a copy of it.

17 MR. EVANS: It is short. It won't take but a
18 minute.

19 THE COURT: And ladies and gentlemen, I will
20 just explain. This is the same type as you have heard a
21 couple other witness testimony that where the witness is
22 no longer available. And when this is being read it will
23 be the testimony under oath that was given by Miss Henry
24 at some previous time.

25 MRS. STEINER: May we approach, Your Honor?

26 THE COURT: You may.

27 (MR. EVANS AND MRS. STEINER APPROACHED THE BENCH FOR THE
28 FOLLOWING BENCH CONFERENCE HAD OUTSIDE THE HEARING OF THE
29 JURY.)

1 MRS. STEINER: You have not heretofore given
2 the date on which -- the year in which the testimony was
3 given. There is no reference in here to a period of
4 time, a year or two. So when the jury is instructed, I'd
5 like it to be instructed that this is from a trial that
6 occurred in 2003 so they will.

7 THE COURT: I will just make a statement this
8 testimony was given in 2003.

9 MRS. STEINER: Or 2004.

10 MR. EVANS: I think it was 2004, but that is
11 fine with us.

12 THE COURT: Okay.

13 MRS. STEINER: Thank you.

14 (THE BENCH CONFERENCE WAS CONCLUDED.)

15 THE COURT: Again, ladies and gentlemen, this
16 is testimony that was offered by Miss Beneva Henry back
17 in 2004. And she is no longer available as a witness.
18 And so that testimony will now be read into evidence.

19 You may proceed, Mr. Evans.

20 MR. EVANS: Thank you, Your Honor.

21 (THE TRANSCRIPT OF THE TESTIMONY OF BENEVA HENRY WAS
22 READ.)

23 THE COURT: Who would the State's next witness
24 be?

25 MR. EVANS: Roxanne Ballard.

26 (THE WITNESS ENTERED THE COURTROOM.)

27 THE COURT: Come around please and raise your
28 right hand.

29 (THE WITNESS APPROACHED THE BENCH.)

1 Do you solemnly swear or affirm that the testimony
2 you give in this case will be the truth, the whole truth
3 and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE COURT: Please come around and have a seat.

6 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

7 If you would, please, state your name for the
8 record.

9 THE WITNESS: Just one second, please.

10 (THE BAILIFF HANDED THE WITNESS A BOTTLE OF WATER.)

11 Roxanne Miller Ballard.

12 ROXANNE MILLER BALLARD, Called on behalf of the State,
13 having been duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION BY MR. HILL:

15 Q. Miss Ballard, before we get started, let me just
16 advise you that you are going to need to speak loudly, because
17 that microphone that you see there does not amplify your
18 voice.

19 A. Okay.

20 Q. And you need to speak loudly enough that jurors as
21 far back away from you as I am can hear.

22 A. Okay.

23 Q. It may necessitate you trying to amplify your voice
24 a little bit.

25 Tell us where you live, please.

26 A. Where I live now?

27 Q. What city?

28 A. I live in Winona, Mississippi.

29 Q. How long have you lived in Winona?

1 A. Okay. I'll be 51 this year. So over 40 -- 43
2 years.

3 Q. Okay. Tell us a little bit of something, if you
4 don't mind, about your educational background.

5 A. I graduated from Winona High School. I went to
6 Millsaps College and a got a degree, B.A. in sociology. Then
7 I went back to school at Ole Miss and took the undergraduate
8 courses to be able to get into the master's program in
9 accounting. Then I got into the master's program in
10 accounting at Ole Miss. And I graduated with a master's in
11 accounting at Ole Miss in December of '89.

12 Q. And what, what kind of work did you do after you got
13 your master's in accounting?

14 A. After that my first job was with B.D.O. Seidman in
15 Memphis, Tennessee. That's an international C.P.A. firm.

16 Q. What kind of work did you do for the Seidman firm in
17 Memphis?

18 A. I was an auditor.

19 Q. Did you know Bertha Tardy?

20 A. Yes.

21 Q. Relationship to her?

22 A. She is my mother.

23 Q. Did you know -- did you know Carmen Rigby?

24 A. Yes.

25 Q. And back in 1996, did you know her?

26 A. Yes. She had worked for mom for about or -- for
27 Tardy and then mom for about 20 years.

28 Q. Do you know who owned Tardy Furniture Company?

29 A. Yes. My mother. Bertha Tardy.

1 Q. Okay. And were you familiar with the operational
2 aspects of Tardy Furniture?

3 A. Yes. I was extremely familiar with it, because I
4 grew up in the store. And I worked there and -- off and on.
5 And sometimes I worked there full-time. Sometimes I worked
6 there nights and weekends. Sometimes I worked there in the
7 summer. But I grew up -- I spent all my life -- even from two
8 weeks old, there are pictures of me in the store. Yes, I
9 spent my whole life in there.

10 Q. And at the latest time before 1996 when you were
11 working there, what, what were your duties? Or if you had to
12 describe your job title, if you could, what, what kind of work
13 did you do for the store?

14 A. Momma called me comptroller. And I did everything
15 as far as the accounting and the bookkeeping went. Back then
16 everything was manual. Momma didn't believe in computers. So
17 we had all -- everything was manual, from the deposits, the
18 check-up sheet for all the activity that occurred, writing up
19 the sales for the day. Everything was manual.

20 We had the big old-timey ledger books. And, you know,
21 all the financial statements were handwritten, and I did that.
22 The payroll taxes, the sales taxes, payroll reports, you know,
23 anything like that.

24 MR. HILL: Court indulge me one minute, Your
25 Honor.

26 THE COURT: Sure.

27 MR. HILL: Court indulge me just one minute,
28 Your Honor. I see what I'm looking for.

29 Q. Miss Ballard, I've got State's Exhibit 2-A out in

1 front over there. Can you see that?

2 A. Yes, sir.

3 Q. Do you know what that is a picture of?

4 A. The front of Tardy Furniture Company.

5 Q. Is that the store that you testified about, that you
6 worked in and grew up in?

7 A. Yes.

8 Q. Tell us what street that is located on, please.

9 A. It's located on Front Street in downtown Winona at
10 the corner of Front. And that little side street is
11 Carrollton.

12 Q. Okay. What city, county and state is it located?

13 A. Winona. Montgomery County. Mississippi.

14 Q. Okay. I now hand you or show to you, this is
15 State's Exhibit 5-A. That is 5-A right there. Do you
16 recognize this building in the corner of 5-A?

17 A. That's the -- that's the side of Tardy Furniture
18 Company where the warehouse door is.

19 Q. Okay. And this street running right down beside
20 Tardy, is that the -- is that Carrollton Street that you
21 referenced in your testimony just a minute ago?

22 A. Yes, sir.

23 Q. Okay. Miss, Miss Ballard, were you familiar with
24 the -- and you have indicated as much, but I want to ask you
25 directly. Were you familiar with the regular business
26 practices and routine operational procedures of the store when
27 it came to opening the store in the morning and closing the
28 store in the evening?

29 A. Yes.

1 Q. Do you know how Miss -- what Miss Rigby's job was
2 and what her duties were?

3 A. Yes.

4 Q. Would you tell the ladies and gentlemen of the jury
5 what that was, please?

6 A. Carmen's title was credit manager. She wrote up
7 sales contracts, checked peoples' credit. She wrote late
8 notices to people. She also went to furniture market to buy
9 furniture. She waited on customers when they came in the
10 store. She did the daily check-up sheet, which is the sheet
11 we did to tell about the activity for that day and went to the
12 bank, post office, you know, pretty much anything you can
13 think of.

14 Q. Okay.

15 A. Just general bookkeeping sort of stuff.

16 Q. During the course of your years there, in your work
17 there, did you ever have occasion to see Carmen Rigby's
18 handwriting?

19 A. Yes.

20 Q. Did you ever have occasion to actually see Carmen
21 writing --

22 A. Yes. Yes.

23 Q. -- on financial instruments and such as that?

24 A. Yes. Of course, I did.

25 Q. Would you then be familiar with her handwriting?

26 A. Yes, sir.

27 Q. Would you be able to recognize it if you saw it?

28 A. Of course.

29 Q. All right. Now, you indicated a minute ago that you

1 were familiar with opening and closing. Tell us first, if you
2 will, about the closing procedures. In other words, at the
3 end of a day's business what steps were taken to close the
4 business overnight?

5 A. As far as the office goes, you would -- on the
6 counter -- I don't know if they have seen what the counter
7 looked like. But there is a big wooden-built counter. And
8 sitting on that counter is the accounts receivable book, which
9 was a big ledger book, and the receipt book where you wrote in
10 people when they paid on account or bought something.

11 And then when you pulled out the wooden cash drawer,
12 there was a metal tray that was inside that held all the
13 money. And then behind that up in the drawer was the deposit
14 bag. And so you would take all those things out and stack
15 them up and take them back to the office. I say momma's
16 office, because that was hers at the very back. And there is
17 a safe in there. And you would put them inside the safe and
18 then lock the safe.

19 MR. HILL: Okay. Court indulge me one minute,
20 Your Honor.

21 THE COURT: Sure.

22 Q. Miss Ballard, I'm showing you now what's been
23 received into evidence as S-29-A. Do you recognize what that
24 is, please?

25 A. That's, that's the little metal tray that I'm
26 talking about that you -- that actually came out of the
27 drawer. It was just -- I guess the drawer was built to fit it
28 or it was bought to fit the drawer. And you just took it out
29 and took that with all those other things I said and took it

1 back and put it in the safe. You didn't take the money out or
2 anything like that. You just took the whole thing and set it
3 in the safe in the back.

4 Q. Just lifted the tray out of the drawer.

5 A. Right. It just came out. And you carried the whole
6 thing and put it in the safe in back in momma's office.

7 Q. All right. This is S-28-A. Do you recognize what
8 that picture shows?

9 A. That's the office I'm talking about. It's like a
10 built, wooden U-shaped office.

11 Q. Okay. Is that like the central counter of the
12 store?

13 A. Right.

14 Q. When somebody comes in to buy something or pay on
15 account, they would come there.

16 A. That's right.

17 Q. Is that cash drawer shown in that photograph? And I
18 want to hand you that pointer. Would you just point to where
19 the drawer is, please?

20 A. This drawer right here above the filing cabinets.
21 And that is the accounts receivable book I'm talking about.
22 And then the receipt book. And we hadn't talked about that
23 other yet. So that is the drawer that the metal drawer is
24 inside.

25 Q. Okay. You were telling us about the procedure for
26 closing the business. At the end of the business day, do
27 y'all count down or prepare your daily report at the end of
28 the day?

29 A. No, sir.

1 Q. Can you tell us when that's done?

2 A. In the morning. Normally Carmen did that, unless
3 she was out of town or something. But Carmen would do it in
4 the morning. Where if I was working, I would do it, you know.
5 But Carmen would be the one normally in the morning that would
6 come in and take the little, yellow check-up sheet and sit
7 down and count the cash drawer and reconcile the cash and
8 write any activity on that sheet. And then take the money to
9 the bank.

10 Q. Okay. So if I understand what you are saying is at
11 the end of the day you just pick up --

12 A. Yes.

13 Q. -- the books and the cash drawer --

14 A. Took it to the back.

15 Q. -- and lock it in the safe.

16 A. Right. We took it to the back. We didn't do that
17 --

18 Q. When you come in in the morning --

19 A. -- at the end of the day.

20 Q. -- the next morning, that is when you count up,
21 reconcile the books --

22 A. That's correct.

23 Q. -- prepare a report for the previous days' business.

24 A. Right. By 5:00 everybody is ready to go home.

25 Q. All right. Okay. Let me see if I can find one more
26 chart here.

27 Court indulge me just one minute, please.

28 THE COURT: Sure. Take your time.

29 Q. Okay. Miss Ballard, I'm pointing, showing you now

1 State's Exhibit 38-A. Do you recognize what that is?

2 A. That's the top of momma's desk in her -- what I call
3 her office, at the very, very back of the store. And that's
4 the safe that I'm talking about.

5 Q. Is that where you put the cash drawer overnight?

6 A. Correct. Correct. All that went in that safe right
7 there and then you would lock the door.

8 Q. Okay. Was the safe generally locked at night?

9 A. It was locked at night, yes. But during the
10 daytime, when they were all there, it was not locked.

11 Q. Okay. Now, you have told us about the routine of
12 closing up. And now I would ask you to explain to the ladies
13 and gentlemen of the jury the routine for opening the business
14 in the morning.

15 A. In the morning around 9:00, unless momma was sick or
16 out of town or something, she would be the one to open the
17 store. And so she would go in and unlock the front door and
18 walk about halfway back. And there was a panel on the wall.
19 I don't know whether you call it a -- I don't know. It was a
20 switch box of some kind.

21 And that's where all the switches were for -- the, the
22 store had two sections. The main section is what I call it,
23 and then a section over on the left. And that panel box
24 worked all the -- all the lights and stuff on the main section
25 of the store where the office was and then the U-shaped
26 office. And then momma's office was in the very back. And
27 that turned on all the power on that side of the store.

28 And then momma would walk on back to her office and
29 unlock the safe and get those same four things I keep talking

1 about out - the accounts receivable book and the receipt book
2 and the deposit bag and, and the little, money tray. And then
3 she would walk them up to the front and put them on the
4 counter and put the tray in the drawer and put the money bag
5 behind the tray until Carmen got there to do the check-up
6 sheet.

7 Q. Okay. Thank you. After the murders at the store,
8 were you ever asked to assist the investigators in going to
9 the office and look for any paperwork that might be of
10 interest or anything like that? And did you discuss that with
11 them and help them locate any paperwork?

12 A. Yes, I did.

13 Q. Okay. I want to show you one other thing, if I may.
14 I want to show you a couple of photographs. These are State's
15 Exhibits 34 and 35. Would you look at those photographs and
16 tell us if you can recognize what they show, recognize where
17 they are taken from?

18 A. If you -- well, is the big office one up there, big
19 picture of the office?

20 Okay. That's the best one.

21 Over here on this side of the office is this table that
22 you can sort of see the top of in these pictures. And that's
23 where the fabric swatches were just kind of all piled up. And
24 lying on top of the fabric swatches in these pictures is what
25 I call the bank bag. And it's just lying there open, way over
26 here on top of those swatches.

27 Q. Okay. So those photographs show a bank bag.

28 A. Correct. The Sunburst bank bag.

29 Q. And what was that bag used for?

1 A. That is the bag I keep talking about that was in the
2 drawer or in the safe or gone to the bank. It's the one they
3 used to go back and forth every day.

4 Q. I am just going to reach across here and hand you
5 State's Exhibit Number 36. Take that and look at it, please.
6 Tell us what that is.

7 A. That, that is the bag. That is what I call the
8 deposit bag.

9 Q. In the picture you just looked, the bag was in,
10 anything that you noticed that would be a little bit unusual
11 about the bag, as far as --

12 A. Yes.

13 Q. I'll hand you these pictures back. Tell us, is that
14 bag open or closed.

15 A. It's open. It's wide open.

16 Q. And why, why would it be open and in that location?

17 A. Well, I can't imagine. It is certainly not a normal
18 place for a bank bag to be. I mean it wouldn't be just thrown
19 over in the fabric swatches. It would be in the drawer or on
20 Carmen's desk or --

21 Q. Okay.

22 A. -- at the bank or something.

23 Q. So can you tell us, was that the normal place for
24 the bank bag to be kept --

25 A. No.

26 Q. -- over by the fabric?

27 A. No. No. No.

28 Q. And you think it was unusual that it would be left
29 open like that.

1 A. Yes. Yes.

2 Q. Was that the bag that they carried the deposit to
3 the bank with?

4 A. Yes.

5 Q. Is there anything in that bank -- in that bank bag?

6 A. Yes, sir. There is the deposit book.

7 Q. All right. Would you look at that? Open it up, if
8 you would, to the last, the last entry in there and describe
9 for us what the last deposit entry shows, please.

10 A. It shows a deposit. At the top it says 7-15-96,
11 because that's the receipt for that day, on 7-15. And then it
12 shows the total deposit of -- I'm sorry 12 -- \$1,238.86.

13 Q. All right. So the deposit slip for July 15 would
14 have been prepared when?

15 A. On the 16th. And you can see -- you can see that
16 the bank stamped it on the 16th.

17 Q. Okay. And what was the normal time for Miss Rigby
18 to carry the deposit to the bank?

19 A. Carmen just -- Carmen didn't get there right at 9:00
20 every day. So it would have been sometime around 9:00 or
21 after 9:00. And then she would have done the deposit, all
22 that, as soon as she got there. And she had been doing it for
23 20 years. So it is not like it took her a really long time to
24 do it. And then she would go to the bank in the morning right
25 when she got there.

26 Q. So if somebody saw her at the bank a little after
27 9:00 that would be consistent with her normal practice.

28 A. Right. That's correct.

29 Q. And you say the bank stamp is dated July 16.

1 A. Yes.

2 Q. All right. You can just put that back in the bag.

3 A. (Complied.)

4 Q. Thank you. Did I ask you if you recognize the
5 handwriting on the -- on the deposit slip?

6 A. No. It's definitely Carmen's.

7 Q. Okay. And I tell you, I may have some more
8 questions about that deposit slip in a minute. So if you have
9 got a place where you can put that just temporarily.

10 Court indulge me one minute, Your Honor. Let me see if I
11 can find some...

12 Miss Ballard, the next thing I want to show you is
13 State's Exhibit Number 42. Let's see. Take a look at State's
14 Exhibit 42. Can you tell us what that is, please?

15 A. That's the check-up sheet that was prepared,
16 prepared for a day's business on the next day.

17 Q. Okay.

18 A. That's the thing I keep talking about the check-up
19 sheet.

20 Q. Okay. Now, I realize the jury -- and we all in here
21 can see that. But what color is that piece of paper you are
22 holding in your hand?

23 A. Yellow.

24 Q. Yellow sheet. Okay. And is that the original?

25 A. Yes.

26 Q. Is that something that you helped the investigators
27 locate in the office?

28 A. Yes.

29 Q. Where was that found when you helped them locate it?

1 A. On Carmen's desk by her calculator and stuff.

2 Q. Okay. Explain to us what that shows, please.

3 A. Do you -- do you have a --

4 Q. You want a chart? Okay.

5 A. Well, nobody can see.

6 Q. I need to ask you a couple of questions.

7 THE COURT: Is this already agreed to be
8 admitted into evidence?

9 MRS. STEINER: No, Your Honor.

10 MR. HILL: If the Court will allow me, I will
11 fix that up, Your Honor.

12 Q. Miss Ballard, you have identified State's Exhibit
13 42, and I would ask you to take a look at State's Exhibit
14 42-A. If you can, tell us what is 42-A with reference to 42?

15 A. It's a copy of the front of the check-up sheet.

16 Q. All right. Is this an enlargement, merely --

17 A. Yes.

18 Q. -- just a bigger poster in enlargement size?

19 A. Yes.

20 MR. HILL: Your Honor, we would ask that 42-A
21 be received.

22 MRS. STEINER: I don't think 42 has been
23 received yet.

24 MR. HOWIE: Yes, it has.

25 MR. HILL: Your Honor, 42 has previously been
26 received into evidence. I believe that was during the
27 testimony of Officer Matthews.

28 I now ask that 42-A be received as being an
29 enlargement of same.

1 THE COURT: I'll allow it to be admitted.

2 (THE ENLARGEMENT OF STATE'S EXHIBIT NUMBER 42 PREVIOUSLY
3 MARKED STATE'S EXHIBIT NUMBER 42-A FOR IDENTIFICATION WAS
4 ADMITTED INTO EVIDENCE.)

5 Q. Okay. Now, Miss Ballard, now we can talk about the
6 enlargement of the daily check-up sheet. Come here, if you
7 will. Take your pointer. And if you don't mind, if you
8 would, just step down.

9 A. (Complied.)

10 Q. Take it from top to bottom and tell us what, what
11 information can be gleaned from this financial document by
12 someone who is familiar with the store's operation and the
13 preparation of the store's financial records.

14 A. Okay. This is what I call a daily check-up sheet.
15 And it was used for all activity that had anything to do with
16 the cash, the sales, anything for any given day. It says
17 store, Winona. That's -- probably some of you are old enough
18 to remember that we used to have other stores. This is the
19 only one that was left. So the store was Winona.

20 And here is the date, which is July 15, 1996. And that's
21 the day's business it is. You would write up the receipts for
22 that day. Okay. It says here it was done by Carmen. That's
23 Carmen's name and her handwriting. There were no cash sales
24 on the 15th, but these receipts were taken in on the 15th.
25 And so the total received on account was -- you know, that's
26 just the list of receipts. And then that's the total cash
27 that was received on account.

28 Then there's -- there's a collection on a charge-off
29 account, which is some -- a bad debt that has been written

1 off. And then they collected some of it. And then the court
2 costs, the garnishment fee were collected. So that's the
3 total deposits for the day's business of the 15th.

4 Q. All right. Now, let me stop you there. You said
5 the total receipts that the furniture store business took in
6 on July 15, \$1,238.86.

7 A. That's correct.

8 Q. Okay. Would that correspond to the amount of the
9 deposit that you saw recorded in the deposit book?

10 A. Yes. That's the same amount.

11 Q. Okay. And now let's go down here. It says petty
12 cash. Will you tell us what that shows, please?

13 A. All right. First, let me say this. This is a
14 credit memo. If somebody paid off their account early and you
15 needed to take the interest off or whatever because they
16 didn't owe as much, it would be there. There are none there.
17 So there is nothing like that.

18 Okay. Then over here is the petty cash. These are two
19 different things. This section right here is -- this is the
20 normal amount of cash that would be in the drawer, would be
21 \$300.

22 Q. Let me ask you a question about that. When you
23 opened the business in the morning, as far as money to use in
24 doing business that day, was there a certain amount of money
25 that was normally used to open the business with?

26 A. Yes, it was \$300. That's the normal amount that
27 would be in the drawer.

28 Q. Is there a name for that, like normal cash balance
29 or something?

1 A. Right. Petty cash in the drawer is the --
2 accountants call it the normal balance. Momma and them just
3 called it cash on hand.

4 Q. Okay.

5 A. So that is the normal amount. If anything had been
6 paid out right there, like they had gone and bought supplies
7 or bought supplies at Fred's or wherever, those things would
8 have been listed right there. And then they would have been
9 subtracted from the total. And, and so the cash in the drawer
10 would have been a different amount right there. But it
11 wasn't, because there are no paid outs. There is no money
12 that's been used out of that \$300.

13 Okay. Then -- okay. This is the confusing part, if you
14 don't, don't know. Okay. I am going to try to -- slow me
15 down if I get to going too fast. Okay. This is -- there is a
16 minus 100 right there. That, that minus 100 reflects money
17 that's in the cash drawer that would not normally be in the
18 cash drawer. It is cash from somewhere else. It's another
19 source that doesn't have anything to do with a normal --
20 normally what would be in the drawer. And then this is the
21 list of cash that was in that little, metal tray. Okay.

22 Q. So it says 260.

23 A. 260 would be the larger bills. It would be 10's
24 20's. If there was a 50 or a 100 or whatever, it would be
25 right there.

26 Q. Okay.

27 A. And then -- and then these would be 5's, and these
28 would be 1's. And then these would be quarters, dimes,
29 nickels and pennies.

1 Q. Okay.

2 A. So the total in the drawer is actually \$400 because
3 you subtracted that 100 right there. If you took that 100 off
4 right there and added those numbers, you would come up to
5 \$400, which is what was in the drawer. But the \$100 didn't
6 belong in the drawer. It was from the late charge box. So
7 whenever they got a lot of money in the late charge box --
8 which I can't explain to you why, but they always have this
9 little box that sat on the counter.

10 If you paid a late charge, it went in that little box.
11 Well, if it got to be a lot of money, they didn't want to
12 leave it sitting on the counter. So they would stick it in
13 the cash drawer. And then at the end of the month or
14 whatever, they would deposit it. And then you would see up
15 here, you would see late charges deposited. Okay. And that
16 meant it got out of the store and into the bank.

17 Okay. And at this point in time, it was still sitting in
18 the drawer as cash. So these whole -- these things right here
19 add up to \$400. And then the normal balance should be \$300 so
20 that is why that 100 is subtracted.

21 Q. Okay. So can you look at that and tell how much
22 money was in this drawer on the morning of July 16, after they
23 got this metal tray out of the safe and put it in? This is
24 where it was found when the investigators got there. Can you
25 tell us how much money was in that drawer when it was put out
26 that morning?

27 A. There was \$400 in that drawer after Carmen went to
28 the bank. When she took the money out from the day before and
29 took it to the bank, what was left was exactly \$400. And the

1 bills would have been right here, and then there's the coins
2 still there. Pennies and everything still there. And there
3 is this little -- there is this little, white piece of paper
4 that says Serta on it. And on that sheet of paper from the
5 scratch pad or whatever, it had -- it had late charges \$100.
6 And that's how I know what came out of that late charge box
7 and went in that drawer.

8 And that \$100 is the \$100 I keep talking about over here
9 that was in the drawer but is not normally part of the drawer.
10 And the only way I knew that is because Carmen left a ticket
11 right there that says late charges \$100.

12 Q. Okay. And so what we see in the drawer matches what
13 we -- except for the missing currency, matches what's on this
14 yellow sheet.

15 A. Yes.

16 Q. Now, I see that there is some pennies, nickels,
17 quarters. Can you -- can you look on there and tell looking
18 at this how much money was missing? In other words, there is
19 no currency, no cash here. Can you tell how much money was
20 missing out of the store?

21 A. It would be the total of the, the currency numbers,
22 which would be \$389. Because these first three numbers below
23 the 100 are currency.

24 Q. All right. Show us --

25 A. \$389.

26 Q. Let me put this back up here. Show us where the
27 numbers are that represent currency see in the box again.

28 A. The 260, the 95 and the 34.

29 Q. Okay. Those numbers there represent currency.

1 A. Right. Right.

2 Q. Okay. And this represents the change.

3 A. Right.

4 Q. Okay. Thank you. You may step...

5 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

6 Q. Miss Ballard, the next exhibit I want to show you is
7 State's Exhibit Number 43. Take a look at that. This is the
8 time card. Take a look at that. Tell us if you know what
9 that is.

10 A. That's, that's Curtis Flowers' time card that --
11 like I said, we didn't have computers or anything. And he had
12 just started. So it's a handwritten time card.

13 Q. Okay. I am going to show you State's Exhibit 43.
14 Can you tell us whether or not State's Exhibit 43-A is an
15 enlargement or just a bigger duplicate of the exhibit you are
16 holding in your hand?

17 A. Yes, it is.

18 MR. HILL: Your Honor, I would ask that 43-A be
19 received.

20 MRS. STEINER: No objection.

21 THE COURT: I'll allow it to be admitted.

22 MRS. STEINER: Did you admit 43 as well?

23 MR. HILL: I think it is already in.

24 (THE ENLARGEMENT OF STATE'S EXHIBIT NUMBER 43 PREVIOUSLY
25 MARKED STATE'S EXHIBIT NUMBER 43-A FOR IDENTIFICATION WAS
26 ADMITTED INTO EVIDENCE.)

27 Q. Okay. Miss Ballard, I will take -- let me hold
28 this, and I am going to ask if you would, if you don't mind,
29 if you would step down with your pointer again.

1 A. (Complied.)

2 Q. Let me make sure I am out of the way. Maybe I can
3 turn it a little more. Can you tell us whose card that is, if
4 the card itself shows it?

5 A. It says Curtis Flowers. I'm sorry. I'm not talking
6 loud, am I?

7 Q. Yeah. Speak up.

8 A. Curtis. Curtis Flowers.

9 Q. Okay. And describe for us the information shown on
10 the card, please.

11 A. It's got the date he started work, the 26th.

12 Q. I'm sorry. What did you say?

13 A. June, June 29. I'm sorry. June 29, 1996. And his
14 hours. And then he didn't work Monday. And then Tuesday his
15 hours. And then Wednesday his hours. And then momma gave him
16 an advance on the first day he worked and --

17 Q. Where is that reflected?

18 A. Right here. Paid cash.

19 Q. Paid \$30 cash.

20 A. On 6-29, which was this date. Then he didn't work
21 Thursday, Friday or Saturday.

22 Q. And there are some figures on the right-hand side
23 over here. It appears that they have been added up. Can you
24 tell us what those are.

25 A. That is -- this is the number of hours he worked
26 from these times over here. And then the total is 17 hours
27 and 55 minutes, which is 11 and -- I mean 17 11/12 hours.

28 Q. Okay. Okay. I want to hand you also State's
29 Exhibit 44 that's been marked as evidence. Would you look at

1 that, please? Can you tell us what that is?

2 A. That's Curtis Flowers' paycheck from Tardy Furniture
3 that my mom wrote.

4 Q. Do you recognize your mom's handwriting?

5 A. Yes.

6 Q. I am going to show you an enlargement of that,
7 S-44-A. Tell us if 44-A is a correct enlargement of 44 that
8 you are holding in your hand.

9 A. Yes, it is.

10 MR. HILL: Your Honor, we would ask that 44-A
11 be received.

12 MRS. STEINER: No objection.

13 THE COURT: I'll allow it to be admitted.

14 (THE ENLARGEMENT OF STATE'S EXHIBIT NUMBER 44 PREVIOUSLY
15 MARKED STATE'S EXHIBIT NUMBER 44-A FOR IDENTIFICATION WAS
16 ADMITTED INTO EVIDENCE.)

17 Q. Okay. Miss Ballard, go through this and tell us --
18 there is some computation up in the upper, left corner. Tell
19 us what that shows up there, if you will, please.

20 A. It shows his, his -- Curtis Flowers' salary, his
21 number of hours he worked.

22 Q. The number of hours I was interested in.

23 A. It's the 11 -- 7 -- I don't know what's wrong with
24 me. 17 11/12 hours.

25 Q. Is that the same amount of time that was recorded on
26 his time card?

27 A. Yes, it is.

28 Q. Okay. And does it show when the check was written
29 or when the check was dated let me refer to.

1 A. On July 5.

2 Q. Check was --

3 A. 1996.

4 Q. -- dated July 5, which is the day after the 4th.

5 A. Um-hum.

6 Q. All right. In the amount of \$82.58.

7 A. Yes.

8 Q. Thank you, ma'am. You can get back on the stand.

9 A. (Complied.)

10 Q. Miss Ballard, you have talked -- you have told the
11 ladies and gentlemen of the jury about your mother and about
12 Miss Rigby, what her job was. Were you aware that there were
13 other employees, new employees of the store on the morning of
14 the 16th?

15 A. Yes. I was aware that, that Bobo started on Monday
16 and then that was his first day. And then Robert started --
17 was starting on Tuesday.

18 Q. Okay.

19 A. Which would be the 16th.

20 Q. So Robert was just starting on the 16th.

21 A. Yes, sir. That was his first day.

22 Q. And as far as Mr. BoBo Stewart, were you aware of
23 his age, general age group?

24 A. I knew he was in high school. I really did not know
25 him before this happened.

26 Q. You said something awhile ago in your testimony
27 about a, a late charge box. Can you look at -- can you look
28 at this photograph, S-28-A? Is the little, late charge box
29 visible in this photograph?

1 A. That's it right there. Just a little, skinny
2 cardboard box. (Indicated.)

3 Q. Okay. And that's where late charges were
4 accumulated.

5 A. Yes. And there was a little sheet in there that
6 says who paid what late charge and the total that was in the
7 box.

8 Q. And on the morning of the 16th the money from the
9 late charge box had been transferred to the cash drawer.

10 A. Right.

11 Q. And one other thing. Quite obviously, State's
12 Exhibit 28-A. What's this object right here in the middle of
13 the floor inside the central counter of the front, front
14 office? What is that?

15 A. That's Carmen's purse.

16 Q. Okay. Is that the usual place she kept her purse?

17 A. No, sir. Her purse normally would be underneath
18 there, under where her chair is.

19 Q. Okay. Have you ever seen her leave her purse out in
20 the middle of the floor like that?

21 A. No, sir.

22 Q. Okay. If you would, resume your seat.

23 A. (Complied.)

24 Q. Miss Ballard, were you aware of the situation
25 regarding the batteries? And if you could, would you tell the
26 ladies and gentlemen of the jury what you knew about any
27 batteries that had been purchased from Coast to Coast?

28 A. They had gotten, I think it was, eight batteries
29 that were golf cart batteries. Tardy had a very old golf

1 cart. I don't know. And -- '60's. From the '60's or '70's
2 or something. I mean a really old golf cart, and the
3 batteries had gone bad in it. So they were buying new
4 batteries to get the golf cart up and running so that Jeremy,
5 my son, could use the golf cart. You know, we could ride
6 around like Tardy's backyard and stuff like that with the golf
7 cart.

8 Q. Okay. And did you ever see the actual receipt for
9 those batteries?

10 A. Yes.

11 Q. Do you know how much it was?

12 A. It was over \$400. I don't know exactly.

13 Q. Over how much?

14 A. Over \$400. I don't know exactly how much.

15 Q. Okay. Do you know whether Tardy's Furniture Company
16 wound up paying the bill?

17 A. It got paid. I think I paid it out of my, my -- we
18 paid it after.

19 Q. And that was including the damaged batteries.

20 A. The damaged batteries. And then we had to buy a new
21 battery. I mean we had to -- we went on and paid. Coast to
22 Coast ordered replacements. So we went on and paid for those.

23 Q. Now, we looked at -- and I may have to move one of
24 those charts, but let me just ask you for right now. Do you
25 know when Curtis Flowers started work? Was that -- was that
26 June 29? Was this his first day that he had ever worked for
27 Tardy Furniture Company?

28 A. Yes, sir. Yes, sir.

29 Q. Okay. Okay. Now, Miss Ballard, you told us that

1 there was \$389 missing out of the cash drawer.

2 A. Yes, sir.

3 Q. Did you or members of your family, after the scene
4 was -- after the store was turned back over to y'all, did
5 y'all search the premises during the days following, following
6 the deaths in the store? Did y'all go back through and search
7 through all of the stuff? And did you -- can you tell us if
8 you ever found the missing money in the store?

9 A. We never found any money lying around anywhere. No.

10 Q. And I take it that it was missing then and still
11 missing today.

12 A. Yes, sir.

13 MR. HILL: One minute, Your Honor. If the
14 Court indulge me.

15 Your Honor, at this time we tender the witness for
16 cross-examination.

17 THE COURT: The jury has indicated they would
18 like a break. We will take a 10-minute recess.

19 (A RECESS WAS TAKEN.)

20 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
21 AND THE DEFENDANT WERE PRESENT. PROCEEDINGS RESUMED AS
22 FOLLOWS:)

23 THE COURT: You can bring the jury back in.

24 (THE JURY RETURNED TO THE COURTROOM.)

25 THE COURT: Court will come back to order.

26 Miss Steiner, you may proceed.

27 MRS. STEINER: Thank you, Your Honor.

28 CROSS-EXAMINATION BY MRS. STEINER:

29 Q. Good morning, Miss Ballard.

1 A. Good morning.

2 Q. I know this is difficult for you. I'm going to try
3 and ask you my questions as clearly and as quickly as
4 possible.

5 You testified, I think, that Tardy's had originally had
6 multiple stores; is that correct?

7 A. Yes.

8 Q. In 1996 -- and I'm not hearing you. If you could
9 speak up.

10 A. I'm sorry. Yes, I did.

11 Q. Okay. In 1996 you just -- the only store remaining
12 was the Winona store; is that correct?

13 A. That's correct.

14 Q. And when have the others, when, when had -- at what
15 point had it become the only store?

16 A. I couldn't tell you that. At least probably 20
17 years ago.

18 Q. Okay.

19 A. Twenty years before that. I was a young child.

20 Q. All right. All right. So for the -- in the
21 immediate five, six years before this, the Winona store had
22 been the only store.

23 A. For longer than that it had been the only store.

24 Q. Okay. And I believe that Tardy's basically did
25 business with the whole Winona community; is that correct?

26 A. That's correct.

27 Q. And had customers from out in Montgomery County and
28 probably Carroll County and maybe even up in the Southern part
29 of Grenada County.

1 A. Even further than that.

2 Q. All right. A very well-known business.

3 A. Um-hum.

4 Q. Business that did its best to accommodate its
5 customers.

6 A. Yes.

7 Q. I mean you, you talked about it. Most people don't
8 have the cash to walk in and buy a bedroom suit, but you would
9 sell furniture for cash if, if they wanted to.

10 A. We sold for cash or on account. That's correct.

11 Q. Right. And when you did your credit accounts, you
12 didn't get a bank or finance company or somebody to handle
13 that. You did it yourselves.

14 A. That's correct. At that point.

15 Q. And because this was a community store and you knew
16 your customers, even the ones that needed credit, you didn't
17 do big fancy credit checks. You just had them sign contracts
18 that bound them to pay; is that correct?

19 A. No, that's incorrect. We did credit checks.

20 Q. Okay. You did.

21 A. That was part of Carmen's job. I also did it and so
22 did mother.

23 Q. All right. But you didn't have some other -- that
24 was -- you all did that. Tardy's did that and it decided
25 whether to extend credit on the basis of its own credit check.

26 A. There was a local credit bureau that we ran our
27 credit check through.

28 Q. And most of your customers, once you decided to
29 extend credit to them, then they sign the contract. They

1 would pay on the installments on time, or maybe they wouldn't.
2 What, what, what kind of collection difficulties did you have
3 with your customers? What percentage of your accounts became
4 in arrears or required collection action beyond just waiting
5 for the person to come in?

6 A. On a monthly basis, there were a good many late
7 notices sent out. Probably, I don't know, 10 or 15 or
8 something like that.

9 Q. Okay.

10 A. But as far as long term bad debts, it was a low
11 percentage. Probably less than 10.

12 Q. Less than 10 percent.

13 A. Um-hum.

14 Q. But possibly, 10 percent of the people who even
15 after your most careful credit check from the local credit
16 agency got in trouble and didn't pay off on the long term; is
17 that correct?

18 A. I'm, I'm not sure it would be as high as 10 percent.

19 Q. But some percent.

20 A. But it was -- it was, you know, more than one or two
21 percent, but maybe not as much, as high.

22 Q. All right. Well, that's fair enough. And now, if
23 somebody comes in late and pays, then that's what those late
24 charges are.

25 A. Right.

26 Q. If I had a note of \$80 a month, and I missed this
27 month and came in the next month with \$160, I'd have -- there
28 would be a late charge that would go in that late charge box.

29 A. That's correct.

1 Q. And had -- but if I got \$1,000 worth of furniture
2 with \$80 a month payments and paid four or five payments and
3 then just stopped paying, didn't come in when you sent me a
4 late notice, didn't respond, just walked the other way so I
5 didn't have to go by the store and be seen. Eventually you
6 would have to do a collection action filed in the justice
7 court where I lived and ask to collect the money from me. Is
8 that correct?

9 A. Yes, that's correct.

10 Q. And did you all take security interests? Did you --

11 A. It was the furniture.

12 Q. In the furniture.

13 A. There is other collateral, other than what you had
14 purchased.

15 Q. Okay. So they walked out. If they -- they have
16 signed a contract that said I am going to pay my \$80 a month
17 until this is paid off and if I don't pay you can come get the
18 furniture back, is that what that security --

19 A. Yes. But that is extremely abnormal in the
20 furniture business to go get the furniture back.

21 Q. Oh, absolutely. I understand. It, it -- probably
22 by the time, it's used --

23 A. Well, probably, if they know you are coming to get
24 it, they are not happy and they might tear it up.

25 Q. All right. So generally, what you did, you went and
26 you filed copies of your paperwork and the contract and filed
27 a suit against the people who were -- was there a certain
28 number of months in arrears that you waited before you filed
29 suit?

1 A. Not a set amount. It all depended on whether the
2 person was trying. Maybe they lost a job. Maybe they were
3 trying to get another job. It was pretty, pretty much up to
4 our discretion as to who, you know.

5 Q. And you did try and -- when someone came in and said
6 Richardson Brothers closed, neither my husband or I are
7 working right now, you might not sue them if they missed a
8 couple of months.

9 A. That's correct.

10 Q. But if someone just didn't bother to see you, after
11 three -- couple of months, you might have to take collection
12 action.

13 A. Might have to if they had a job and there was
14 something you could sue to get.

15 Q. And, and collection means that you would go -- was
16 it usually justice court? Usually --

17 A. Normally. Because it cost too much money to go
18 beyond that.

19 Q. All right. And you'd file copies of all your
20 paperwork. You wouldn't have to hire a lawyer or anything.
21 You just do it yourself.

22 A. No, we didn't hire a lawyer.

23 Q. All right. And y'all filed your paperwork and the
24 documentation of what they paid and what they hadn't; is that
25 right?

26 A. Yes, that's correct.

27 Q. And then the justice court would send out a notice,
28 a summons to the customer and they could come in.

29 A. That's correct.

1 Q. If they had an explanation or -- and but if, if the
2 customer didn't come in or if the justice court says well, I
3 am sorry, ma'am, you do owe this money, I am going to enter a
4 judgment against you, you would have a judgment for a certain
5 amount of money.

6 A. That's correct.

7 Q. All right. And that -- you would also have the late
8 charges in that; is that correct?

9 A. In the amount that was turned over to justice court?

10 Q. Um-hum.

11 A. It would be whatever was due at the time that it was
12 --

13 Q. Right.

14 A. -- turned over to justice court.

15 Q. And if they were six months in arrears, there would
16 be six months of late charges as part of what was due.

17 A. Most likely, yes.

18 Q. All right. And, of course, the court costs.

19 A. Yes.

20 Q. Yeah. Tardy's was a business. So you couldn't
21 afford to give away its furniture. It would have -- or pay
22 for its own collection. If it could, it would like to have
23 not only what was owed, but also the cost of collection; is
24 that correct?

25 A. That's correct.

26 Q. And typically, if you got a judgment and people
27 still didn't come in and make arrangements to pay off the
28 judgment, then you would have to go back and get a garnishment
29 against them.

1 A. The garnishment is the judgment.

2 Q. Okay. Would that be -- would you ever get orders on
3 their -- you know, if they were working at the hospital and
4 they had a paycheck coming in and they weren't paying you,
5 when you got a judgment, you would get an order for the
6 hospital to pay you direct; is that correct?

7 A. Generally, the money goes back through the justice
8 court and the justice court writes a check to you.

9 Q. I'm sorry. You are right. It has been a long time
10 since I have --

11 A. It has been a long time since I did that too.

12 Q. Yeah. And so but you would get an order sometimes
13 that took money out of their paycheck wherever they worked.
14 Took it to the justice court. And when they had enough, they
15 would send a check over to Tardy's to discharge --

16 A. That's correct.

17 Q. -- the judgment. In fact, the last receipt in the
18 receipt book that you were referring to was just such a
19 situation; is that correct?

20 A. That's exactly right.

21 Q. And so at any given time -- well, at any given time,
22 how many lawsuits or garnishments or judgments would you say
23 you had out there?

24 A. Very few.

25 Q. Very few of that two or three percent.

26 A. Very, very few --

27 Q. Very --

28 A. -- got garnished.

29 Q. Very few got garnished. And more --

1 A. They have to have a job, an income. If they have
2 lost their job, there is no point in garnishing them. Or if
3 they have a lot of prior debts and you would be so far down
4 the line that there would be nothing -- you can't take all of
5 someone's pay check. You can only take a portion of it.

6 Q. But if you get a judgment against them, you'd file
7 that for record. And then if they buy a piece of land, that
8 judgment attaches to their land. I mean it stays with them
9 until they can pay it off.

10 A. I never know of anybody's land being attached by us.

11 Q. Oh, I am not saying you did, but it could have.

12 A. I really don't know what could happen as far as that
13 goes. We never went that far.

14 Q. That's fair enough. You were so knowledgable about
15 the business, I thought you might know.

16 Now, in addition, as I understand the furniture business,
17 the, the store you had, your mother ran the store. She owned
18 it --

19 A. Correct.

20 Q. -- at the time this happened. She had been a long
21 time employee of that store since you were -- I think you said
22 a couple of months old.

23 A. No. She had been there longer than I had been
24 alive. She started working there in high school.

25 Q. All right. And then Miss Rigby, you said, had been
26 there about 20 years as well.

27 A. That's correct.

28 Q. And I believe Mr. Tardy, now, he was your
29 stepfather; is that right?

1 A. That's correct.

2 Q. He, he had run the business, but he kind of retired
3 from active management.

4 A. That's correct.

5 Q. But he would be at the store because customers liked
6 him and wanted to greet him.

7 A. That's correct.

8 Q. And did you have any other regular full-time
9 employees in the store on this day besides, I believe, your
10 mother, who is the owner; Miss Rigby, who had been there for
11 20 years doing credit management? And you said Mr. Robert
12 Golden had just started that day. He was full-time?

13 A. We don't know yet. It was his first day. It would
14 have depended on how busy we were. He also had a full-time
15 job, was my understanding. So this was a second job for him.

16 Q. So your delivery staff, you would have as many
17 delivery people as the business required in any given week.

18 A. Normally there was one. Sometimes two. Depended on
19 how business was. And, you know, with Bobo and Robert just
20 starting, I don't know how many hours they would have ended up
21 working.

22 Q. All right. And I believe that the reason you had
23 hired in that month - actually, that would be three new
24 employees - Mr. Flowers, Mr. Stewart and Mr. Golden - was
25 because Mike Martin, who had been your delivery person, had
26 left to go take another position or do something else.

27 A. Mike Martin left. And that's the reason Curtis
28 Flowers was hired.

29 Q. I see.

1 A. The reason the other two people were hired is
2 because Curtis was fired.

3 Q. So he, he failed -- you don't -- did you handle
4 that? Do you have firsthand knowledge?

5 A. My mother did.

6 Q. All right. So you don't know what -- your mother
7 had written him a pay check on July 5; is that correct?

8 A. That's correct.

9 Q. And he -- but he didn't show up for work that day.

10 A. No, he did not.

11 Q. In fact, he never showed up for work again.

12 A. That's correct.

13 Q. And he -- you decided that you wanted somebody more
14 reliable and replaced him; is that correct?

15 A. That's part of the answer to that question.

16 Q. I believe he had also damaged some property.

17 A. That's another part of the answer to the question.

18 Q. And now, you -- over the years you've had
19 part-time -- as well as having a full-time person, you have
20 had part-time delivery people as your volume of business
21 required; is that correct?

22 A. That's correct.

23 Q. Do you know if Doyle Simpson ever worked part-time
24 for the company?

25 A. I'm not absolutely positive. There were people that
26 came in and out that may have even worked just two or three
27 days. And I'm not positive about him.

28 Q. All right. But he could have. You would hire a day
29 laborer, people who had other jobs who needed extra time if

1 you had a big, big week where you were delivering a lot of
2 furniture; is that correct?

3 A. Yes.

4 Q. Now, I believe you said that the routine of the
5 store was at the time, as of July 16, your mother would have
6 come in and turned on the lights in the store.

7 A. (Nodded.)

8 Q. And I'm not sure if I didn't hear you or you didn't
9 say. About what time would she do that?

10 A. About 9:00 in the morning.

11 Q. All right.

12 A. A few minutes before.

13 Q. All right. And Carmen would come in after that.

14 A. Generally. She could be there at 9:00, or she could
15 be there at 9:05.

16 Q. And the first thing she did after she came in was
17 your mother would have brought the cash drawer out and the
18 books, did you say?

19 A. They would be up front in the -- their place.

20 Q. Okay. What time would the store open?

21 A. 9:00.

22 Q. 9:00. But the first thing Carmen would do would be
23 to take this out and do the paperwork you described.

24 A. That's correct.

25 Q. And any employee would know that.

26 A. Not necessarily. Only an office employee would
27 probably know the normal operating procedures of the office.

28 Q. All right. So a delivery person wouldn't know.

29 A. They would not be doing any of the cash

1 transactions, other than possibly seeing people pay or seeing
2 Carmen do the check-up.

3 Q. Okay. A delivery person would be either in the
4 storage area loading up or out on the road delivering --

5 A. Or in the front walking around.

6 Q. Or in the front walking around. But they --

7 A. Moving furniture on the floor.

8 Q. Right.

9 A. You know.

10 Q. But they, they wouldn't -- they would not keep up
11 with this routine you've described.

12 A. They would not do the record keeping. No.

13 Q. And now, let me step back. If you were -- had to
14 sue somebody for not paying a bill, it could be for well over
15 \$400; is that correct?

16 A. I can't recall what the limit was for justice court
17 at the time. But whatever the limit was for justice court
18 would be the most it could possibly be.

19 Q. But if it were \$1,000 at the time, you would be
20 suing for up to \$1,000.

21 A. If it were \$1,000, I mean, yeah.

22 Q. But people tended -- I mean, did you sue -- you
23 would sue. Was there a minimal amount? I mean if somebody
24 had defaulted on \$40 of a \$1,000 contract, would you go to
25 justice court to collect that?

26 A. I can't recall that happening, no.

27 Q. So people tended to owe a fairly considerable
28 amount, more than \$400.

29 A. Not necessarily.

1 Q. All right. But around -- I mean people -- there
2 were plenty of people who you had to get judgments against who
3 owed \$400.

4 A. I don't know why you are on this \$400-thing, but
5 there is no \$400-number.

6 Q. All right.

7 A. I mean a minimum or maximum. I don't know what you
8 are getting at.

9 Q. I'm just saying to your recollection you've sued
10 people for more than \$400.

11 A. For more than \$400?

12 Q. Yes.

13 A. Yes, we have.

14 Q. All right. And you've had to collect more than \$400
15 in wage garnishments when you have been -- when you have been
16 able to get wage garnishments.

17 A. Yes.

18 Q. Now, you've testified that and identified some -- a
19 time card that you said pertained to Mr. Flowers; is that
20 correct?

21 A. Yes.

22 Q. And you said that you actually came into the store
23 and helped the investigators locate that time card; is that
24 correct?

25 A. Yes.

26 Q. And that was actually kept in a card box with the
27 cards of other employees.

28 A. No.

29 Q. Did you have --

1 A. It was lying by itself with his check on my mother's
2 desk, which is very unusual.

3 Q. Okay. Now, did you have other employee time cards
4 available in the store?

5 A. Most people that had been there any length of time
6 had a time book that flipped. And Carmen had one in her
7 drawer.

8 Q. All right.

9 A. And anyone else that had been there awhile would
10 have had one.

11 Q. All right. And did the investigators ask to review
12 any of those other time books for any other employees?

13 A. I, I do not recall. You would have to ask them.

14 Q. All right. You did not, to your recollection,
15 furnish them anybody else's time card, other than the one for
16 Curtis Flowers.

17 A. I mean I am sure we looked at when we were in the
18 store, but I don't remember specifics about it.

19 Q. All right. And similarly, that was a uncashed
20 paycheck, but your -- the checking account records for the
21 account from which payroll was paid would have payroll checks,
22 payroll to all the employees; is that correct? Each employee
23 would have had several payroll checks issued during the course
24 of his or her employment.

25 A. Did you just ask me if employees would have payroll
26 checks issued?

27 Q. Yes. Every week an employee --

28 A. Yes.

29 Q. Every employee who worked that week would get a

1 paycheck; is that correct?

2 A. Yes.

3 Q. Were you asked, to your recollection, to produce the
4 paychecks for any employees other than the one for Curtis
5 Flowers?

6 A. Well, it was the only one lying around the store.

7 Q. Okay. Now, I believe that the --

8 May I approach, Your Honor?

9 THE COURT: You may.

10 Q. I'm handing you S-42, which I believe you said is
11 the -- what do they call them?

12 A. The check-up sheet.

13 Q. The check-up sheet. And now, that you located, that
14 wasn't just lying around the store. You actually had to --

15 A. It was lying on Carmen's desk.

16 Q. Okay. That was because she had just prepared it or
17 --

18 A. That's correct.

19 Q. And that was the place you would expect to find it.

20 A. That was.

21 Q. Okay. Thank you.

22 I'm sorry. I don't mean to turn my back on you.

23 And you assisted the investigators by saying ah, this is
24 this. This is what the routine that would have happened; is
25 that correct.

26 A. Right.

27 Q. And now --

28 May I approach, Your Honor? I am looking for something.

29 I am going to ask you to look again at S-44, which is, I

1 believe, you had identified as the paycheck that had been
2 written to Curtis Flowers. Is there any withholding out of
3 that paycheck?

4 A. There is social security and Medicare.

5 Q. All right. There was no withholding out of that
6 paycheck for any damage to any property, the batteries?

7 A. If you are referring to the batteries, it would have
8 been more than the check. If you are referring to the \$30
9 that he was advanced, the normal practice was to cash the
10 check in the cash drawer so that the employee could go on and
11 get their cash and not have to go to the bank. So it would
12 have been withheld when he cashed his check, which --

13 Q. But just for the \$30 that had been advanced to him
14 on that paycheck.

15 A. That's not what my mother told me was going to
16 happen with the check. If you would like the answer to
17 that --

18 Q. No. No.

19 A. I'm assuming not.

20 Q. No. No. Okay. We can't...

21 Now, it's fair to say Mr. Flowers is not the only
22 employee who ever damaged property belonging to Tardy
23 Furniture; is that correct?

24 A. I'm sure at some point in time someone scratched
25 something.

26 Q. All right. And he is not the only employee who
27 would be asked to reimburse for that damage if it had occurred
28 and could not be reimbursed from some other source.

29 A. I cannot recall any kind of damage that was anywhere

1 near this kind of amount.

2 Q. All right.

3 A. And on outside of the store property. I mean it was
4 something we had to go buy.

5 Q. I see. And I believe you said you were gonna use
6 the -- this was a old golf cart that the store had.

7 A. That Mr. Tardy had.

8 Q. That Mr. Tardy had. He would ride around in that.

9 A. At this point in time, he had it in his backyard.
10 And he and Jeremy -- the batteries had gone bad, and they were
11 going to ride around in the golf cart.

12 Q. All right. And Jeremy is your son.

13 A. Um-hum. One of them.

14 Q. Now, did Tardy Furniture re-open for business after
15 July 16, to your knowledge?

16 A. Yes, it did.

17 Q. Do you recall when it re-opened for business?

18 A. I went in and out some in the days after that.

19 Q. Um-hum.

20 A. Not immediately.

21 Q. Do you recall --

22 A. Then -- I'm sorry.

23 Q. I didn't mean to interrupt. Go ahead.

24 A. And I'm not sure the date we opened to the public.
25 I basically was letting people in and out that I knew, and I
26 always had someone with me. I think we actually opened to the
27 public on a Saturday at the 1st of August, but I'm not
28 positive.

29 Q. Okay.

1 A. I know I was still pregnant. So it must have been
2 before August 7.

3 Q. All right. And now, obviously, you had to come in
4 and clean up the, the floors and the premises before it was
5 reopened. Do you recall --

6 A. Are you talking about the blood from the crime
7 scene?

8 Q. Yes.

9 A. I certainly didn't clean up from the crime scene.

10 Q. No, I know you didn't. Do you know when someone
11 came in and did that?

12 A. The day after they finished the crime scene,
13 whenever they released the store.

14 Q. All right. You don't know -- you didn't ask for
15 that permission, but they did it about the day after.

16 A. I think it was. I'm not positive if it was the day
17 after. I was a little bit stressed at that time.

18 Q. Obviously. And I'm sorry to do that. But somebody
19 released it and --

20 A. Someone released it, and someone cleaned up.

21 Q. All right. So by the time you started having to
22 come in and out, it had been cleaned up.

23 A. Yes.

24 Q. And you think that was that same week that your
25 mother had died.

26 A. Yes.

27 MRS. STEINER: One moment, Your Honor.

28 Miss Ballard, that's all I have. Thank you for your
29 patience.

1 THE COURT: Mr. Hill, any redirect?

2 MR. HILL: Just a couple of questions, Your
3 Honor.

4 REDIRECT EXAMINATION BY MR. HILL:

5 Q. Miss Ballard, other than Miss Rigby and Derrick
6 Stewart and Robert Golden, and not counting Curtis Flowers,
7 were there any other employees left to check on?

8 A. Not at that time. No, there were not.

9 Q. And you were asked about damage. At any -- were you
10 aware of any other property that had been damaged within the
11 several months, I think, be safe to say any, maybe, years or
12 months before this murder? Did you have any other employees
13 that had damaged anything or any issues with employees
14 damaging --

15 A. No.

16 Q. -- company property before these murders?

17 A. No.

18 Q. At the time of these murders, was, was there any
19 issue with any customer that rose to the level of anything out
20 of the ordinary?

21 A. No, sir.

22 Q. The money that was stolen out of the store, that
23 belonged to your momma.

24 A. Yes, sir.

25 MR. HILL: That's all we have, Your Honor.

26 THE COURT: Miss Ballard, you may step down.

27 THE WITNESS: Am I finally excused so I can
28 watch the trial?

29 MR. EVANS: Yes, sir.

1 MRS. STEINER: Yes, Your Honor.

2 THE COURT: You may.

3 THE WITNESS: Thank you.

4 THE COURT: Who would be the State's next
5 witness?

6 MR. EVANS: Give me one moment, Your Honor.

7 Your Honor, for our record keeping, Exhibit S-125 is
8 in evidence, which is the entire exhibit that has the 10
9 1/2 shoes that came off the defendant's feet. Each
10 individual shoe was previously marked for identification.
11 So to keep it straight, I would ask that the two
12 individual shoes be entered into evidence also so there
13 won't be any confusion.

14 THE COURT: I'll allow that. I think what it
15 was is the bag the shoes were being held in had a exhibit
16 number, which was holding the shoes. But the bag was
17 getting rather ragged.

18 MRS. STEINER: We have no objection, Your
19 Honor.

20 Your Honor, I would like the bag to be preserved
21 since it is part of the evidence.

22 MR. EVANS: It's in evidence.

23 THE COURT: It is.

24 (THE LEFT SHOE PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
25 125-A FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

26 (THE RIGHT SHOE PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
27 125-B FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

28 MR. EVANS: Your Honor, at this point the State
29 of Mississippi will rest on its case in chief.

Motion of Defendant

1 THE COURT: Ladies and gentlemen, we will take
2 about a 15-minute recess before the defense starts
3 putting on their case. If you will, step in the jury
4 room now.

5 (THE JURY LEFT THE COURTROOM.)

6 THE COURT: Defense want to make a motion?
7 I need quiet in the courtroom.

8 MRS. STEINER: If the Court please, the defense
9 has several related motions. The first thing defense
10 would do would be to renew all of its pretrial and
11 in-trial evidentiary objections and ask that they be
12 reconsidered and overruled and the evidence admitted
13 after they were previously overruled excluded and
14 preserve any pretrial motions having to do with any
15 evidence that has come forward and renew them.

16 THE COURT: The Court will reaffirm the
17 previous rulings that the Court has made for the reasons
18 stated in the rulings -- in the rulings of the Court at
19 the time the motions were made. So that motion is
20 denied.

21 MRS. STEINER: We would renew our Motion to
22 Quash the Venire and the Jury on the grounds previously
23 -- all the grounds previously cited at this time.

24 THE COURT: That motion is denied as well.

25 MRS. STEINER: We would renew -- and we
26 would -- comes now the defendant and moves for a directed
27 verdict and dismissal of all of the charges and discharge
28 of the defendant on the grounds that the State has failed
29 to make -- prove the essential elements of the crime with

1 which the defendant is charged.

2 State's evidence is -- with the exception of a --
3 well, the only evidence that is not completely
4 circumstantial and suggestive of a reasonable theory
5 other than -- not excluding too, the only evidence that
6 has been presented does not -- does not exclude every
7 other reasonable hypothesis inconsistent with guilt. And
8 the only direct evidence presented is the evidence of the
9 jailhouse snitch whose evidence -- who not only by his
10 demeanor and information and his self-admission as a liar
11 is so incredible --

12 COURT REPORTER: Judge, I'm having a hard time
13 hearing.

14 THE COURT: If you will speak up a little
15 louder.

16 MRS. STEINER: I'm sorry. I don't usually have
17 this problem.

18 His evidence is so facially unreliable as to have no
19 value whatsoever. And we would submit that they did not
20 prove -- they have proved the existence of a crime of
21 capital murder. We agree -- or they have put on evidence
22 that, if believed by the jury, would support a verdict of
23 finding someone guilty of capital murder. We do not
24 believe they have sustained their burden of proof of also
25 showing that it was Curtis Flowers, who they have not put
26 on sufficient evidence or any evidence to meet the, the
27 last element of establishing that it was Curtis Flowers
28 who did the conduct that if it is believed by the jury
29 would establish capital murder. And therefore, we move

Motion of Defendant

1 to -- for directed verdict to dismiss and to have the
2 defendant discharged and the matter finally dismissed
3 with prejudice.

4 THE COURT: In considering a motion for
5 directed verdict, the Court has to consider all the
6 weight in the light most favorable to the non-moving
7 party. So the Court considers the evidence in the light
8 most favorable to the State of Mississippi. The Court
9 finds that there has been sufficient evidence presented
10 to show Mr. Flowers guilty of the crime of capital
11 murder. So there are jury issues here. So the motion
12 for directed verdict is denied.

13 Are y'all going to be ready in about 10, 15 minutes?

14 MRS. STEINER: Yes, Your Honor. Fifteen
15 minutes. Would that be --

16 THE COURT: Okay. We will be in recess until
17 then.

18 (A BREAK WAS TAKEN.)

19 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
20 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS RESUMED AS
21 FOLLOWS:)

22 THE COURT: You can bring the jury back in.
23 (THE JURY RETURNED TO THE COURTROOM.)

24 Court will come back to order. Who will be the
25 defense's first witness?

26 MRS. STEINER: Your Honor, we would call Mike
27 McSparrin.

28 (THE WITNESS ENTERED THE COURTROOM.)

29 THE COURT: Come around please and face the

1 bench. Raise your right hand.

2 Do you solemnly swear or affirm the testimony you
3 give in this case will be the truth, the whole truth and
4 nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE COURT: Come around please and have a seat.

7 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

8 State your name for the record, please.

9 THE WITNESS: Mike McSparrin. It's spelled
10 M-c-S-p-a-r-r-i-n.

11 MRS. STEINER: May I proceed, Your Honor?

12 THE COURT: You may.

13 MIKE MCSPARRIN, Called on behalf of the Defendant, having
14 been duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION BY MRS. STEINER:

16 Q. Good morning, Mr. McSparrin.

17 A. Good morning.

18 Q. Would you tell the jury where you are presently
19 employed and what your business or profession is?

20 A. I'm employed by the Department of Public Safety.
21 The division at the Department of Public Safety is the
22 Criminal Information Center. And I'm a fingerprint expert.

23 Q. All right. And how long --

24 MR. EVANS: Your Honor, the State will gladly
25 stipulate that he is an expert in the field of
26 fingerprint comparison.

27 MRS. STEINER: I'm happy to have the
28 stipulation.

29 THE COURT: I'll allow him to testify as an

1 expert in that field.

2 Q. Now, since you're the expert and this jury isn't,
3 I'm going to ask you to explain to the jury how long have you
4 been -- this is one of many forensic sciences; is that
5 correct?

6 A. Yes.

7 Q. And how long have you been practicing as forensic
8 science specialist in fingerprint comparison identification?

9 A. Better part of 20 years.

10 Q. All right. In your present position, what exactly
11 is it that you do with respect to fingerprint identification?

12 A. What I do now is I am the director of the AFIS
13 system with the State of Mississippi, which is the Automated
14 Fingerprint Identification System. It's a computer repository
15 for arrest records.

16 Q. All right. And tell the jury a little bit about
17 what AFIS is.

18 A. Well, it's just a -- like I said earlier, it's a
19 repository for arrest records that are based on fingerprints.
20 And that's how we put information in the system, based on a
21 set of fingerprints. And that is how we retrieve information
22 out of the system, based on fingerprints.

23 Q. So if you have an unknown -- today, with your
24 system, if somebody gives you an identified fingerprint, can
25 you compare it through that system with the fingerprints in
26 that system?

27 A. We do that everyday. It is happening right now even
28 though I'm not there, but my staff is doing that right now.

29 Q. All right. Now, when did that particular -- it is

1 called AFIS.

2 A. Yes.

3 Q. When did the computer system AFIS come into use in
4 Mississippi?

5 A. We flipped the switch March of 1998.

6 Q. 1998. So that was a couple of years after this --
7 the events of July 16, 1996 --

8 A. Yes.

9 Q. -- is that correct? Now, what education do you have
10 and, and training, in particular, focused on your profession
11 as a firearms, firearms, excuse me, fingerprint examiner and
12 supervisor over the AFIS system at your agency?

13 A. Well, I have got a B.S. degree from the University
14 of Southern Mississippi, and I've worked at the crime lab with
15 the State of Mississippi for 13 years. Went through training
16 programs there. Went through FBI training programs. Pretty
17 typical for your fingerprint examiners.

18 Q. All right. So you -- so your first job out of
19 completion of your bachelor's degree was with the Mississippi
20 State Crime Lab.

21 A. Yes.

22 Q. And you worked -- you worked there for 13 years.

23 A. Yes.

24 Q. And when did you leave there?

25 A. I left there October of 1998.

26 Q. And have you been with C.I., criminal
27 investigation --

28 A. Let me back up. October of 1997.

29 Q. 1997. All right. But you were employed by the

1 Mississippi Crime Lab in or about the summer of 1996.

2 A. Yes.

3 Q. And at that time, what was your speciality with the
4 Mississippi Crime Lab?

5 A. I was a latent print examiner, fingerprints.

6 Q. All right. Now, in the course of your career as a
7 latent print, fingerprint examiner have you ever had occasion
8 prior to this to testify in a court law?

9 A. Oh, yes.

10 Q. Approximately how many times so far in your career?

11 A. Probably a dozen.

12 Q. All right. And have you also -- do you continue to
13 testify in court?

14 A. Occasionally. Usually the federal level.

15 Q. Okay. And so you have offered testimony in both
16 state and federal court --

17 A. Yes.

18 Q. -- is that correct? And you have been recognized by
19 those courts as an expert.

20 A. Yes.

21 Q. As His Honor has done today.

22 A. Yes.

23 Q. All right. Mr. McSparrin, did you have occasion to
24 perform fingerprint -- fingerprint examinations of certain --
25 on certain evidence submitted to the Mississippi Crime Lab in
26 connection with the shooting deaths of four people on July 16,
27 1996, in Winona, Mississippi?

28 A. Yes.

29 Q. And maybe before we move on, if you would explain to

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT # : 2003-0071-CR

1 the jury what fingerprint identification examination is,
2 what -- how you do it and what, what's involved in it.

3 A. Okay. Well, your fingerprints, my fingerprints,
4 everybody's fingerprints in this courtroom are unique and
5 individual to you and only you. And with this we process
6 evidence, when I was at the crime lab, for the presence or
7 absence of latent prints that can be left on surfaces, pieces
8 of items, pieces of evidence. And then if we have any latent
9 prints that are of value, we can compare those to known inked
10 fingerprints that are taken of individuals.

11 Q. All right. And is there an art, a skill to -- well,
12 obviously, to interpreting whether they match? Can you
13 describe how you make a decision on -- in this comparison as
14 to whether you found a match?

15 A. Well, like I said, your fingerprints are unique and
16 individual to you. Even twins have different fingerprints,
17 identical twins. What is used is the fingerprints of skin on
18 the under side of your hands or on the under side of your feet
19 have ridges, furrows and ridges. And these ridges are not
20 continuous. They start. They stop. They divide. They come
21 together. And where these areas are, are known as
22 identification characteristics or minutia and you compare
23 these and their relative positions with a latent that is
24 unknown, that is a chance set of a fingerprint impression left
25 on a surface to that of known set of fingerprints.

26 Q. And in this case -- I believe you said there is now
27 a computer way to do that. But when you did the analysis in
28 this case, did you do that with your own two eyes?

29 A. Yes.

1 Q. So -- and is there a art or skill required in
2 collecting the -- you used the term, I think, latent lift?
3 What is a latent lift?

4 A. Like I said earlier, a latent lift is a -- it's a
5 lift of a impression that's left on a surface by chance, that
6 you can use -- there's a lot of different mediums you can use.
7 Tape is probably the most common. That you can dust this
8 particular image on this surface. See this image. And then
9 take a piece of tape, lifting tape, place it on top of the
10 latent impression and lift it from that surface and place it
11 on a card where you can use it during a comparison.

12 Q. All right. And then you indicated there was a
13 comparison of known fingerprints that you then made the
14 comparison with; is that correct?

15 A. Yes.

16 Q. All right. Now, in this case did you receive lifts
17 taken from various pieces of evidence in this matter?

18 A. Yes. I received latent lifts that were taken from a
19 crime scene.

20 Q. All right. Did you also receive latent lifts? I'm
21 handing you S-79, a Fila shoe box. Did you also check to see
22 if there were any fingerprints of value collected from this
23 Fila shoe box?

24 A. Actually, what I did with this particular box is I
25 processed it myself.

26 Q. All right.

27 A. And I did the lifting of some images off of this
28 piece of evidence.

29 Q. All right. Were you able to lift any, any images

1 off of this box?

2 A. Yes.

3 Q. And were some of them what you would call latent
4 lifts of value?

5 A. There were latent lifts of value off this box. Yes.

6 Q. All right. Now, who did you receive comparison,
7 known samples from in this case?

8 A. In this particular case I received some known inked
9 fingerprints of a Curtis Flowers and of a Doyle Simpson.

10 Q. All right. And you understood those to be two
11 suspects in this matter.

12 A. Two individuals.

13 Q. All right. Did you receive any kind of history on
14 the shoebox as to where it was recovered from?

15 A. No.

16 Q. All right. So -- you said you were able to get some
17 latent lifts of value from this shoebox.

18 A. Yes.

19 Q. And did you make a comparison of those latent lifts
20 of value to the known fingerprints of Mr. Flowers?

21 A. Yes.

22 Q. And what did you find with respect to whether or not
23 the lifts from this shoebox matched or did not match Mr.
24 Flowers' known fingerprints?

25 A. The latents from this particular piece of evidence
26 did not match the fingerprints that were on the known inked
27 images of Mr. Flowers.

28 Q. All right. And similarly, did they match any of the
29 known images of Doyle Simpson?

1 A. No.

2 Q. All right. Thank you.

3 Mr. Byrd, I believe you testified that you had also
4 received some latent lifts of value recovered from what you
5 called the crime scene.

6 A. Mr. McSparrin.

7 Q. Mr. McSparrin. I apologize. I'm tired.

8 A. Yes.

9 Q. Do you know how those -- who or how those were
10 collected? Do you know from whom they came?

11 A. I'm assuming that they came from the crime scene,
12 the individual that worked the crime scene.

13 Q. Okay. I'm handing you Exhibit D-10 and ask you to
14 review that and say if that supports your assumption.

15 A. Yes. This looks like the, the evidence submission
16 form.

17 Q. That was signed by Miss Melissa Schoene; is that
18 correct?

19 A. Yes. Yes.

20 Q. And she was at that time one of the Mississippi lab
21 crime scene investigators; is that correct?

22 A. Yes. Yes.

23 Q. All right. Thank you.

24 Now, in -- this has been previously identified for the
25 jury as a photograph of part of the business area where the --
26 in the place where the, the killings occurred. And are there
27 surfaces in this area that would be suitable or likely to
28 retain fingerprint impressions that could be lifted?

29 A. Yes. Numerous. Yes.

1 Q. Why don't you come down, if you may step down.

2 THE COURT: And if you will, state for the
3 record what exhibit he is looking at.

4 MRS. STEINER: I'm sorry. I'm looking at
5 S-28-A.

6 THE COURT: You may step down.

7 (THE WITNESS STEPPED DOWN FROM THE WITNESS STAND.)

8 Q. Thank you. And I don't have a pointer, but if you
9 want to use my pen. If you would show where such --

10 A. Any of the laminate, any of the smooth, nonporous
11 surfaces anywhere. Excellent surfaces --

12 Q. Okay.

13 A. -- for crime scene investigation as far as
14 processing for latents.

15 Q. All right. What about these metal file cabinets?

16 A. Yeah. The metal filing cabinets could be. The
17 handles may be serrated. That may cause an issue. But the
18 flat, nonporous surfaces just about all through -- there is
19 numerous, numerous --

20 Q. I'm going to hand you a laser pointer. Maybe that
21 will make it easier. You can stand back a little.

22 So why don't you show the ladies and gentlemen of the
23 jury in here what you are talking about when you are talking
24 about the laminates?

25 A. Any, any smooth laminate surface is an excellent
26 surface.

27 Q. Along here also.

28 A. Oh, anywhere. Yes. Any smooth surface. Any glass
29 surface. I don't know if that is mirrors. I can't tell.

1 Even this because it is chrome. It is a very smooth surface
2 there. (Indicated.)

3 Q. What about these shiny handles on these drawers?

4 A. Well, the problem with the handles, if they are
5 serrated, it could cause a problem.

6 Q. Um-hum.

7 A. Plus, another issue with handles, on any type of an
8 item is it's handled a lot.

9 Q. All right.

10 A. Sometimes when a surface is handled too much it can
11 actually wipe away latent evidence.

12 Q. All right. Well, I appreciate that. But there
13 was -- Miss Schoene was correct to dust this area and try and
14 obtain any prints.

15 A. Having not been at the crime scene --

16 Q. Well, these, these laminate surfaces.

17 A. Yes. If this is considered part of the major part
18 of the crime scene, yes.

19 Q. All right. And then I'm going to show you, put up
20 here S-29 in evidence. And I'll just let you know that what
21 I'm putting up from previous testimony, the jury has heard is
22 a photograph of this drawer here immediately above one of the
23 metal filing cabinets. And I'm gonna ask you to look at this
24 picture and point out for the ladies and gentlemen of the jury
25 where there might be good surfaces from which latent print
26 lifts might, might be received.

27 A. I think it would be anywhere, on any of the flat
28 surface here. Some of this may look a little worn. I can't
29 tell by the photograph. (Indicated.)

1 Q. Um-hum.

2 A. Any of the flat surfaces anywhere. Think I can kind
3 of halfway see. If I'm not mistaken, this looks like this may
4 be some fingerprint dusting powder.

5 Q. Right.

6 A. I see some residue.

7 Q. Right.

8 A. This would be some good places to process for
9 prints. (Indicated.)

10 Q. And, in fact, these fruitful places were processed
11 or at least you received prints purporting to come from those
12 places where the fingerprint powder was; is that correct?

13 A. Yes. I'm assuming the lifts -- I don't have the
14 lifts with me.

15 Q. All right.

16 A. And usually on the backside of the lift, most of the
17 crime scene investigators will list where the latent lift was
18 processed and taken from.

19 Q. All right. Now, you may have a seat again.

20 A. Thank you. (Complied.)

21 Q. And again, I'm having you look at S-38-A in
22 evidence. And I will tell you that the jury has already
23 learned this is a corner of an office located in the rear of
24 the place where the people were found, and this is a safe.
25 And again, could you point out for the jury, if you want to
26 use the pointer, whether there are surfaces that would be
27 fruitful for seeking latent fingerprint lifts?

28 A. There could be. I mean there is a laminate desktop
29 here.

1 Q. Um-hum.

2 A. I'm not sure the safe is. I would have to see --
3 the picture, you can't really tell. I don't know how rough
4 this surface is, which may cause some issues. But this may be
5 an excellent surface also, in and around this particular safe.
6 Even -- it doesn't necessarily have to be a non-porous
7 surface. You can get latent prints from paper items.

8 Q. Okay.

9 A. They can be embedded in the paper itself, and these
10 can be pretty good surfaces also.

11 Q. All right. And this metal around the chair.

12 A. This, this could be a -- it could be, yes.

13 Q. All right. All right. So there is -- there were
14 places -- fruitful places that fingerprints could have been
15 left.

16 A. Yes.

17 Q. Including on -- in the background, the cash drawer.

18 A. Yes.

19 Q. All right. Thank you.

20 I don't think I'm going to ask you anything that requires
21 this, but I will leave them here in case I do.

22 Now, did you -- did you, in fact, receive latent lifts
23 collected at the location of that crime scene?

24 A. Yes, I did.

25 Q. And approximately how many, if you can tell me,
26 lifts did you receive from that crime scene? And of those,
27 how many were what you would call latent lifts of value for
28 comparison purposes? And if you wish to refer to your notes,
29 you may.

1 A. I received six latents of value that were on lifts
2 that were from this crime scene.

3 Q. And did you, in fact, compare those latent lifts of
4 value to the known fingerprints of Curtis Flowers?

5 A. Yes.

6 Q. Were you able to make any match of those
7 fingerprints?

8 A. No identification was effective. No.

9 Q. All right. And did you do the same for Doyle
10 Simpson?

11 A. Yes.

12 Q. And again, were you able to affect any sort of
13 identification?

14 A. No. No identification was affected.

15 Q. We're using -- identification was effective. That
16 means you made a match that you were confident in your skilled
17 eye, said this fingerprint here is the same as this latent
18 lift here; is that correct?

19 A. My, my report stated that the latents from this
20 particular crime scene did not match the known inked
21 fingerprints that were submitted on this case.

22 Q. All right. And so nothing that you found on either
23 the shoebox or from the crime scene connected Curtis Flowers
24 in any way to the crime scene?

25 A. None of the fingerprints -- none of the latent
26 prints matched any of the knowns from this particular case.

27 Q. And nothing connected Doyle Simpson to the crime
28 scene.

29 A. None of the fingerprints -- none of the latent

1 prints from this crime scene were identified to Doyle Simpson.

2 Q. All right. And so they were -- you know, as far as
3 what you found, they were both equally unimplicated at the end
4 of your --

5 A. None of the latent prints from the crime scene with
6 this case were identified to the knowns submitted on this
7 case.

8 Q. Thank you.

9 Now, were you ever given prints from an Emmitt Simpson,
10 known prints from an Emmitt Simpson --

11 A. No.

12 Q. -- to compare? Were you ever given any known prints
13 collected in Alabama from a Mr. Presley or a Mr. Gamble to
14 compare to any of these prints?

15 A. No.

16 Q. Were you ever submitted the known prints of a Willie
17 Hemphill to compare to any of these latent prints of value?

18 A. No.

19 Q. Were you ever submitted the known prints of a
20 Jeffrey Hudson to submit to, to compare for latent prints of
21 value?

22 A. No.

23 Q. Now, if Mr. Hemphill or Mr. Hudson were arrested in
24 the state of Mississippi subsequent to your going online in
25 1998, would their known prints -- latent -- would their known
26 prints be in your AFIS system?

27 A. Their arrest record known prints?

28 Q. Yes.

29 A. They could be. Yes.

1 Q. Did Forrest County typically submit, get on the
2 system? Was it a large enough county? Do they submit,
3 routinely submit their arrests?

4 A. Yes. They submit. Yes.

5 Q. Does Montgomery County --

6 A. Yes.

7 Q. -- routinely submit?

8 A. We get arrest records from Montgomery County. Yes.

9 Q. Okay. And is it -- do you go interstate? If
10 Alabama has something in the AFIS system, is the AFIS system
11 capable of comparing with prints submitted in the state of
12 Alabama?

13 A. The way the system is set up, we feed the federal
14 system with arrest records from the State of Mississippi. And
15 Alabama, Louisiana, Tennessee, all other states, also feed
16 this same system.

17 Q. All right.

18 A. So if Alabama sent arrest records to the FBI, we
19 would search against those also.

20 Q. So, now, I understand that -- does the Mississippi
21 Crime Lab have access to this same AFIS system at present and
22 since 1998 as you have at C.I.S.?

23 A. Yes.

24 Q. And now, you left the crime lab prior to the AFIS
25 system getting up and running; is that correct?

26 A. Yes.

27 Q. So you don't know whether or not AFIS has been run
28 on any of these latent prints; is that correct?

29 A. No. No.

1 Q. But you can testify and explain to the jury that
2 that has been available for any police agency or district
3 attorney's office or any law enforcement agency to do since
4 sometime in early 1998.

5 A. Yes.

6 Q. Is that correct?

7 MRS. STEINER: One moment, Your Honor.

8 Thank you, Your Honor. I have nothing further.

9 THE COURT: Mr. Evans.

10 CROSS-EXAMINATION BY MR. EVANS:

11 Q. Good morning, Mr. McSparrin.

12 A. Good morning.

13 Q. I think we use y'all's office quite often, don't we?

14 A. (Nodded.)

15 Q. And in relationship to the AFIS, we have solved
16 several major crimes using AFIS, haven't we?

17 A. Yes.

18 Q. Including the Greene case in Attala County.

19 I want to direct your attention back to this crime scene.
20 Of course, you didn't go to the crime scene; is that correct?

21 A. No.

22 Q. And would you rely more on the expert that was at
23 the scenes ability to look at certain objects and tell what
24 could be printed and what couldn't?

25 A. Yes.

26 Q. You would not disagree with her if she said the
27 wooden surface around that drawer was not a good surface
28 because of looking at its lift prints, would you?

29 A. No.

1 Q. Now, if I go into a business that is a public
2 business and work there, wouldn't you expect my prints to be
3 in that store?

4 A. It's possible. Yes.

5 Q. So if I already worked in that store, it wouldn't
6 make any difference whether you found my prints in that store
7 or not, would it?

8 A. No.

9 Q. Now, if I go in your house and my prints are found
10 in your house and I'm not ever supposed to have been in there,
11 that would be important, wouldn't it?

12 A. Yes, it would.

13 Q. But it's a drastic difference in a public business
14 and a private location, isn't it?

15 A. Yes, it can be.

16 Q. Now, as far as this case that we are here on today,
17 the proof has been that a person came into a public business,
18 shot four individuals with a automatic pistol and took the
19 money out of the store. Now, what would have to be touched in
20 that store if you walked in and shot four people and just
21 grabbed the money?

22 A. It's hard for me to say. I mean you could touch
23 nothing or you could just -- it's hard for me to say what
24 would be handled and what wouldn't be.

25 Q. There is nothing unusual about many crime scenes not
26 having any prints that help in the case, isn't it?

27 A. No, it's not.

28 Q. Now, you were asked about prints. You also compared
29 some prints that came out of Doyle Simpson's car, I believe;

1 is that correct?

2 A. Yes.

3 Q. And you didn't even find his own prints in the car.

4 A. No.

5 Q. So that's not unusual.

6 A. No.

7 Q. The box that you were asked about, the Fila box,
8 there were some prints on it; is that correct?

9 A. That's correct.

10 Q. If the testimony was that a person named Connie
11 Moore went and got the box, picked it up and handed it to some
12 officers and then those officers later carried it to the crime
13 lab, wouldn't you expect their prints to be on there?

14 A. They could be. Yes.

15 Q. The six prints of value, that was all that was found
16 anywhere in the entire store; is that correct?

17 A. That's all that was submitted to me. That is all
18 the evidence that I looked at. Yes.

19 Q. And do you have a list of where they were recovered
20 from?

21 A. I don't.

22 Q. All right. So we would have to rely on what Miss
23 Schoene testified to for that; is that correct?

24 A. That's correct.

25 Q. And if her testimony was that there were no prints
26 in the area where the money would have had to have been, you
27 would have to rely on that.

28 A. Yes.

29 Q. Now, you were asked about checking a lot of other

1 people. Do you normally just go out and routinely check
2 individuals you don't have any reason to check?

3 A. No.

4 Q. If an officer has positively eliminated a suspect or
5 a person, do you normally get their prints to compare?

6 A. No.

7 MR. EVANS: Nothing further.

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION BY MRS. STEINER:

10 Q. Mr. Evans asked you about - and I'm sorry I forgot
11 to ask you before - about some latent lifts collected from a
12 motor vehicle by Miss Melissa Schoene. And I am just going to
13 tell you that Miss Schoene has identified these three
14 pictures, S-100-A, S-99-A and S-101-A, as being photos of the
15 vehicle from which those prints were recovered or those lifts
16 were taken.

17 And now, I believe Miss Schoene said she felt this
18 surface here on the glove box certainly was cracked vinyl.
19 You would agree with her that that is not the most fruitful
20 place to look.

21 A. A pebbled surface can be difficult.

22 Q. Yeah. Now, the handle, this shiny lock button, is
23 that -- is that a surface which would take a print?

24 A. It would. The problem you have with any kind of
25 handle is it's there for the reason it's there. It's to grab
26 and hold.

27 Q. All right.

28 A. And you can wipe prints off, and you can leave
29 residue on there. It's handled so many times. Sometimes

1 surfaces that get handled too much create problems with trying
2 to get latents from crime scenes.

3 Q. But if the testimony we heard is that Mr. Simpson --
4 we have heard this was Mr. Simpson's car. That if Mr.
5 Simpson's testimony is he never touched this glove box or the
6 lock on it that day. In fact, it fell open --

7 MR. EVANS: I object to that, Your Honor. That
8 is not the testimony that has been before this jury.

9 MRS. STEINER: There is no --

10 MR. EVANS: I think she has at least got to
11 tell the testimony that has actually been presented here
12 and not just anything she wants to.

13 MRS. STEINER: I'm sorry, Your Honor. There
14 has been no testimony from Mr. Simpson that he did
15 himself handle this lock that day. There has been
16 testimony --

17 Q. Well, right now, I'm going to ask you on -- now, we
18 see the passenger side of this car. We see the rear. Are the
19 metal surfaces or the glass surfaces of an automobile fertile
20 ground for collection of fingerprints?

21 A. Well, it depends if we are talking interior,
22 exterior.

23 Q. Yeah. Interior. The testimony is before the jury
24 that this car had been rained on.

25 A. Um-hum.

26 Q. Before Miss Schoene collected prints from the
27 exterior.

28 A. Um-hum.

29 Q. But assuming the doors were closed and the windows

1 were up or the widows were -- happened to be rolled down
2 during the rain, could you still even from the interior side
3 that hadn't gotten wet? Could you -- is that a fertile ground
4 for collection of prints?

5 A. There is good places inside of vehicles - mirrors,
6 any of the glass areas, nonporous, flat areas. Pretty much
7 fabric is not a very good surface whatsoever. But there
8 are -- yeah, there is good surfaces in the car.

9 Q. So the interior of the car does have good surfaces.

10 A. (Nodded.)

11 Q. And I believe that you testified Doyle Simpson's
12 fingerprints were not found inside this vehicle; is that
13 correct?

14 A. The latents that -- on the lifts that were submitted
15 from this vehicle with this crime scene were not identified to
16 Doyle Simpson. So no.

17 Q. And additionally, the latent lifts from this vehicle
18 that were identified at the crime scene were not identified to
19 Mr. Flowers either.

20 A. That is correct.

21 Q. Thank you.

22 I believe Mr. Evans asked you and you responded properly.
23 You only performed comparisons on what the investigating
24 agencies elect to submit to you; is that correct?

25 A. Yes, that is correct.

26 Q. You are not also a crime scene investigator who goes
27 out and helps, advise them on what might be useful to submit.

28 A. No, I'm not.

29 Q. All right. And you also talked about the fact that

1 in a private home, you might very well find -- well, you said
2 in this case the officers who'd handled this S-79-A, the Fila
3 shoebox, their fingerprints could have been on this shoe box;
4 is that correct?

5 A. That's possible.

6 Q. Now, isn't that why most officers who are collecting
7 evidence are trained to and, in fact, usually do wear some
8 sort of gloves or hand protection?

9 A. That's correct.

10 Q. And if they have a surface like this, are they not
11 trained, if they are doing it properly, to at least glove and
12 also to try and pick the object up in a way that leaves as
13 little possibility for adding their own prints to their mix?
14 Is that correct?

15 A. That's correct.

16 Q. And probably put it in -- is there some sort of bag
17 that would be useful? Assuming that they were going to ask
18 the lab to do the lift, how would they have --

19 MR. EVANS: Object to probably unless he can
20 testify what the officers did with this specific item.
21 All he can testify to is what he examined.

22 MRS. STEINER: I appreciate that, but I think
23 on cross --

24 THE COURT: I think you are asking him to
25 speculate right now.

26 Q. Now, is there a proper way which you forensic
27 scientists, when you have the opportunity to train and
28 interact with officers, do you advise them on how the best way
29 to collect an item like this, if they believe it to be of any

1 --

2 MR. EVANS: Relevancy on that also, Your Honor.

3 Q. -- evidentiary value?

4 THE COURT: Overrule that objection.

5 A. I would suggest to any crime scene investigator or
6 law enforcement personnel that they would put that in a paper
7 bag and seal the top of the paper bag, that would be the
8 proper way to store that piece of evidence --

9 Q. Okay.

10 A. -- to submit it to a crime lab to be processed.

11 Q. Do you recall when it came to you, was it sealed
12 inside a paper bag?

13 A. No. I can't recall.

14 Q. You can't recall one way or the other?

15 A. I can't recall.

16 Q. All right. Now, when you collect -- and I'll ask
17 you. Typically, when you collect evidence from a private
18 home, do you expect the resident's and homeowner's
19 fingerprints to be there to be ruled out? I mean if my house
20 is burglarized and prints are lifted, do you -- are you
21 surprised when my, my prints show up on my own property that's
22 been ransacked?

23 A. That are identified as being your prints?

24 Q. Yeah.

25 A. No, I'm not surprised. No.

26 Q. So -- all right. But that box had no latent lifts
27 which matched Mr. Curtis Flowers; is that correct?

28 A. That is correct.

29 Q. And that is despite the fact that there has been

1 testimony that he resided in the home where this box was
2 found. Is that -- it makes no difference one way or the
3 other, I take it.

4 A. Makes no difference.

5 Q. All right. Thank you.

6 Nothing further, Your Honor.

7 THE COURT: I assume he is finally excused as a
8 witness; correct?

9 MRS. STEINER: Yes, Your Honor. As far as we
10 are concerned.

11 MR. EVANS: (Nodded.)

12 THE COURT: Mr. McSparrin, you are free to go,
13 excused as a witness.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury,
16 we are going to recess now.

17 And the bailiff -- one of the bailiffs brought up
18 that you had been concerned about photographs. Again,
19 under the court rules photographs can be taken. But I
20 want to reassure you like I had earlier, your photograph
21 is not being taken. Your pictures are not showing up in
22 the newspaper. They are not on the internet. They are
23 not on t.v. They are not anywhere. Because the cameras
24 are filtering out -- I know some things look like at
25 times they may be pointed towards you, but they are not.

26 We have got Miss Craft from Jackson who is the court
27 information officer. She is -- before photographs were
28 allowed in, advised the photographers of the court rules.
29 And they are strictly following those rules. So I don't

1 want that to be a concern of any one of you and
2 apparently that had become a concern. So I just wanted
3 to restate what I had told you as the trial was first
4 beginning.

5 If you will, just step in the jury room for a few
6 minutes. And they will take you to lunch as soon as
7 everybody has kind of cleared out.

8 (THE JURY LEFT THE COURTROOM.)

9 (COURT RECESSED FOR THE NOON HOUR.)

10 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
11 AND THE DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS
12 RESUMED AS FOLLOWS:)

13 THE COURT: Good afternoon.

14 You can bring the jury in.

15 (THE JURY RETURNED TO THE COURTROOM.)

16 THE COURT: Court will come back to order.

17 Who would be the next witness for the defense?

18 MRS. STEINER: Your Honor, we would have Steve
19 Byrd.

20 THE COURT: You can get Mr. Byrd. He was
21 standing right back here a few minutes ago.

22 (THE WITNESS ENTERED THE COURTROOM AND APPROACHED THE
23 BENCH.)

24 Do you solemnly swear or affirm the testimony you
25 give in this case will be the truth, the whole truth and
26 nothing but the truth, so help you God?

27 THE WITNESS: I do.

28 THE COURT: If you will have a seat, please.

29 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

Steve Byrd - Direct

1 For the record, state your name, please.

2 THE WITNESS: My name is Steve Byrd.

3 THE COURT: You can proceed.

4 MRS. STEINER: May I proceed?

5 THE COURT: You may.

6 STEVE BYRD, Called on behalf of the Defendant, having
7 been duly sworn, was examined and testified as follows:

8 DIRECT EXAMINATION BY MRS. STEINER:

9 Q. Mr. Byrd, would you tell the jury where you work and
10 what your profession is?

11 A. I work in Jackson, Mississippi, at the state crime
12 laboratory. I am the section chief of the firearms section at
13 the laboratory. I perform forensic analysis of firearms
14 evidence that's submitted to the laboratory, as well as
15 oversee the day-to-day operation of the section itself.

16 Q. So you are the big boss of the firearms section
17 there.

18 A. I'm the supervisor of the firearms section. Yes.

19 Q. How long have you been employed in the firearms
20 section of the Mississippi State Crime Laboratory?

21 A. July would be 28 years.

22 Q. And have you worked your entire career in that
23 section?

24 A. Yes, I have.

25 Q. Why don't you describe for the jury the education
26 and training you received to be firearms examiner with the
27 Mississippi State Crime Lab?

28 MR. EVANS: Your Honor, we know Mr. Byrd well,
29 and we will stipulate that he is an expert in firearms

1 examination.

2 MRS. STEINER: Thank you.

3 THE COURT: Do you accept that stipulation?

4 MRS. STEINER: I do. I do.

5 THE COURT: I will find him to be an expert in
6 that field and will allow him to testify as such.

7 Q. How long have you been the supervisor of that
8 section?

9 A. I believe since 1994.

10 Q. So you were the supervisor of the section at the
11 time the examinations were done in connection with this case;
12 is that correct?

13 A. Yes.

14 Q. All right. And have you testified and been
15 recognized throughout the state in courts of law as a
16 qualified firearms examiner as His Honor has done here today?

17 A. Yes, I have.

18 Q. Approximately how many cases, if you have kept
19 track?

20 A. I would say in excess of 300 occasions.

21 Q. All right. Now, Mr. Byrd, were you asked to perform
22 firearms identifications examinations of certain evidence
23 submitted to the Mississippi Crime Lab in connection with the
24 shooting deaths of four people on July 16, 1996, at Tardy
25 Furniture store here in Winona, Mississippi?

26 A. Yes.

27 Q. Now, you, yourself did not personally participate in
28 the collection of any of that evidence; is that correct?

29 A. No, I did not.

1 Q. But are you familiar, as a firearms examiner, with
2 the means and methods by which firearm -- retrieval of
3 firearms evidence should be made to best preserve it for you
4 to make your firearms examination?

5 A. Yes.

6 Q. All right. Now, let me -- let me first pull the
7 stuff that has been retrieved and let him make sure he has got
8 it in front of him.

9 THE COURT: Go ahead.

10 MRS. STEINER: Excuse me one moment.

11 May I approach the witness, Your Honor?

12 THE COURT: You may.

13 MRS. STEINER: I apologize for the delay, Your
14 Honor. I didn't get to do this during the lunch hour.

15 Q. Mr. Byrd, I've placed several items of -- that have
16 been already offered into evidence as exhibits in this case.
17 Several of them are in boxes. A couple of them are in plastic
18 bags. Can you inspect that and tell me if each of those --
19 without talking about what they are, just would you look
20 through those and make sure each of those represents an item
21 of firearms evidence which you inspected and performed
22 analysis and comparison of in this matter?

23 A. May I?

24 THE COURT: You may.

25 Q. And you may refer to your notes, if you wish.

26 A. Yes. Each of these containers do contain firearms
27 evidence that was submitted to the laboratory.

28 Q. And which was -- comparisons were -- you opened it
29 and performed comparisons.

1 A. That's correct.

2 Q. And that -- and how do you know that just from
3 looking at the containers?

4 A. The -- each of the items have my initials that are
5 marked -- still marked on them. I can -- are legible, S.C.B.,
6 which are my initials. The containers in these five boxes
7 which are marked State's Exhibit 88, 89, 90, 91 and 92. Each
8 of these boxes contain a fired cartridge case. These other --
9 these other containers contain projectiles or fragments from
10 projectiles that were submitted to the laboratory.

11 Q. And if I'm correct, the plastic bags S-87 and S-86
12 contain projectile fragments that appear from the chain of
13 custody have been recovered from the state medical examiner;
14 is that correct?

15 A. That is correct. Based on their packaging, yes.

16 Q. All right. And then the one -- the other three
17 boxes are S-83, -84 and -85. The first two of those are whole
18 fired projectiles recovered from the crime scene; is that
19 correct? And the last one is a fired projectile fragment. Or
20 do you need to open the box to determine that?

21 A. Which box -- are you asking me about these three
22 boxes?

23 Q. Yes. 83, 84 and 85.

24 A. Eighty-three is the Laboratory's Exhibit Number 31,
25 and it is intact projectile. That's State's Exhibit 83.
26 State's Exhibit 84 is a crime laboratory submission 32. It is
27 intact projectile. And State's Exhibit 85 is crime laboratory
28 submission 33.

29 And if you will excuse me, may I refer to my notes?

1 THE COURT: Sure.

2 A. Thirty-three is copper and lead fragments. That's
3 correct.

4 Q. All right. Thank you.

5 A. That's State's Exhibit 85.

6 Q. And I believe the jury has already heard testimony
7 that, that those eight boxes you are looking at were all
8 collected from the crime scene by Miss Melissa Schoene. Do
9 you know who she is or was?

10 A. Yes, I do.

11 Q. Who, who is Miss Melissa Schoene and what was her
12 job in 1996 at the time these were collected?

13 A. She is a former employee of the crime laboratory.
14 She worked in the trace evidence section at the laboratory, as
15 well as she performed crime screen searches.

16 Q. And you worked with her frequently; is that correct?

17 A. That's correct.

18 Q. Now, when you actually got these items they were --
19 were they packaged in these same boxes and bags?

20 A. Yes, they were.

21 Q. All right. When an analyst at the crime lab gets an
22 item of evidence, is it packaged in the packaging in which it
23 was brought to the crime lab, usually, customarily?

24 A. Yes.

25 Q. All right. And if it was in a paper bag or a
26 plastic bag or one of these little boxes, do you ever discard
27 the container in which it came in when you are doing an
28 analysis?

29 A. No.

1 Q. All right. So you put -- do you put it back in the
2 container and send it back to storage?

3 A. When I examine evidence at the laboratory, any
4 analyst at the laboratory, the first thing they do is they
5 mark the packaging itself. And then they examine the items
6 that are in that packaging. Once the examinations or analysis
7 are completed, they would go back in that packaging.

8 Q. All right. And you don't just throw away a paper
9 bag just because --

10 A. No.

11 Q. If it came in a paper bag, it would leave the
12 analysis in the paper bag.

13 A. If that were the sealed container that it was
14 submitted in, yes, that is the way it would leave the
15 laboratory. However, it were submitted to the laboratory in a
16 container or a carrier bag, which is a routine way to submit
17 something, it might have a case number on it and all these
18 items would be in one paper bag. And that paper bag may or
19 may not be sealed with some tape just to keep them in there.
20 But there would be no reason for that container to be marked
21 or retained.

22 Q. All right. Thank you. Now, let's turn first --
23 let's talk about when you are doing a firearms identification.
24 What kinds of things are you looking on? Let's turn first to
25 the projectiles you looked at and projectile fragments. What
26 are you looking for to make an identification with respect to
27 any projectile or projectile fragment when you are doing
28 firearms analysis? What is the first thing you look for?

29 A. Well, a routine analysis would be to examine the

1 projectile visually in the laboratory, weigh it, see what type
2 of material it is. And in this case, is it copper or lead?
3 To determine further characteristics of those projectiles or
4 fragments, you would examine them. After the visual
5 comparison you would examine them under comparison microscope
6 and compare them to known standards that are typically
7 retained by laboratories.

8 There -- to make an identification or during the course
9 of examinations you have two type characteristics that you
10 examine when you are performing these analysis under a
11 microscope. You are looking at class characteristics and
12 individual characteristics. Class characteristics are common
13 to a group of guns and will place a projectile into a broad
14 group. Individual characteristics are microscopic striations
15 within those class characteristics allowing an examiner to
16 examine and compare them and say a projectile was fired in a
17 known gun or that two projectiles were, in fact, fired in the
18 same gun based on the individual characteristics. That is how
19 the individual characteristics are used to determine that two
20 projectiles were fired in the same weapon.

21 Q. All right. Now, you analyzed all five pieces of
22 projectile, recovered projectile evidence in those two plastic
23 bags and the three boxes we've identified as S-87, S-86, S-83,
24 S-84 and S-85. Were you able to detect any class
25 characteristics in common among those projectiles and
26 fragments among them, in comparison to each other?

27 A. Well, part of these fragments were unsuitable for
28 analysis, and this is not all the projectiles that I examined.
29 But the projectiles that I examined bore the class

1 characteristics that would be consistent with .380 auto
2 caliber, six lands and grooves. And the two projectiles that
3 I was able to say this positively about would have been
4 State's Exhibit 83 and 84.

5 Q. Were you able to identify any individual
6 characteristics that could do any -- to identify it, narrow it
7 down to any particular .380 with the lands and grooves?

8 A. I was able -- each of these projectiles have
9 individual characteristics on them. And I compared them to
10 the other items that were submitted in this case and they do
11 have similarities in individual characteristics with the other
12 items that I examined in the case, yes.

13 Q. Do -- did -- were the similarities sufficient for
14 you to either include or exclude them from being fired
15 from the same weapon?

16 A. No. When I say similarity in individual
17 characteristics in these two projectiles that I'm speaking of,
18 when an examiner goes through their steps of performing their
19 analysis and -- which is the same steps I followed in this
20 case. When you place two projectiles under the comparison
21 microscope -- and basically what a comparison microscope is
22 two microscopes where the fields of view overlap.

23 The first thing that you do is you make sure they are the
24 same caliber, the same number of lands and grooves and the
25 widths are the same. Now, these two projectiles, when I say
26 they had similarity in individual characteristic, and that's
27 stated in my report, what I am able to say based on the way I
28 have worded that report is say in the case of these
29 projectiles, they have six lands and grooves.

1 Okay. And I'm going -- I'm using my hand for an example.
2 If I had six fingers, which obviously I don't, for me to
3 perform the analysis properly, I would have to have thumb to
4 thumb and so forth through the fingers. I was able to put
5 these said two projectiles in orientation where I was
6 comparing the right grooves with each other if I was going to
7 be able to say that they were fired in the same gun as the
8 other projectiles that I examined in this case.

9 In other words, the individual characteristics that are
10 present on here, I was able to orient them or phase those
11 projectiles. Now, there were insufficient amount or they had
12 insufficient weight for me to say they were, in fact, fired in
13 the same gun that the other projectiles that I examined in
14 this case were.

15 Q. All right. So you could say they had the same --
16 you could not definitively say they were fired from the same
17 gun; is that correct?

18 A. No.

19 Q. And now, the other five boxes that are sitting up in
20 front of you, I believe those are S-88, 89, 90, 91 and 92.
21 Those, I believe, you referred to as cartridges.

22 A. They are cartridge casings. They are the portion
23 that is extracted and ejected from the firearm when it is
24 discharged.

25 Q. All right. And with respect to those cartridge
26 casings, were you able to identify any class characteristics?

27 A. The caliber is .380 auto caliber. And based on
28 the -- you know, I can compare them to each other. The shape
29 of the firing pins, the extractor and ejector markings and the

1 chamber signatures, which are all the characteristics you
2 would examine if you were comparing these cartridge cases to a
3 weapon.

4 Q. All right. And were you able to draw any
5 conclusions to either include or exclude these five cartridge
6 cases from having been fired in the same weapon?

7 A. Three of these cartridge cases were, in fact, fired
8 in the same weapon.

9 Q. All right. Of those --

10 A. Yes.

11 Q. I have three other -- oh, okay. Of those three --
12 could you double check your notes?

13 A. Do you want to know which ones? Crime Laboratory
14 Exhibit 25, 27 and 28, would be State's Exhibit 88, 90 and 91.

15 Q. But the other two you could not correlate either to
16 those three or to each other; is that correct?

17 A. Well, like I say, they bear the same class
18 characteristics as these three. Could I say that these two
19 were, in fact, fired in the same weapon that discharged these
20 three positively? No.

21 Q. All right. Thank you. And that's on the basis of,
22 at that time, your 15 years as a firearms examiner with the
23 Mississippi State Crime Lab.

24 A. '82 to '96. However long that is. July. And I
25 worked it in July.

26 Q. And that continues to be your opinion to this day
27 after reviewing your report; is that correct?

28 A. That's correct.

29 Q. All right. Now, you subsequently, I believe, were

1 asked to examine some additional firearms evidence. And all
2 of this, as far as you know, was collected from the scene of
3 Tardy Furniture by Miss Melissa Schoene on or about July 16,
4 1996; is that correct?

5 A. Based on the evidence description that I have, yes.

6 Q. All right. Now, did you subsequently have occasion
7 to examine the three items I've put up there before you that
8 are marked S-80, S-81 and S-82?

9 THE WITNESS: May I?

10 THE COURT: You may.

11 A. Yes, I did.

12 Q. All right. And what -- can you describe what each
13 of those is and if you can tell from the packaging where,
14 where, or from your report, where they are said to have come
15 from?

16 A. Well, each of these containers contains a
17 projectile. The box labeled State's Exhibit 80, according to
18 the note on the side of it, recovered from mattress Tardy
19 Furniture, Winona, Mississippi.

20 Q. All right. And 81 and 82. I believe the jury has
21 heard testimony those were recovered from a post at a home on
22 Poorhouse Road. The home of Lizzie Simpson. Does it say so?

23 A. The projectile -- according to my information, the
24 projectile in State's Exhibit 81, which is a crime laboratory
25 Exhibit Number 66, was recovered from there.

26 Q. Okay. Do you --

27 A. The --

28 Q. -- have any notation on 82?

29 A. May I refer to my notes?

1 MRS. STEINER: May I approach, Your Honor?

2 THE COURT: You may.

3 A. According to the crime scene -- excuse me, not the
4 crime scene, according to the evidence description, there is
5 no location given where State's Exhibit 82 was recovered. In
6 the evidence description it says one white envelope labeled
7 one spent projectile, initialed BT S02 and JM B42.

8 Q. All right. Now, the jury has already heard
9 testimony from both Bill Thornburg and Jack Matthews, who
10 were -- Bill Thornburg was the chief deputy of the sheriff's
11 office, and Jack Matthews was with the Mississippi Highway
12 Patrol. They collected this from a post on the same property.

13 A. Okay.

14 Q. All right. So let me ask you this. If you are --
15 as a firearms examiner, how, how do you -- if, if a projectile
16 obviously is found on the floor, how should that be collected?

17 A. It should be recovered from the floor using methods
18 that would not damage the surface that I would be interested
19 in as a firearms examiner, the bearing surfaces.

20 Q. All right. And that would ordinarily involve --
21 when Miss Schoene picked the firearms evidence up off the
22 floor would she -- how, how would you expect her to handle it?
23 Would she use her bare hands?

24 A. I would expect her in the processing the crime scene
25 to possibly have had gloves on and either used forceps to pick
26 it up or picked it up with those gloves on and placed it in
27 the container.

28 Q. Now, as for these two items that were found
29 extracted, the jury has heard evidence that they were actually

1 projectiles that were discovered to be embedded in a wooden
2 post that had apparently been used for target practice. Is
3 there a particular technique or kinds of techniques that
4 investigators -- that you as a firearms examiner would prefer
5 to have investigators use to collect that evidence? They
6 obviously can't get forceps in there.

7 A. Well, it would depend on the skill level of the
8 person that was recovering the projectiles from the post. If
9 they were comfortable with recovering from the post, they
10 could do it on the scene. If they felt like they were going
11 to damage the evidence to where it wouldn't be usable by the
12 examiner, they could remove a portion of the post and bring it
13 to the laboratory where a trained firearms examiner would
14 remove it. If the examiner was comfortable with removing that
15 projectile while at the scene, they would try to determine the
16 projectile tract or its path through the post and remove it
17 from that area cautiously, not to damage the surface that the
18 examiner would be interested in looking at.

19 Q. Would poking a screwdriver or pocket knife down the
20 hole before you had some notion of exactly where in that hole
21 the projectile was located be a, a proper way to begin making
22 that determination?

23 A. Well, if that is all they had at their means to use,
24 they would be cautiously placing that in the hole. To pry it
25 out with a pocket knife might not be the best approach. You
26 could -- typically you want to use something softer than the
27 projectile to do your probing. But if that is all you had,
28 you could probe gently to determine the path of the projectile
29 into whatever surface it is to know what part of that post or

1 whatever item it was the medium had discharged in how you
2 would go about removing it so not to damage that projectile.

3 Q. And these projectiles are -- are they lead or --

4 A. They are copper jacketed.

5 Q. Copper jacketed. All right. And a knife might very
6 well be of a harder metal than either the copper or the lead
7 of these projectiles.

8 A. Typically speaking, a knife blade is going to be
9 harder than a copper jacketed projectile. For the jury's
10 information, when I perform analysis of projectiles, and I did
11 it in this case, if I know mutilation that is done by the
12 removal, I would note it in my bench notes. And I have no
13 record that there were any mutilation to any of these
14 projectiles.

15 Q. And you were not informed of any by the means by
16 which they were collected or --

17 A. I wasn't there --

18 Q. -- any --

19 A. -- so I don't know how they removed them from the
20 post, no.

21 Q. All right. Now, and then I think the jury has heard
22 testimony that S-80 was actually recovered from inside a
23 mattress, a soft surface.

24 A. That's correct.

25 Q. Possibly with springs in there, as well.

26 A. That's correct.

27 Q. All right. And how would typically you in your
28 ideal world want a collector to retrieve a projectile from
29 inside of a mattress?

1 A. If they can locate or -- if they can determine the
2 tract of the projectile through the mattress, they can
3 determine how far it has gone in there. If they use a dowel
4 rod to probe to see how far it traveled into the mattress they
5 may be able to go into the side of it or the bottom or top of
6 it to retrieve that projectile at that time.

7 Q. And would a die rod --

8 A. A dowel rod is a wooden stick, basically.

9 Q. That would be a wooden stick. And that would be
10 softer. That would not be harder than the projectile. It
11 would be softer.

12 A. No. That is correct. It would be softer.

13 Q. All right. But again, if you probed in with a
14 pocket knife or --

15 MR. EVANS: Your Honor, I object. There is no
16 indication that the mattress was probed in with anything
17 and this is improper.

18 MRS. STEINER: If the Court please, I think in
19 the photograph collection from the mattress the handle of
20 a pocket knife was visible.

21 MR. EVANS: It's a big difference in cutting
22 than it is probing. That is what the testimony was. If
23 she would like to ask about those questions, it would be
24 fine.

25 Q. Would a pocket knife ordinarily, Mr. Byrd, be an
26 appropriate tool to be used in the course of collecting this
27 evidence if you were not sure exactly how far in the
28 projectile had gone?

29 A. If you could -- if you could determine where the

1 entrance is and that was the only means you had necessary to
2 open the outer portion of the mattress itself, that would gain
3 you entrance to the mattress. Yes. That would be possible.
4 That would be feasible, and it wouldn't damage the projectile.

5 Q. Okay. Thank you. Now, I take it at this time Miss
6 Schoene, from the crime scene investigation group at the
7 Mississippi Crime Lab, was experienced in recovering
8 projectiles from solid surfaces, soft surfaces and from even
9 lining. And she was as experienced as that at she was at
10 picking them up off the floor or retrieving them when they are
11 not embedded in some other surface.

12 A. Yes. Anybody that has worked crime scenes for the
13 crime laboratory, they underwent training from the various
14 section as to how to collect properly the evidence that they
15 would be at the scene recovering.

16 Q. And once she was assigned to this case, Miss Schoene
17 could have been called back to the scene by the investigators
18 if they wanted her to actually collect this evidence rather
19 than trying to do it themselves; is that correct?

20 A. That would have been possible. Yes.

21 Q. All right. There is nothing on that to indicate
22 Miss Schoene was in any way involved in collecting any of
23 these three items; is that correct?

24 A. I don't see her initials on any of it.

25 Q. Thank you. Now --

26 A. There are initials on here. Now, I don't know whose
27 they are. It says -- excuse me. That, that goes with
28 something else. It is part of the conclusion. I don't see
29 her initials on any of these items.

1 Q. Your initials would be S.B.

2 A. S.C.B.

3 Q. S.C.B. Generally, the examiner tries to make his or
4 her initials distinct from anybody else they would expect to
5 handle it. But I don't -- but close enough to them that
6 someone looking at it could say who it was.

7 A. You are supposed to make them individual to
8 yourself. So you -- when you see your initials on an item you
9 should be able to recognize it. Yes.

10 Q. Okay. Now, you did perform a comparison among those
11 three projectiles; is that correct?

12 A. Yes.

13 Q. And in that case you were able to determine these
14 three projectiles. You could make a determination that it was
15 consistent with them having been fired from the same weapon;
16 is that correct?

17 A. Yes, it is.

18 Q. All right. Did you also make any attempt to
19 correlate them to the projectiles you had previously examined
20 from the crime scene and determine whether there was any
21 correlation that -- well, any -- you could identify them as
22 having come from the same weapon as the projectiles from the
23 crime scene?

24 A. Yes. The two projectiles that I was speaking of
25 earlier that you had up here that were in the boxes that were
26 in tact that I stated that they had individual characteristics
27 consist with these three projectiles, that was the two
28 projectiles I was talking about that I was able to phase them,
29 in other words, put them in the proper orientation for me to

1 do a conclusive analysis to reach my conclusion.

2 Q. They were consistent with it, but you could not
3 either definitively rule -- you could not -- you do not offer
4 the opinion that they came from the same weapon here, do you?

5 A. I can't offer that opinion, no.

6 Q. You can say they could have come from that weapon,
7 but you can't say definitively that they did.

8 A. That's correct.

9 Q. And there are thousands of .380's out there that
10 have that similar land and groove class characteristic; is
11 that correct?

12 A. Yes.

13 Q. Now, did you ever receive or examine a firearm that
14 was identified to you as the firearm -- strike that. Did you
15 ever examine or receive a firearm that you could match up with
16 either the cartridges or the projectiles to do a comparison
17 firing that you examined here?

18 A. No.

19 Q. Did you ever inspect a firearm that these could have
20 been from but might also not have been from?

21 A. Well, I actually examined a firearm that was
22 submitted to the laboratory that I was able to do a comparison
23 with, and I also examined some test projectiles and cartridge
24 cases that were submitted to me by another firearms examiner
25 from another state. So I did examine test projectiles and
26 cartridge cases from two firearms in this case.

27 Q. And with respect to one of them you could neither
28 say they did come -- any of those did come from that, nor rule
29 it out as having fired those.

1 A. One of the firearms I was able to say that it had
2 some similarities in the class characteristics that I
3 described earlier. The other firearm that I was submitted
4 test projectiles and cartridge cases, I was able to say that
5 they were not fired in that gun.

6 Q. Okay. Did you -- any of these labeled as being
7 associated with Curtis Flowers?

8 A. Could you repeat that question?

9 Q. Was there anything to your recollection on the --
10 what was submitted to you with either of these firearms --
11 well, with the one that you could neither rule in or rule out,
12 anything to indicate that that firearm had anything to do with
13 Curtis Flowers?

14 A. That it was his firearm?

15 Q. Yeah.

16 A. No.

17 Q. All right. As a firearms examiner, you can talk to
18 the ladies and gentlemen, can you not, about how these
19 projectiles relate to each other; is that correct? Whether
20 they are consistent or whether they are definitive?

21 A. Yes. I can relate my results to the jury.

22 Q. Yeah. Right. And but you are saying here that
23 these three items that you've examined and talked to the jury
24 about as being consistent with each other, you cannot tell as
25 being actually from the same -- I believe you said you can
26 identify those three as having been from the same gun; is that
27 correct?

28 A. These three projectiles in State's Exhibit 82, 80
29 and 81 were all fired in the same gun.

1 Q. All right. But you could not say that they were
2 fired in the same gun as any of the projectiles you examined
3 from the crime scene; is that correct?

4 A. No, I was not able to positively link any other
5 items or the projectiles to these three projectiles
6 positively, no.

7 Q. Okay. And now with the cartridge casings, can you
8 correlate whether a particular -- were you able in this case
9 to make any findings with respect to whether any of these
10 projectiles were fired -- came from any of the cartridge
11 casings that were fired?

12 A. To my knowledge there, there is not a technique that
13 currently exists that allows an examiner to place a given
14 projectile back into a fired cartridge case.

15 Q. All right.

16 A. So to answer your question, no.

17 Q. All right. So you're -- now, you've made these
18 scientific findings, but am I correct in saying that nothing
19 in these findings puts us any closer to identifying who was
20 holding whatever firearm was discharged, that discharged these
21 projectiles; is that correct?

22 A. No. I can offer no testimony to that effect.

23 Q. And you can't offer any testimony saying who was
24 holding the firearm or firearms from which the cartridge
25 casings were ejected.

26 A. No.

27 Q. Is that correct? And you cannot even say that all
28 of the cartridge casings recovered at the scene were from the
29 same firearm.

1 A. No. Three of them were. The other two I wasn't
2 able to link to those three or to each other.

3 MRS. STEINER: One moment, Your Honor.

4 Q. Mr. Byrd, you, I think -- well, I'm going to hand
5 you what's been marked as D-10 in evidence. It's a
6 Mississippi Crime Lab evidence submission form. And can you
7 tell the jury what that is?

8 A. Okay. It's two pages from the crime scene -- excuse
9 me, not the crime scene, from the crime laboratory. It's a
10 evidence submission form that entails Exhibits 24 through 30
11 on the first page, and that crime laboratory Case Number is
12 J963536-01C. On the second page is a continuation of that.
13 It start at Exhibit 31 and goes through Exhibit 37.

14 Q. And I believe Miss Schoene has already testified to
15 the jury that that represents the projectiles and other
16 evidence collected at the scene that she submitted that day.
17 Is that what it appears to be?

18 A. It covers the cartridge cases that we have spoken of
19 already in Exhibits 25 through 29 and the two projectiles that
20 we spoke of earlier.

21 Q. All right.

22 A. Excuse me. The two projectiles and the fragments,
23 which were crime laboratory Exhibits 31, 32 and 33.

24 Q. Now, that is a document prepared so that the crime
25 lab knows what it has and how it's identified; is that
26 correct?

27 A. Yes. Who collected it.

28 Q. And the numbers there are the numbers that are
29 assigned when it arrives at the crime lab; is that correct?

1 A. That's correct.

2 Q. And these are records being kept for purposes of the
3 crime lab use. This is not something that the investigating
4 officers prepare or use to document their work.

5 A. No.

6 Q. Now, you would expect, I assume, that an
7 investigating officer would have his or her own notes --

8 MR. EVANS: I object to him assuming what an --

9 MRS. STEINER: Okay.

10 MR. EVANS: -- officer is going to do. He can
11 testify about what his expertise is in.

12 Q. Now, to your knowledge, when a crime scene person,
13 like Miss Schoene -- well, there is evidence before this jury
14 that Miss Schoene kept nine or ten pages of her own personal
15 notes. Is that, as you understand it, usual and customary for
16 a crime scene investigator to do?

17 A. Yes. Because they can keep up with items that they
18 are collecting at the crime scene so when they get back to the
19 laboratory to actually prepare this they have got their notes
20 in order. And their exhibit numbers will follow in the order
21 in which they collected it.

22 Q. And that would apply to anybody who had done any
23 evidence collection. He or she might want to have his or her
24 own notes to organize what they were sending to the crime lab.

25 A. Well, that would depend on the training of the
26 actual analyst that did the crime scene. Yes, I am sure they
27 would want to keep up with an accurate reflection of what they
28 did at the crime scene and what they collected at the crime
29 scene.

1 Q. And taking a picture of what you were doing step by
2 step in the collection would also be a good way of documenting
3 how that was done as well. But you wouldn't have done that at
4 the crime lab.

5 A. I wouldn't have done it. But typically speaking,
6 when someone examines a crime scene they take overall
7 photographs and they take photographs of items before they
8 recover them or retrieve them from that scene.

9 Q. But those, those notes wouldn't come to the
10 Mississippi State Crime Lab.

11 A. Well, if the analyst that worked the crime scene was
12 an employee of the crime laboratory, they would have their
13 notes, yes.

14 Q. All right.

15 A. Would I have them? No, they are not a part of my
16 work packet.

17 Q. But if it was collected by the sheriff of a county
18 or even the Mississippi Bureau of Investigation, would those
19 notes reside at the crime scene?

20 A. No. Because they are not something that is
21 generated by the crime laboratory.

22 Q. And those documents that -- I'm sorry, Defendant 10
23 is generated by the crime laboratory; is that correct?

24 A. This paperwork? Yes.

25 Q. Thank you.

26 MRS. STEINER: I have nothing further, Your
27 Honor.

28 CROSS-EXAMINATION BY MR. HILL:

29 Q. Good afternoon Mr. Byrd.

1 A. Good afternoon.

2 Q. After you performed your analysis on the firearms
3 evidence from the four murders at Tardy Furniture company, was
4 there a court order entered allowing another analyst to come
5 to Mississippi Crime Lab and do additional examinations of
6 this firearms evidence?

7 A. Yes.

8 Q. Do you know that man's name?

9 A. Yes, I do.

10 Q. Can you tell the ladies and gentlemen of the jury
11 who it was, please.

12 A. David Balash.

13 Q. Do you recall being, being there when he came in to
14 look at the evidence?

15 A. Yes, I was.

16 Q. Okay. Have you seen his report?

17 A. To my recollection, no.

18 Q. Okay. So then would you be prepared to criticize or
19 disagree with anything that he found in his report?

20 A. I know Mr. Balash personally. I wouldn't criticize
21 his work. He is a competent firearms examiner.

22 Q. Okay. Now, you were asked about retrieval methods.
23 And I gathered that counsel for the defense was trying to
24 suggest that the firearm projectiles in State's Exhibit 81 and
25 State's Exhibit 82 might not have been correctly collected. I
26 would ask you, sir, based on your expertise, when you examined
27 State's Exhibit 81 and 82, and these by the way are the --
28 what we have been calling the, what I call the post bullets.
29 That is, the bullets removed from the cedar post at Doyle

1 Simpson's mother's house. Did you notice any damage on these
2 projectiles that you recorded or noted or saw by the person
3 retrieving the evidence?

4 A. As I testified a few moments ago, I have no notes
5 that there were any damage to these projectiles. And if there
6 were any damage, it didn't inhibit my analysis.

7 Q. Okay. So if there was no damage done to the
8 projectiles during the collection process, does it matter then
9 how they were collected?

10 A. No.

11 Q. Now, you were also asked about State's Exhibit
12 Number 80. This is what we call the mattress bullet. Are you
13 aware that the mattress bullet was found at the crime scene,
14 the scene of the four murdered people, just a few inches to a
15 few feet away from Miss Bertha Tardy. Were you aware of that?

16 A. According to the description on the box, I knew that
17 it was from the scene, and it was from the mattress.

18 Q. And you were asked if you compared the projectile in
19 State's Exhibit 80 with the projectiles -- which, by the way,
20 these are visible down here in the little cellophane taped
21 portion; right?

22 A. Yes, sir.

23 Q. You compared those --

24 A. Yes, I did.

25 Q. -- three bullets with each other, one with the other
26 and all three against each other.

27 A. Yes, sir.

28 Q. And what was your opinion then, Mr. Byrd, about
29 those bullets?

1 A. My opinion then and today is the same. They were
2 all three fired in the same weapon.

3 Q. Okay. As far as you could tell, sir, all of the
4 cartridge cases that were on the floor were of what caliber?

5 A. They were all .380 auto caliber.

6 Q. And you said you were able to positively identify
7 three of them as having been fired in the same gun.

8 A. That's correct.

9 Q. And if I was paying attention correctly, when you
10 were testifying on cross, the three that you identified were
11 different, different State's Exhibits -- I believe the numbers
12 that you got were your crime scene Numbers 25, 27 and 28 and
13 our court Exhibit Numbers 88, 90 and 91, those were all the
14 C.C.I. or Omark Industries aluminum cartridge cases; is that
15 right?

16 A. That's correct.

17 Q. Okay. And you said that those three were fired in
18 the same gun and you were sure that.

19 A. That's correct.

20 Q. Did you see any similarities in class
21 characteristics with the other two cartridge cases?

22 A. Yes. But I was not able to say positively they were
23 fired in the same gun that fired those three.

24 Q. Would it be -- would they be consistent with having
25 been fired in the same gun based on what you saw?

26 A. They have the same class characteristics, yes.

27 Q. Okay. And those other two cases, I believe, if I
28 recall, they -- one was Remington Peters and one was
29 Winchester.

1 A. That's correct.

2 Q. And those would be brass casings; is that right?

3 A. That's correct.

4 Q. Now you -- the firearms evidence that you examined,
5 we've talked about the mattress bullet and the post bullets.
6 But you also identified -- or I'm sorry. That's the wrong
7 word, you also examined the rest of the firearms evidence.
8 You looked at a couple of bullets that they got up off the
9 floor, didn't you?

10 A. Yes.

11 Q. What caliber were those projectiles that were
12 removed from the floor of the crime scene next to the bodies
13 of the decedents there?

14 A. The two intact ones were .380 auto caliber.

15 Q. Were you able to tell anything about the bullet
16 fragments as to their caliber or class characteristics or
17 anything about the type of projectile they were insofar as
18 whether they were total metal jacket or full metal jacket or
19 anything like that?

20 A. Well, several of the items that were submitted were
21 fragments. And to determine caliber you have to have an
22 intact base, and I was not able to do that with all the
23 fragments that were submitted. They were copper jacket
24 fragments that had portions of lands and grooves, and that is
25 commonly referred to as the rifling, that I am analyzing or
26 examining under the microscope. And they had similar land and
27 groove widths.

28 The two projectiles were the same caliber number of lands
29 and grooves and the class characteristics were consistent, as

1 well as the individual characteristics that I described
2 earlier between those two and these three projectiles here.
3 However, the copper jacket fragments in the remaining
4 submissions, I wasn't able to determine the caliber because
5 the base wasn't there.

6 Q. Okay. Let me ask you this question. With the
7 portions of the fragments that were available to you for
8 examination, could you tell anything about the class
9 characteristics? In other words, were the lands and grooves
10 -- could you tell if they -- if what was there was consistent
11 with a projectile that was fired in the weapon that had six
12 lands and grooves that were right twist?

13 A. Yeah. I was able to do that. But to say they bear
14 the same class characteristics, I would have had enough -- I
15 would either -- there is two ways I could have approached it.
16 If the fragment had sufficient individual characteristics, I
17 would have been able to say it was fired in the same gun that
18 fired these three, which would obviously tell you it's a .380
19 auto caliber. Or if I don't have enough of the whole
20 projectile left, all I can tell you is that the land and
21 groove widths are inconsistent with, with these three. Which
22 I was able to do. And that's why my report said it had
23 similar characteristics to these three projectiles.

24 Q. Okay. Are you -- you are saying then that the lands
25 and grooves, insofar as what you saw, was consistent with the
26 ones that you were able to positively identify.

27 A. Yes. And, and I have a possibility of two results.
28 I'm able to match it to these three and say it's the same
29 caliber. Or I'm able to say it's similar class

1 characteristics, because I don't have a entire complete base
2 to allow me to say this is a .380 auto caliber.

3 Q. Mr. Byrd, did you see anything in your examination
4 of the exhibits in this case here -- and let me go down the
5 list of them. Let's see. Maybe I need -- have you got a list
6 of your evidence that you looked at?

7 A. Yes, sir.

8 Q. Submission 67, 66, 61, 8, 23, 31, 32, 33, 25, 26,
9 27, 28, 29 and 30. Those exhibits -- those are the exhibits
10 that were two post bullets. And the rest that came from the
11 crime scene itself, did you see anything there that would lead
12 you to believe that all of these things were not fired in the
13 same weapon? Did you see anything that stood out as saying to
14 you this wasn't fired in the gun that fired the rest of the
15 them?

16 A. If I would have had class or individual
17 characteristics -- excuse me, if I would have had class
18 characteristics that had been different from any of these
19 items that were submitted from the crime scene or from the
20 post, which was basically my known exemplar in this case, that
21 were different, that would allow me to say that they weren't
22 from the same weapon or there were more than one weapon
23 involved, it would have been in my report.

24 Q. In other words, if you could have excluded it, you
25 would have said so.

26 A. That's correct.

27 Q. Now, is it unusual for officers to screen weapons?
28 That is, for instance, in this case you did examine firearm
29 that came into the lab to see if that could be matched to

1 these crime scene firearms evidence; is that right?

2 A. Yes.

3 Q. And you did not identify that as the weapon, if I
4 understood what you told counsel for the --

5 A. No, I did not.

6 Q. -- defense. So but there is nothing wrong or
7 improper with officers submitting weapons they come across
8 just to see if they match.

9 A. That would be proper procedure for them to submit
10 it.

11 Q. Right. And finally, in the two post bullets, those
12 would be your Crime Lab Exhibit Number 61 and 66, they were
13 submitted on documentation, were they not?

14 A. Yes, they were.

15 Q. Crime lab submission forms.

16 A. Yes.

17 Q. Just like Miss Schoene's were.

18 A. That's correct.

19 MR. HILL: That's all we have, Your Honor.

20 REDIRECT EXAMINATION BY MRS. STEINER:

21 Q. Mr. Byrd, about how many .380 pistols are there?
22 How many thousands of .380 pistols out there exist with the
23 same width, with land and groove widths consistent with those
24 you observed in the projectiles that you could not identify
25 anymore closely than that?

26 A. I can't give you an exact number. But there is many
27 thousands out there that fall in the category of .380 auto
28 caliber, six lands and grooves, right twist.

29 Q. All right. And how many millions of rounds of

1 Winchester and Remington R.P. ammunition are there out there
2 that are consistent with .380 caliber --

3 A. I could --

4 Q. -- fired --

5 A. I could give no testimony as to how many rounds of
6 ammunition that these two companies produce. It is many,
7 many.

8 Q. Okay. But they, they -- to have the same class
9 characteristics as a cartridge casing is simply to say it's
10 one of however many these companies have been producing over
11 the years; is that correct?

12 A. Unless there is something that identifies them to a
13 specific weapon, that would be correct.

14 Q. And you -- with respect to two of the cartridge
15 casings you found that were submitted to you from the scene,
16 you could not make that association.

17 A. No.

18 Q. Now, I believe you said that you respect Mr. Balash
19 as a firearms examiner; is that correct?

20 A. Yes.

21 Q. And as far as you know, he respects you as another
22 professional in the same profession.

23 A. Yes.

24 Q. You did not read his report. Were you aware that
25 his conclusions in some respects differed from yours?

26 A. I was aware that he identified a projectile -- at
27 least three projectiles that I was not willing to do.

28 Q. All right. And you respect that conclusion; is that
29 correct?

1 A. That's correct.

2 Q. But you even today having heard it, having -- you
3 still stand by your opinion that such correlation is not shown
4 by the evidence in front of us.

5 A. The conservative nature of my analysis did, did not
6 allow me to match that projectile to these three projectiles.
7 Is Mr. Balash right? That's up for you, as a jury, to decide.
8 Am I wrong? No. I just didn't come to the same conclusion,
9 conclusion that he did. I was inconclusive in that
10 projectile, where he actually identified it.

11 Q. All right. And you stand by that opinion today, 13
12 years later, just as he stands by his; is that correct?

13 A. I'll stand by my opinion until I die.

14 Q. All right. And that opinion is that then and today
15 you cannot say that these three -- that, that any of the
16 projectiles or projectile fragments found by Miss Schoene at
17 the scene were fired from the same weapon as those three
18 projectiles.

19 A. I was not able to positively identify any of the
20 recovered items that were recovered from the autopsy and Miss
21 Schoene. That's correct.

22 Q. And as you told the jury before, you cannot give
23 them any information about whose hand pulled the trigger that
24 fired those projectiles or ejected those cartridges; is that
25 correct?

26 A. No, I cannot.

27 Q. And you're a scientist. It -- excuse me. It's
28 not -- it may not be important to you -- to you to do your
29 science who pulled that trigger; is that correct?

1 A. It doesn't affect my analysis whatsoever who pulled
2 the trigger. No, it doesn't.

3 Q. And from your point of view, as long as you have not
4 detected defects resulting from the collection process, it
5 doesn't matter to you how those projectiles were collected; is
6 that correct?

7 A. As long as --

8 Q. I think you told the jury that on redirect.

9 A. As long as they don't damage the bearing surface,
10 which is what I would be interested in and the chain of
11 custody is in tact when it gets to the laboratory, the
12 collection method really doesn't concern me.

13 Q. All right. But, of course, that could be a matter
14 of concern to the jury --

15 MR. EVANS: Your Honor, I object. That is not
16 proper.

17 Q. -- or the defendant or other people in this
18 courtroom.

19 THE COURT: He doesn't know what is important
20 to them, so I will sustain the objection.

21 MRS. STEINER: Thank you, Your Honor. I have no
22 nothing further. This witness is finally excused as far
23 as we are concerned.

24 THE COURT: Mr. Byrd, you may step down. You
25 are excused as a witness.

26 We will take a 10-minute recess at this time.

27 (A RECESS WAS TAKEN.)

28 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
29 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS RESUMED AS

1 FOLLOWS:)

2 THE COURT: You can bring the jury in now.

3 (THE JURY RETURNED TO THE COURTROOM.)

4 Court will come back to order.

5 Who would be the next witness for the defense?

6 MR. CARTER: James Taylor Williams, Your Honor.

7 (THE WITNESS ENTERED THE COURTROOM.)

8 THE COURT: Come around, face the bench raise
9 your right hand and take the oath.

10 (THE WITNESS APPROACHED THE BENCH.)

11 Do you solemnly swear or affirm the testimony you
12 give in this case will be the truth, the whole truth and
13 nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE COURT: Please come around.

16 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

17 THE COURT: For the purposes of the record,
18 state your name, please.

19 THE WITNESS: James Taylor Williams.

20 THE COURT: You may proceed.

21 JAMES TAYLOR WILLIAMS, Called on behalf of the Defendant,
22 having been duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION BY MR. CARTER:

24 Q. How are you doing, Mr. Williams? I couldn't put a
25 face to you until I saw you, but now I remember talking to
26 you.

27 How are you doing this morning, this evening?

28 A. Fine.

29 Q. I wanted to talk to you briefly - well, it may not

1 be all that brief - about a statement that you gave awhile
2 back. You remember the day that the killing took place at
3 Tardy Furniture store.

4 A. Yes, sir, I do.

5 Q. And you may not remember the date, but I think it
6 was July 16, 1996. Is that pretty much the time --

7 A. Yes, sir.

8 Q. -- that you have in your mind? Now, I may jump
9 around a little bit but what exactly were the duties you were
10 assigned on that particular, particular day? And who made the
11 assignments to you?

12 A. My assignment that day was I had a case here in
13 justice court that morning.

14 Q. Okay. And you heard about a, a shooting at --

15 A. Yes, sir. I had just left the courtroom here and
16 had entered the justice court office when Deputy Bill
17 Thornburg came in and advised us of an incident there at
18 Tardy's.

19 Q. Okay. And what did you do after hearing about that?

20 A. I proceeded directly from the courthouse to Tardy
21 Furniture store.

22 Q. Okay. And what did you hear had happened before you
23 got to Tardy's?

24 A. I believe Deputy Thornburg had made the statement
25 that they had some type of shooting there at the --

26 Q. And you got down to Tardy's around 10:46.

27 A. Roughly. Yes, sir.

28 Q. Okay. And what did you do once you got there?

29 A. I initially pulled into the alley there between

1 Tardy's and Weed Brothers garage and worked my way toward the
2 front of the store there on Front Street.

3 Q. And once you got to Front, who did you meet?

4 A. I believe, best of my recollection, was Chief Johnny
5 Hargrove.

6 Q. Okay. And how long did you stay there with Chief
7 Johnny Hargrove?

8 A. It was several minutes there.

9 Q. Okay. Did you ever go inside the building?

10 A. At some point in time I did. Yes, sir.

11 Q. Did you go then or did you go later?

12 A. That -- I believe -- I believe I did go in
13 momentarily on the first, initial arrival there.

14 Q. Okay. Tell the ladies and gentlemen of the jury how
15 far you went inside the store and what did you see, if
16 anything?

17 A. At the time that I entered the store, it was the
18 three bodies that were there. I saw Miss Tardy, Miss Rigby
19 and Mr. Golden.

20 Q. Did you see anything else unusual in the store at
21 that time that would --

22 A. Yes, sir. There was a considerable amount of blood
23 in the area where their bodies were.

24 Q. Okay. Did you see any other things that could
25 possibly be considered evidence in this case?

26 A. Not to my recollection, I don't.

27 Q. Okay. Now, did you -- when you were on the back of
28 the store, did you ever have the occasion to look at the doors
29 or, or did you look at the doors at the store at any point, in

1 any area?

2 A. When I first arrived I did check the outside doors
3 to the building as I worked my way toward the front of the
4 building there.

5 Q. Okay. What, if anything, did you find with respect
6 to the doors?

7 A. They were secure.

8 Q. All of them were secure. And did you happen to
9 leave that area at some point shortly?

10 A. Yes, sir, I did.

11 Q. How long would you say you stayed at the furniture
12 store on your first occasion?

13 A. Roughly, maybe 15 minutes.

14 Q. Okay. In that 15 minutes, who else did you see
15 besides Chief Johnny Hargrove, if anybody?

16 A. Deputy Thornburg was there. I think it was maybe
17 another police officer or two there but I'm not sure.

18 Q. Okay. Now, Deputy Thornburg and this other officer
19 you saw, were they inside the building or outside?

20 A. I don't really recall at that point in time whether
21 we had entered the building at that time or not there.

22 Q. Okay. Now, when you went into the store the first
23 time, on the first occasion that you got to Tardy's, did you
24 go in by yourself or was someone with you?

25 A. I was with Chief Hargrove at the time we went in.

26 Q. Okay. And at that time that you went in, were you
27 told to -- what were you told? What did Chief Hargrove tell
28 you with respect to what your conduct -- your behavior should
29 be like, if anything?

1 A. Well, with my training and all, after he had advised
2 me of what had actually happened, I knew that it was a crime
3 scene, and it was going to have to be investigated. So we
4 were very careful as to what our movements were in the store.

5 Q. Okay. Now, did you see any blood that was separate
6 from the other three areas of blood?

7 A. Not to my knowledge, I did not.

8 Q. Did you see any footprints, bloody footprints? Do
9 you recall ever seeing that?

10 A. No, sir, I did not.

11 Q. Okay. Now, you left Tardy's and went to where?

12 A. I left Tardy's and went down to B and F Building
13 Supply.

14 Q. Okay. And why did you go there?

15 A. My wife works there as bookkeeper. And with
16 severity of the crime, I was wanting to let them to know to be
17 cautious of a person or persons coming into that place of
18 business there.

19 Q. Okay. And what happened while you were at P and F
20 and making sure that they knew that something had happened and
21 to be careful, that kind of stuff? Did anybody come there?

22 A. Such as?

23 Q. Did you see Porky Collins there?

24 A. Yes, sir, I did.

25 Q. And what did he do or say?

26 A. Mr. Collins inquired to me what had taken place
27 there. And at that point in time I told him that we had had a
28 shooting. I didn't know who was involved or anything, because
29 at that point I didn't know whether the next of kin had been

1 notified.

2 And during our conversation he related to me that he had
3 seen Mrs. Rigby earlier at the post office, that he left just
4 a short distance -- a short time after she left. That he was
5 going down to the cleaners to either pick up some laundry and
6 that Miss Rigby was entering the store at that time that he
7 made his trip down Front Street there in front of Tardy's.

8 Q. And what did you and Mr. Collins do after that?

9 A. We had a short conversation as to what he may have
10 seen in the immediate area. He said that he noticed two
11 individuals in the center parking area that appeared to be
12 having a heated argument, that appeared that they were fixing
13 to go to blows. And at that time I asked him if he would
14 follow me back to Tardy's to where he could give a statement
15 to the investigators.

16 Q. Okay. Now, did he give you a statement, such as
17 what the people looked like or that kind of stuff? Or you
18 just took him to the investigators?

19 A. His words were that he didn't know who the
20 individuals were, but he felt like that if he saw them again
21 that he could recognize them.

22 Q. Okay. And he didn't give you any description of
23 what they looked like?

24 A. Other than they were black.

25 Q. Two black males.

26 A. Yes, sir.

27 Q. And y'all went to Tardy's. He followed you in his
28 car.

29 A. Yes, sir.

1 Q. And you in your patrol car.

2 A. Yes, sir.

3 Q. And you were a highway patrolman at the time, I
4 believe.

5 A. Yes, sir.

6 Q. Now, so when you went back to Tardy's, who did you
7 turn Mr. Collins over to?

8 A. I believe it was Mr. Jack Matthews, which was
9 investigator with the patrol. And if I'm not mistaken, I
10 believe Mr. John Johnson was there at that particular time.

11 Q. And both were at Tardy's. Where were they located
12 at Tardy's? Were they inside the store or outside the store?

13 A. They were inside the store just, just as you walk
14 inside and down to your left.

15 Q. Down to your left. And about how far was that from
16 the -- where you saw the blood and bodies? Were the bodies
17 still there when you got back?

18 A. Yes, sir.

19 Q. How far were they away from the blood and the,
20 the --

21 A. The bodies were located on back toward the center of
22 the building. It was some distance.

23 Q. Now, did you see any yellow tape back by the bodies
24 separating that from the location where Mr. Johnson and Mr.
25 Matthews were located?

26 A. I remember it was some yellow tape on the outside.
27 At that -- at that particular point in time when I entered
28 with Mr. Collins, I went directly to the area where Mr.
29 Johnson and, and the other investigators were.

1 Q. Mr. Hargrove was nowhere around at that time. Is
2 that fair to say?

3 A. I'm sure he was. I don't recall seeing him --

4 Q. Don't recall.

5 A. -- in that immediate area there.

6 Q. Which one, out of Mr. Johnson and Mr. Matthews, did
7 you consider to be the lead investigator or to be in charge?

8 A. I have no idea as to who...

9 MR. CARTER: Don't shake your head.

10 Q. You have no idea.

11 A. No, sir.

12 Q. Thank you. But as far as your memory, you took
13 after Mr. Matthews.

14 A. Well, in most cases your, your state investigator
15 takes, takes predence (sic) to that.

16 Q. I want to make sure I understand you. In most cases
17 where -- you said state investigator for the Mississippi
18 Highway Patrol.

19 A. Yes.

20 Q. You all.

21 A. Yes, sir.

22 Q. Now, how at that time -- strike that. How long did
23 you work for the Mississippi Highway Patrol, Mr. Williams?

24 A. Sir.

25 Q. How long did you work for the Mississippi Highway
26 Patrol in all?

27 A. Twenty-eight and three-quarter years with actual
28 time with patrol.

29 Q. And by the time the incident happened at Tardy's you

1 had been employed at highway patrol half that time, would you
2 say? How long?

3 A. Well, this was this '96, and I retired last year.
4 So probably about 15, roughly 15 years.

5 Q. And after you took Mr. Collins back there and left
6 him, what did you do after that?

7 A. During the time that we had had the discussion down
8 at P and F, Mr. Collins had related to me that he had been at
9 the post office buying a money order. And I went to the post
10 office to retrieve the receipt where he had purchased that
11 money order to give a timeline as to when he was actually
12 there.

13 Q. Okay. And after the post office, what did you do?

14 A. I brought the receipt back down to Mr. Matthews.

15 Q. Okay. And you gave it to Mr. Matthews; is that
16 correct?

17 A. By that time -- it was within a short period of
18 time. I don't recall whether I gave it to Mr. Matthews or Mr.
19 Miller.

20 Q. Okay.

21 A. I believe Mr. Miller had already gotten there about
22 that time.

23 Q. Okay. Okay. How long did you stay there after,
24 after passing on the receipt? Do you have any idea?

25 A. Just a short period of time because we were more or
26 less trying to just kind of ride around the areas and all
27 there to see if we could find something that might be out
28 of -- out of place.

29 Q. Okay.

1 A. To give us a lead on something.

2 Q. Okay. Now, did you -- did you see anything out of
3 place?

4 A. No, sir. I drove back down to P and F somewhere
5 right around 11:00, I think.

6 Q. Okay. Let me ask you this. Did you see anybody
7 else beside yourself that was riding around the neighborhood
8 trying to see if you could run up on something out of place?
9 Was anybody else doing that? If so, whom?

10 A. I saw some other patrol vehicles, law enforcement
11 vehicles. As to who were in them, I don't recall who it was.

12 Q. Okay. And about what time was this would you say?

13 A. Like I said, this would have been sometime shortly
14 around 11:00. Maybe a few minutes after 11:00.

15 Q. Now, these people that you saw that was riding
16 around just like you, had you seen them earlier at Tardy's?
17 Had you seen any of those people meet with Mr. Johnson or Mr.
18 Matthews and get assignments as to what they should be doing?

19 A. I did not.

20 Q. Okay. You didn't. Okay. So you are riding around,
21 and you eventually wind up going back where?

22 A. To P and F.

23 Q. Okay. And did something happen at P and F this
24 time?

25 A. I had a second meeting with Mr. Collins, and he
26 related to me that he had just came from his brother-in-law's
27 place of business, which was Fuzzy's Fried Chicken. That is
28 next door to -- or was next door to P and F. And that
29 according to his brother-in-law, that there was an individual

1 in his place of business short time earlier picking up some
2 lunches that had made the statement that his vehicle had been
3 broken into and a gun had been removed from his vehicle.

4 Q. And about time -- about what time was this?

5 A. Like I said, this was somewhere right around 11:00,
6 give or take a few minutes.

7 Q. Okay. How much time had elapsed between your taking
8 Mr. Collins to see Mr. Johnson and Mr. Matthews and your
9 seeing Mr. Collins again at P & F? You don't have to -- just
10 the best you can.

11 A. Speculating, I'd say probably 35, 45 minutes.

12 Q. Okay. You said you left your brother-in-law's place
13 of business, which is Fuzzy's; is that correct?

14 A. Sir.

15 Q. Mr. Collins said he had left his brother-in-law's
16 place of business and that place of business is called
17 Fuzzy's, I believe, isn't it?

18 A. Yes, sir. Fuzzy's Fried Chicken.

19 Q. Fuzzy's Fried Chicken. And, and he said there was
20 an individual that had been in there and said he had a gun
21 stolen. Is that what you said?

22 A. According to Mr. Collins, his brother-in-law had
23 related to him that a customer had came in to purchase some
24 lunches and that made the remark that his vehicle had been
25 broken into and a vehicle -- I mean, excuse me, a weapon or
26 gun had been taken from the vehicle from Angelica parking lot.

27 Q. Okay. Now, were you able to determine what time --
28 what did you do after that, after hearing that?

29 A. Well, once he told me that, I went over to talk to

1 Mr. Jones. And Mr. Jones said he did not know what the
2 individual's name was. But that he frequently came in to pick
3 up lunches. And that he thought that he did work there at
4 Angelica and picked up lunches for some of the workers because
5 they didn't have but 30-minute lunch break. And he asked one
6 of his workers if she knew who he was. And that's when the
7 name Doyle Simpson was mentioned.

8 Q. Okay. Now, did Fuzzy tell you or did you think to
9 ask what time Mr. Simpson was in there that day?

10 A. Like I said, this was all within 11:00 time span, I
11 believe. The -- he was in probably a few minutes earlier
12 than, than I was in there.

13 Q. But you didn't -- on that occasion you didn't
14 actually tie Fuzzy down to a particular time though, did you?

15 A. No, sir.

16 Q. Okay. What did you -- what did you then do?

17 A. Once I got a name I came back and called the police
18 department and the sheriff's department on the radio and
19 inquired from them if anyone had called reporting a vehicle
20 being broken into and a gun stolen from that area of Angelica.

21 Q. And what were you told?

22 A. I was told that they had not.

23 Q. And after that, what did you do?

24 A. I requested from the sheriff's department to send a
25 deputy to meet me there to where we could talk to the
26 individual.

27 Q. Okay. And where did y'all go?

28 A. We met there at Angelica, went to the office, talked
29 to the, the manager there and was told that Mr. Simpson was

1 not there. But he should be arriving shortly, because he had
2 gone to pick up lunches for the other workers there.

3 Q. Okay. Now, I believe I saw in your report that you
4 and Mr. Thornburg got to Angelica about 11:14. Is that kind
5 of the time that you recall or --

6 A. As to what time?

7 Q. 11:14.

8 A. I would say -- safely say that that is probably
9 about the time that we were there.

10 Q. Okay. You got -- okay. They told you that Mr.
11 Simpson was going to lunch. And I apologize, if I wasn't
12 listening well. I may have been looking at my next question.
13 Could you just tell us, upon you and Mr. Thornburg getting
14 there, did you do anything outside before going into the
15 building?

16 A. No, sir. We went in and we talked to the -- to the
17 lady that was in charge. And that's when she told us that Mr.
18 Simpson was not there --

19 Q. Okay.

20 A. -- but he should be returning shortly.

21 Q. Did they tell you what time he left?

22 A. They may have mentioned it. I'm -- I don't recall.

23 Q. You don't have any -- one moment. If the report
24 shows that they told you he left at 10:30, you wouldn't
25 quarrel with that, would you?

26 A. No, sir.

27 Q. Okay. And while you were inside having a, a
28 conversation did something happen unusual? Tell us what
29 happened, what you saw while you and Mr. Thornburg left out

1 the store.

2 A. There was an individual that came by the office
3 doors virtually running. And Mr. Thornburg and I caught up
4 with the individual, and it happened to be Mr. Doyle Simpson's
5 brother, Emmitt.

6 Q. Now, while you were inside did somebody say or tell
7 you who the gentleman was that was running?

8 A. Not to my knowledge.

9 Q. Okay. So you went and talked to Emmitt. And what
10 happened as a result of that?

11 A. From there Mr. Doyle arrived and Chief Thornburg and
12 Mr. Bob Tatum, which was chief of police at Duck Hill, was
13 down there with us. And they had went back to the office. I
14 was still talking to Mr. Emmitt Simpson. Excuse me.

15 Q. Let me stop you for a minute you. Again, I may not
16 have been listening. You said Mr. Bob Tatum, Duck Hill Police
17 Chief and Mr. Thornburg went --

18 A. They went back to the office there at Angelica.

19 Q. Okay.

20 A. And while I was still talking to Mr. Emmitt Simpson,
21 Mr. Bob Tatum called me on the radio and told me to come on
22 back to the office there. That the gentleman that we was
23 there to see, which would have been Mr. Doyle Simpson, had
24 arrived. And we went back and Mr. Doyle Simpson and Chief
25 Thornburg was in the office there.

26 Q. Okay. And Mr. -- and what did Mr. Simpson report
27 with respect to the gun?

28 A. What did Mr. Simpson report as what?

29 Q. Doyle Simpson. With respect to his gun that he had

1 in his car.

2 A. That it had been removed from the glove compartment
3 of his vehicle.

4 Q. And did Mr. Simpson state where he had stayed the
5 night before?

6 A. According to Mr. Simpson he had stayed at his
7 mother's house there on Poorhouse Road. That normally he
8 would have kept the vehicle -- excuse me, would have kept the
9 weapon at his regular residence, but he didn't spend the night
10 there at his regular residence.

11 Q. He spent the night at his mom's house.

12 A. Right.

13 Q. And put the gun in his car that night or that
14 morning or some time.

15 A. Well, he had it in the glove compartment there.

16 Q. Yes, sir. And after talking to Emmitt, who you saw
17 running, and talking to Doyle, who you saw come up later, what
18 did y'all do after that?

19 A. We talked to Mr. Doyle a short time there at
20 Angelica. And we left from there.

21 Q. Let me stop you for a minute, Mr. Williams. I'm
22 sorry. At Angelicas did Mr. Simpson ever say where he got the
23 gun from?

24 A. Not at Angelica, he did not.

25 Q. Okay. Did he later say at some other point that you
26 were available and around and heard the answer?

27 A. Yes.

28 Q. Where, where did that take place?

29 A. That took place after we went to Mr. Simpson's

1 mother's and father's house there on Poorhouse Road and
2 retrieved the ammunition that, that they had been using in the
3 gun.

4 Q. Okay. Now, did this happen the same day as the
5 murders?

6 A. Yes, sir.

7 Q. About what time of day? Do you recall?

8 A. This was probably -- I would say around 1:00, 1:30,
9 possibly 2:00.

10 Q. Okay. Who was with you, as best you can recall?
11 Who was with and you Mr. Simpson, if you can recall, at Mr.
12 Simpson's house.

13 A. At the residence?

14 Q. Yes, sir.

15 A. Chief Thornburg. And I don't recall whether it was
16 sheriff of Choctaw County or the chief deputy of Choctaw
17 County was there.

18 Q. And where did Mr. Simpson tell you he got the gun
19 from?

20 A. Mr. Simpson said that he got the gun from a relative
21 that lived in Louisiana and the reason why he did not report
22 it as being stolen out of his vehicle that morning is because
23 the vehicle -- excuse me, the weapon was not registered.

24 Q. Okay. Now, during the time that you were talking to
25 Mr. Doyle Simpson at Angelicas, did this occur inside the
26 building or outside the building?

27 A. Part of it was inside. Part of it was outside.

28 Q. Now, the part that occurred inside, were there
29 employees of Angelicas listening in on the conversation, if

1 you can recall?

2 A. I don't recall that there were. I think it was just
3 myself and Chief Thornburg. I think Chief Tatum had already
4 left.

5 Q. Okay. Let's -- did you -- did you all make any
6 searches or seizures while you were at Angelicas on that
7 occasion before you left?

8 A. We were given permission from Mr. Emmitt Simpson to
9 search his van.

10 Q. Okay. And you did.

11 A. We did. We did not find anything.

12 Q. Okay. Did y'all search Mr. Simpson's car at that
13 time?

14 A. Mr. Simpson carried us out and showed us his vehicle
15 and showed us where the weapon was kept in that vehicle.

16 Q. Okay. And what did Emmitt tell you that had
17 occurred between he and Doyle that morning or at some point?

18 A. Something to the effect that Doyle considered maybe
19 Emmitt had taken the gun out of -- out of the vehicle. And I
20 think maybe there was some hard feelings for a short period of
21 time there that Mr. Doyle Simpson felt like Mr. Emmitt had
22 taken his gun.

23 Q. Okay. Now, after you left Angelicas, where exactly
24 did y'all go after talking to Doyle and Emmitt and you left
25 Angelica at some point after -- how long were you at Angelica
26 before you left on that occasion?

27 A. I don't know. I know when we left from there Mr.
28 Doyle was doing janitorial work at the high school here. And
29 he was right at time for him to be at work there at, at the

1 high school. And he advised us if we needed to talk to him
2 any time after he left there, that we could find him there.

3 Q. So you allowed him to go on to work. And where did
4 you all go afterwards?

5 A. I left and met the crime scene investigators at the,
6 the Gas Mart out on 82 just east of the interstate and let
7 them follow me down to the crime scene.

8 Q. Okay. These are the people from Jackson you are
9 talking about.

10 A. Yes, sir.

11 Q. Miss Schoene and there was two ladies, I believe,
12 wasn't it.

13 A. I'm not sure who it was. I let them follow me down
14 to --

15 Q. Do you know if they were female or male? Or did you
16 even look, get a chance to look?

17 A. I know one of them was female.

18 Q. And they followed you to the crime scene, to
19 Tardy's.

20 A. Yes, sir.

21 Q. And, and they went in, I assume. Did you see them
22 go in?

23 A. No, sir.

24 Q. Did you stay or did you move on to somewhere --

25 A. I went on to something else.

26 Q. Okay. What did you do after that?

27 A. From there a short time later they wanted to talk to
28 Mr. Doyle Simpson.

29 Q. Who wanted to talk to him?

1 A. I believe it was, maybe Chief Thornburg, Johnny
2 Hargrove. I don't recall exactly who all was present.

3 Q. Okay.

4 A. But we went to the vocation center there where --

5 Q. Doyle.

6 A. -- Mr. Doyle's --

7 Q. Mother lived.

8 A. Right.

9 Q. Let me ask you this. When you got back to Tardy's
10 Furniture store, before you went to where Doyle's mother
11 lived, how long did you stay at Tardy's on that occasion?

12 A. Roughly, guessing, probably 20 minutes.

13 Q. Okay. And I take it during that period of time that
14 you went -- did you go inside?

15 A. Yes, sir.

16 Q. And I take it you briefed somebody, Mr. Johnson, Mr.
17 Matthews, about what had happened at Angelica. I don't want
18 to put words in your mouth. Tell us what happened.

19 A. As far as what transpired at Angelicas, I was not --
20 I don't believe I was the one that transferred that to the
21 investigators. I know at one point we were in Tardy's and,
22 and that may have been the second trip down that we kindly
23 scoped the upstairs area of the store. But as far as having
24 any contact after with the investigators to what transpired
25 down at Angelica or out at Mr. Simpson's mother's house, I
26 didn't have any --

27 Q. You didn't get any further briefing on that.

28 A. Right.

29 Q. Okay. Now, when you say you scoped upstairs, who

1 went upstairs, as best you can recall?

2 A. Um...

3 Q. I know you are going by memory. So if you don't
4 remember, that is fine. Do the best you can.

5 A. I can't recall who all was there. I know a dog was
6 brought to, to the scene.

7 Q. Okay. And who was the -- do you remember the leader
8 of the dog?

9 A. Right offhand I can't recall.

10 Q. Do you remember -- even remember what police force?

11 A. He was with the Winona Police Department.

12 Q. Winona Police Department. And the dog was taken
13 upstairs.

14 A. Yes, sir.

15 Q. Was the dog allowed to track downstairs or to do the
16 smell test downstairs as well.

17 A. The only that I'm aware of is upstairs.

18 Q. Upstairs.

19 A. Yes, sir.

20 Q. Okay. And do you know if on that occasion that you
21 were -- did you see Mr. Johnson, John Johnson, and Jack
22 Matthews?

23 A. Be honest with you, I don't.

24 Q. Okay. Did you see the honorable Mr. Evans on that
25 occasion when you got there?

26 A. No, sir. I don't recall that.

27 Q. Do you recall seeing him at all at Tardy's that day?

28 A. Yes, sir. At some point in time I did.

29 Q. Okay. Now, now, what did you understand the dog was

1 supposed to be doing, and what did you see the dog do?

2 A. My understanding was that they use dogs to make sure
3 there was no one hiding upstairs.

4 Q. Okay. And how did you arrive to that understanding?
5 Did you hear somebody say that or was there discussion about
6 that or just people's perception of --

7 A. It was just from the, the feeling that I got that's
8 what it was.

9 Q. Okay. And was the dog and the trainer still there
10 when you left and went out the courthouse?

11 A. By the time that I left, the dog and the handler
12 were still there but that was during the time that I left and
13 went to P & F right along in that time on the second go around
14 there.

15 Q. I don't know if you --

16 A. That was before we became aware of Mr. Doyle
17 Simpson's gun missing.

18 Q. Okay. So --

19 A. This was -- this was in the earlier part of --

20 Q. That you saw the dog there.

21 A. -- initial part of the investigation.

22 Q. Saw the dog much earlier. Okay. Now, were you ever
23 given some specific assignments or duties to perform by Mr.
24 Johnson or Mr. Evans? Or were you just kind of brought in
25 using your own best judgment having been a police officer for
26 a long period of time?

27 A. Primarily just riding. And if someone approached us
28 with some information as to direct them to the proper
29 authorities.

1 Q. Okay. Now, did somebody tell you to -- as you drove
2 through the neighborhood looking for clues or whatever, that
3 if you see something to report to a particular person? Or was
4 it -- is that why you did it? Or you just knew from
5 experience that, that if you saw something you were supposed
6 to report it to the investigators or --

7 A. It is combination of both.

8 Q. Combination of both.

9 A. Yes, sir.

10 Q. Okay. Who was the person doing the talking and
11 actually said to you and to others that if you see anything
12 report it to such-and-such?

13 A. Mr. Miller and Mr. Matthews.

14 Q. Okay. Now, it's your understanding Mr. Miller and
15 Mr. Matthews were investigators with the highway patrol; is
16 that correct?

17 A. Yes, sir.

18 Q. And you were a patrolman. Were you still a
19 patrolman at the time, or what was your, I guess, title or
20 position at that time?

21 A. I was a road man.

22 Q. Now, did you see any investigators on the scene at
23 Tardy's that you had met before and were familiar with and who
24 were investigators with other surrounding police department or
25 agencies?

26 A. The only ones that I was aware that was
27 investigators, outside the investigators with the D.A.'s
28 office, was Mr. Matthews and Mr. Miller.

29 Q. Okay. Okay. So I'm just trying to be clear. So

1 basically, you understood your duties to be to first of all to
2 drive around, look for clues. If you saw something out of the
3 ordinary or that was suspicious to report back. And as far as
4 going to Angelicas, nobody actually asked you to do that or
5 instructed you to do that. You did that based on information
6 that was relayed to you. Is that fair to say?

7 A. Right.

8 Q. And as far as going out on Poorhouse Road with
9 Doyle, was that something that was assigned to you or was that
10 something that you just figured out was a good idea and went?
11 How did that -- how did that come about?

12 A. Well, I was aware that, that they were going to that
13 area and so --

14 Q. Okay. How did you become aware that they were going
15 to that area?

16 A. Within talking to Chief Thornburg.

17 Q. Okay. And the reason for going there was, was what,
18 as best you recall?

19 A. Once found out what the caliber of the weapon was
20 that was missing, Mr., Mr. Doyle Simpson had made the remark
21 that they had been using the gun for target practice and still
22 had some ammunition that hadn't been fired. And it was at his
23 mother and daddy's house.

24 Q. Okay. Now, in the way Mr. Simpson made this
25 comment, was it at the school, at Tardy's, at Angelicas?
26 Where did this occur?

27 A. To be exact, as far as the exact location, I don't
28 recall whether it was at the school or -- I know it was just
29 shortly after we left the school there that we went out to his

1 mother and daddy's house.

2 Q. Okay. Now, did you perform any other duties other
3 than going to Angelicas, seeing Fuzzy, I'm sorry, seeing Mr.
4 Collins on a couple of occasions and instructing him to go
5 down and talk to Mr. Johnson, talk to Doyle and Emmitt, going
6 out to Poorhouse Road and helping look for and retrieve
7 projectiles? Did you play any other role in this?

8 A. No sir.

9 Q. Okay. Now, with respect to the hull and the
10 projectile that was found at Doyle's house, did you play any
11 role in collecting it and packaging it --

12 A. No. No, sir.

13 Q. -- and sending it? And how many times did you
14 actually go to Poorhouse Road, Doyle's mother's house? Was it
15 once or was it twice?

16 A. Just that one time.

17 Q. Just that one time. So it is your testimony that
18 you worked on this case just that one day, July 16. Or did
19 you --

20 A. Yes, sir.

21 Q. Just that one day. And were you asked that day to
22 do a, a report that memorialized and set forth in writing what
23 your duties had been and what your findings had been?

24 A. Pretty -- Yes, sir, I did. I believe Mr. John
25 Johnson requested that I --

26 Q. Do a report?

27 A. -- write that report.

28 Q. Okay. Did you write a report?

29 A. Sir.

1 Q. You said Mr. Johnson requested that you write a
2 report.

3 A. Or give a report.

4 Q. Okay. Now, you gave --

5 A. Because I had to write one. I believe I had to
6 write one and turn it in to my district office.

7 Q. Okay. Did you write one? Do you remember?

8 A. I am sure I did.

9 Q. Okay. And you remember giving Mr. Johnson a
10 recorded statement at some point too; is that correct?

11 A. Yes, sir. I think it was some several -- few months
12 later.

13 MR. CARTER: Okay. And may I approach the
14 witness, Your Honor?

15 THE COURT: You may.

16 Q. Mr. Williams, you can take a look at that and see if
17 you can identify it and tell us what it is.

18 A. This is the statement that, that I gave to Mr.
19 Johnson.

20 Q. Thank you, sir. And do you recall what date was on
21 it when you looked at it?

22 A. I believe it was February 7 of 1997.

23 Q. Yes, sir. And that would have been some seven or
24 eight months later. Now, now, Mr., Mr. Johnson called you and
25 asked you to come in and let him get a report from you. Is
26 that how this came about?

27 A. I am pretty sure that's the way it went.

28 Q. Okay. And to your knowledge he hadn't asked you
29 earlier, months earlier and you had refused to do so. To your

1 knowledge he, he only asked you to do it at or around the time
2 that you did it; is that correct?

3 A. I am sure that that is it, because I wouldn't of
4 refused to give him a statement.

5 Q. Right. If he had asked earlier, you would have done
6 it earlier.

7 A. Well, you know --

8 Q. Or as early as you could have.

9 A. As early as I possibly could have, yes, sir.

10 Q. Now, you said you are not really sure if you --
11 correct me if I'm wrong, because I'm not trying to put words
12 in your mouth. You are not really sure if you did a written
13 report. But if you did a written report, you didn't -- to
14 your knowledge, you didn't turn it in to Mr. Johnson or Mr.
15 Matthews, did you?

16 A. If I did a written report, it would have went into
17 my district headquarters at Greenwood, and then it would have
18 been channeled through channels there.

19 Q. And that channel should have --

20 A. I'm sure it would have been a copy that would have
21 went to the investigators that were handling the case and
22 would probably went a copy to Jackson.

23 Q. Okay. One moment.

24 Mr. Williams, you were in your uniform that particular
25 day; right?

26 A. Sir.

27 Q. You were in your uniform on that particular day that
28 the murders occurred and that you were working on this case.
29 Were you in your uniform?

1 A. Yes, sir.

2 Q. And you were in your patrol car?

3 A. Yes, sir.

4 Q. Okay. Do you recall if Deputy Thornburg was also in
5 his uniform and in his sheriff's -- chief deputy car?

6 A. Yes, sir.

7 Q. Okay. Now, did Mr. Thornburg had get to Angelicas
8 before you?

9 A. No, sir.

10 Q. A little.

11 A. He got there shortly after I got there.

12 Q. After you. Okay. Now, did you see Mr. Thornburg
13 talking to Mr. Simpson when you were not close enough to hear
14 what was actually going on?

15 A. To Mr. Simpson? Or are you referring to --

16 Q. Oh, Doyle.

17 A. Doyle.

18 Q. I'm sorry.

19 A. Doyle.

20 Q. Yes, sir.

21 A. It's possible, because by the time I came from Mr.
22 Emmitt Simpson's vehicle back up to the office there at
23 Angelica, they were already in, inside the office there at
24 Angelica. He could have had a conversation with him prior to
25 me getting there.

26 Q. Okay. And what else was said between the two when
27 -- before you got there? You have no knowledge of what was
28 said --

29 A. No.

1 Q. -- because nobody told you later. Okay. Now, did
2 Porky or Fuzzy give you a physical appearance of this person
3 they said that was Doyle Simpson? Did they give a description
4 of physical appearance?

5 A. Are you talking about --

6 Q. Did, did Porky Collins give you a physical
7 description of this guy that he claimed was up at Fuzzy's and
8 talking about somebody had taken his gun.

9 A. The only thing that was mentioned as far as physical
10 description was that the man was nervous and perspiring
11 heavily, which it was a hot day in July. So it could very
12 easily have been from the weather. But he acted awful
13 nervous. And that he was telling the workers there that at
14 Fuzzy's that he had a gun stolen out of his car.

15 Q. And also, now when y'all tried to catch up with
16 Emmitt, now, correct me if I'm wrong, but my understanding was
17 that you got in your patrol car and Mr. Thornburg got on his
18 feet and, and ran and actually tried to catch up with Emmitt.
19 Is that what happened?

20 A. Right.

21 Q. Now, the ammunition that was retrieved at Poorhouse
22 Road, did you actually see it, see them retrieve it?

23 A. I didn't see them retrieve it. I saw it in the box
24 where it was taken out of the closet. But now where, where
25 the ammunition was taken once we left from there, I have no
26 idea.

27 Q. Okay. So y'all took some ammunition when at
28 Poorhouse Road, at Doyle's place, there was some ammunition
29 that was taken out of a closet.

1 A. That's where it was kept was in the closet. He had
2 taken it out of the closet, showed it to us. As to what
3 happened to that ammunition, I don't know.

4 Q. Okay. So and the evidence you saw, was it live or
5 fired?

6 A. It was live.

7 Q. It was live. Now, did you see Mr. Thornburg or
8 anybody pick up some hulls from the ground while you were out
9 there that day?

10 A. I didn't see anybody pick up any from --

11 Q. Did --

12 A. -- from the residence there, no, sir.

13 Q. Okay. And did you see anybody, any officer cut a
14 projectile or anything from a cedar log?

15 A. No, sir, I did not.

16 Q. And the evidence that you did see them take from
17 Poorhouse Road, what did they do with it? Did you see them
18 take it back to John Johnson or Jack? Or what happened to it
19 after that? Did you --

20 A. I have no idea. When we left the Simpson residence,
21 I transported Mr. Doyle Simpson in my patrol car back down to
22 the police department, which is now the E.O.C.

23 Q. Okay.

24 A. And the other deputy -- and like I said, I don't
25 know where -- I know he was from Choctaw County, but whether
26 it was chief deputy or the sheriff along with Mr. Thornburg,
27 they, they went in separate directions.

28 Q. Okay. Now, when you were down at Angelicas and you
29 finally met up with Doyle Simpson, did he say anything about

1 anything that had happened to his glove compartment? Or did
2 he even actually say where the gun was, was taken from?

3 A. He carried us -- Chief Thornburg and I carried --
4 Mr. Doyle Simpson led Chief Thornburg and I out to his vehicle
5 and showed us the glove compartment. And it was open.

6 Q. Okay.

7 A. It appeared where it had been pryed open.

8 Q. Okay. And then you saw what you thought might have
9 been pry marks on the glove compartment.

10 A. Right. It wouldn't -- you couldn't shut it back.

11 Q. Couldn't shut it back. Now, let me ask you this.
12 Now, there is a lot of comments about how popular those Grant
13 Hill Fila shoes were. Did you -- did you hear from talking to
14 any of co-police officers or any investigators that these
15 shoes, Grant Hill Fila shoes, were popular at the time? Did
16 you hear any talk like that?

17 A. No, sir.

18 Q. Okay. And did you see the officers going throughout
19 the neighborhood and checking to see if other people wore
20 Grant Hill Fila shoes and were bringing them in and ruling
21 them in and ruling them out as suspects? Did you see anything
22 like that?

23 A. I have no knowledge.

24 Q. Mr. Williams, I hate to ask you this, because I, I
25 basically feel you did a good job. But let me ask you. Did
26 you ever go to the police academy in Jackson? Did you ever go
27 to the police academy in Jackson?

28 A. I went through the Mississippi Highway Patrol
29 Training Academy.

1 Q. Mississippi Highway Patrol training. Okay. And in
2 that particular program, one of the things they stress and
3 teach you is to --

4 MR. EVANS: Object to leading.

5 THE COURT: Sustained.

6 Q. Is anything done at that police training at the
7 highway patrol training with respect to report writing? Is
8 that mentioned or discussed?

9 A. You have report writing. Yes, sir.

10 Q. And are you told whether it's important to do so or
11 not do so?

12 A. It's stressed that, that you do your paperwork.
13 Yes, sir.

14 MR. CARTER: Okay. One moment, Your Honor. I
15 think I'm finished.

16 Q. One final question, Mr. Williams. I don't know
17 that you, you have given me an answer on this. I don't -- I
18 don't have a written report that you did. I have never seen
19 one. As best you, you can -- you said you -- I am trying to
20 -- you might have written one and, and you might not have.

21 Can you be any more definite in terms of whether you did
22 or you didn't? And I'm not really -- if you can't, you can't.
23 Because I am really not trying to belabor the point, because I
24 actually think you did a good job. Do you know whether you
25 wrote one any --

26 A. I am pretty sure that I did write one, that I turned
27 it in to my district headquarters. Because instances of those
28 nature -- of a nature of this magnitude you are required to
29 submit something in writing as to what occurred.

1 Q. Okay. Okay. And prior to the recorded statement
2 that you gave, did anyone ever -- any of the investigators,
3 Mr. Johnson, Mr. Matthews, ever ask you whether you had
4 written a outer statement and follow-up by asking you to
5 present whatever written statement, if you had written one?

6 A. Not that I can recall.

7 MR. CARTER: Okay. I tender, Your Honor.

8 Thank you, Mr. Williams.

9 CROSS-EXAMINATION BY MR. EVANS:

10 Q. Good evening, Officer Williams.

11 A. Good evening.

12 Q. You were assisting in any way you could, weren't
13 you?

14 A. Sir.

15 Q. You were assisting in any way you could, weren't
16 you?

17 A. Under the circumstances, yes, sir.

18 Q. Along with a lot of other officers.

19 A. Yes, sir.

20 Q. And you were not only doing the things that you were
21 asked to but you were going out and trying to find other ways
22 of helping, weren't you?

23 A. Yes, sir.

24 Q. And, in fact, you were the first person, I believe,
25 that Charles Collins or Porky Collins went to offer help that
26 day; is that right?

27 A. Yes, sir.

28 Q. And he was very detailed about what he saw and where
29 he was that day, wasn't he?

1 A. Yes, sir.

2 Q. And to verify, since he saw Miss Rigby, to verify
3 what time it was, you went to the post office yourself and got
4 that receipt to show what time he was at the post office,
5 didn't you?

6 A. Yes, sir.

7 Q. And that was another documentation to help pin down
8 times, wasn't it?

9 A. Yes, sir.

10 Q. He also told you about seeing the two people in
11 front of the Tardy Furniture Company, didn't he?

12 A. Yes, sir.

13 Q. And he told you that he felt sure that he could
14 identify the person that was headed towards the store if he
15 saw him again, didn't he?

16 A. Yes, sir.

17 Q. Are you aware that he has identified somebody in
18 this case?

19 A. No, sir.

20 Q. You've talked about going to the scene. Did you
21 ever in any way tamper with anything in the actual scene up
22 there where the bodies were laying, the hulls were, things
23 like that?

24 A. No, sir.

25 Q. Did you stay out of that area?

26 A. Yes, sir.

27 Q. Now, as far as going back to Fuzzy's, Doyle Simpson
28 from the very beginning was telling people that his car had
29 been broken into, wasn't he?

1 MR. CARTER: I object to that, Your Honor.
2 Only if he knows. That is speculation.

3 MR. EVANS: Your Honor, I think that is very
4 clear, and he can -- he can make that judgment.

5 MR. CARTER: He said from the very beginning,
6 Your Honor. What is the very --

7 THE COURT: I sustain the objection as to the
8 way the question was phrased.

9 Q. Doyle Simpson earlier that day was telling people at
10 work and at Fuzzy's that his gun had been stolen, wasn't he?

11 A. Apparently he was.

12 Q. And he cooperated with y'all in every way that you
13 asked, didn't he?

14 A. Yes, sir.

15 Q. He showed you the car, didn't he?

16 A. Yes, sir.

17 Q. He showed you where the glove compartment had been
18 pryed open and the gun stolen, didn't he?

19 A. Yes, sir.

20 Q. He took you to where he had some hulls or some
21 projectiles in the house to see what brand of bullets he had
22 in that gun, didn't he?

23 A. Yes, sir, he did.

24 Q. And he told y'all that he had a mixed variety of
25 bullets in that gun, didn't he?

26 A. Yes, sir.

27 Q. Now, I don't know that you did. You didn't go back
28 to the scene with the officers when they dug some projectiles
29 out of the post where he had been shooting, did you?

1 A. No, sir.

2 Q. The report that you had was just that Doyle had gone
3 to pick up some lunches after he had got off work or at
4 approximately 11:14; is that correct?

5 A. That is when we went to Angelica and inquired about
6 Mr. Doyle Simpson, the, the lady manager there advised us that
7 he had gone to pick up some lunches for some of the workers
8 there.

9 Q. And that was normal, wasn't it?

10 A. Yes, sir. From all indications, I think that he
11 picked up lunches at various locations for, for those workers.

12 Q. And from what you found out he left there about
13 10:30 to go do that.

14 A. Roughly. Yes, sir.

15 Q. Now, it kind of sounded like a while ago you had to
16 jump in your patrol car and take off after Emmitt. Was Emmitt
17 running from y'all?

18 A. I don't feel like he was running from us, no.

19 Q. What was he doing?

20 A. I think he was having a little nip on the job.

21 Q. And he was trying to get back to where he was
22 supposed to be on the other side.

23 A. Right. Right.

24 Q. Emmitt fully cooperated with you to didn't he.

25 A. Yes, sir.

26 Q. And the fact that Doyle was even asking him about
27 the gun, is that much more proof that he had one stolen that
28 day, isn't it?

29 MR. CARTER: Object, Your Honor.

1 Q. Just the fact that Doyle was asking Emmitt about
2 that gun is that much more proof that he actually had one
3 stolen that day, isn't it?

4 THE COURT: Wait. I sustain the objection. I
5 don't think that's a proper question.

6 Q. Did you take that into your consideration when you
7 were working there to try to find out what happened to the
8 gun?

9 I think that is proper, Your Honor.

10 MR. CARTER: Same objection.

11 THE COURT: I'll overrule it.

12 Q. You may answer that. Did you take that fact into
13 consideration that he was already questioning his brother
14 about whether he had gotten the gun or not as to whether the
15 gun was actually stolen?

16 A. Yes, sir.

17 Q. All right. Now, you've talked about all the
18 different ways that you've helped. You didn't actually do
19 anything at the crime scene to recover evidence, did you?

20 A. No, sir.

21 Q. You left that to the investigators and the crime
22 scene experts.

23 A. Right.

24 Q. And you work for the same agency that Jack Matthews
25 and Wayne Miller work for, don't you?

26 A. Yes, sir.

27 Q. Or worked for.

28 A. Yeah. Yes, sir.

29 Q. Now, the purpose of the dog was just to go upstairs

1 and make sure that whoever had committed it wasn't hiding up
2 there.

3 A. Exactly.

4 Q. The dog never went through the crime area.

5 A. None that I'm aware of.

6 Q. And you didn't see the dog wearing Fila Grant Hill
7 tennis shoes.

8 A. No, sir.

9 MR. EVANS: One moment, Your Honor.

10 THE COURT: Sure.

11 MR. EVANS: Nothing further, Your Honor.

12 REDIRECT EXAMINATION BY MR. CARTER:

13 Q. Mr. Williams, what kind of shoes did Mr. Evans have
14 on that day?

15 A. I have no idea.

16 Q. So he could have had on the Fila's. Is that fair to
17 say?

18 A. If you say so.

19 Q. Now, this dog trainer, the guy, I'm assuming the
20 trainer, the person that was leading the dog, did you happen
21 to know -- notice what kind of shoes this person might have
22 had on?

23 A. I just thought of the man -- the man that was
24 handling the dog that day was Dennis McCullough.

25 Q. Okay.

26 A. And to the best of my knowledge, I believe he had
27 something on kind of like a combat boot.

28 Q. Okay. Did you see anybody -- you said his name was
29 Dennis McDonald?

1 A. Oh, I'm sorry. Dennis McCullough.

2 Q. Did you see anyone check his, his shoes?

3 A. No, sir, I did not.

4 Q. Okay. Now, looking in your statement, I am trying
5 to see what Mr. Collins said in his statement, that if he saw
6 that person again he would -- he could recognize them.

7 Now, Mr. Johnson got this statement from you. Was there
8 a conversation between you and Mr. Johnson before he turned
9 the tape on? Or was it a situation where you came in and the
10 tape was turned on immediately before he asked you anything?

11 A. I don't recall. I know it wasn't a conversation. I
12 went in and he told me that, you know, he was going to ask me
13 some questions, and he was going to tape it if it would be all
14 right. And I agreed to it.

15 MR. CARTER: Okay. One moment.

16 Q. Now, as to what time Doyle left his job and went to
17 Fuzzy's, I mean, all you know about that is something that you
18 were told; is that correct? You don't have any knowledge
19 exactly what time he left the job, do you? Any personal
20 knowledge.

21 A. Other than I think that the time that was arrived
22 was off of his, possibly his time card when he checked out.

23 Q. Okay. Did you put that in your report anywhere,
24 that the time --

25 A. I didn't see the time clock, so I don't know what
26 time it was. I didn't see any time card.

27 Q. Okay. I didn't hear you due to the officer's
28 coughing.

29 You said you thought that time was, was gleaned or was

1 gotten from his time card. But also say you never saw the
2 time card; is that correct?

3 A. I never looked at the time clock, I mean the time
4 card. Excuse me.

5 Q. Time card. So you don't personally know --

6 A. No.

7 Q. -- what time he left?

8 A. No, sir.

9 Q. And now, did you say in your statement that you gave
10 Mr. Johnson, and maybe I missed it -- that Mr. Collins said
11 that if he saw the people again he would -- could recognize
12 them? And maybe -- and I do not have speed reading, so I
13 might have missed it. But can you look, I guess, on this
14 first page? And if it's in there, I apologize. If it is, I
15 missed it. And I could have missed it.

16 A. I don't -- I don't see it in here. I am not good at
17 speed reading either.

18 Q. Okay. That's okay. Thank you. Now, also in your
19 report, Mr., Mr. Williams, and correct me if I'm wrong, I
20 didn't really see anything in there about a -- about a dog,
21 did you?

22 A. No.

23 Q. Now, is it fair to say that this report here is not
24 a complete report of, of everything that you did on that
25 particular day that you worked on this case?

26 A. No. It's not a complete report. No, sir.

27 MR. CARTER: One moment, Your Honor.

28 THE COURT: Sure.

29 Q. Mr. Williams, I applaud you. You worked hard on

1 this case, but you were a patrolman doing what you were asked
2 to do and doing what your instincts and training had, had
3 compelled you to do. Is that fair to say?

4 A. Yes, sir.

5 Q. And if anything else was required, you realized the
6 investigators who had the charge and responsibility of
7 investigating this case to ask you for any additional thing
8 that they needed from you and to give you any additional
9 instructions that should have been given to you. Is that fair
10 to say?

11 A. Yes, sir.

12 MR. CARTER: Thank you. Thank you, sir. I'm
13 finished. No more questions.

14 THE COURT: He is excused.

15 MR. EVANS: Yes, sir.

16 MRS. STEINER: Yes, sir.

17 THE COURT: Mr. Williams, you may step down.

18 THE WITNESS: Thank you.

19 THE COURT: You are finally excused as a
20 witness.

21 Who would be your next witness?

22 MR. CARTER: Your Honor, Miss Campbell, Essa
23 Ruth Campbell.

24 (THE WITNESS ENTERED THE COURTROOM.)

25 THE COURT: I need you to come around, please.

26 (THE WITNESS APPROACHED THE BENCH.)

27 If you would, raise your right hand and take the
28 oath at this time.

29 Do you solemnly swear or affirm the testimony you

1 give in this case will be truth, the whole truth and
2 nothing but the truth, so help you God?

3 THE WITNESS: Yes, sir.

4 THE COURT: Please come around and have a seat.
5 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

6 THE COURT: For the benefit of the record,
7 state your name, please.

8 THE WITNESS: Essa Campbell.

9 THE COURT: Miss Campbell, you are going to
10 need to speak louder than that. You are going to need to
11 speak loud enough so these ladies and gentlemen over here
12 can hear you.

13 ESSA RUTH CAMPBELL, Called on behalf of the Defendant,
14 having been duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION BY MR. CARTER:

16 Q. Good afternoon, Miss Campbell.

17 A. Good afternoon.

18 Q. Miss Campbell, what city do you live in?

19 A. Winona.

20 Q. Okay. How long have you lived here?

21 A. Fifty-four years.

22 Q. Okay. And where are you employed now?

23 A. Right now I'm not because I had knee surgery.

24 Q. Knee surgery. Okay. At the time that the murders
25 occurred down at Tardy's Furniture store, where were you
26 working?

27 A. At Winona Manor.

28 Q. Okay. How many years did you spend working at the
29 Winona Manor?

1 A. For 20 years.

2 THE COURT: Can you speak a little louder? I
3 am afraid everybody over here can't you hear you.

4 Q. Did you say 20 years?

5 A. Twenty.

6 Q. Yes, ma'am. And back at the time that this incident
7 occurred down at Tardy's, what hours were you working?

8 A. Seven to three.

9 Q. Okay. And what kind of place is Winona Manor? What
10 occurs there? What kind of business is it?

11 A. It's a nursing home.

12 Q. Okay. What were your duties back then?

13 A. I was a C.N.A.

14 Q. Okay. And what did you do as a C.N.A.?

15 A. I bathed the patients and feed them get them up and
16 make the bed.

17 Q. Okay. As a result of doing that job, were you
18 required to move about the building and even go outside?

19 A. Yes.

20 Q. And do you know Curtis Flowers?

21 A. Yes, I do.

22 Q. Are you related to him?

23 A. Yes.

24 Q. How?

25 A. He is my nephew.

26 Q. Do you know Doyle Simpson?

27 A. Yes.

28 Q. Are you related to him?

29 A. Yes.

1 Q. How?

2 A. He is my brother.

3 Q. You know Emmitt Simpson.

4 A. Yes.

5 Q. Are you related to him?

6 A. Yes.

7 Q. How?

8 A. He is my brother.

9 Q. Do you remember about when you heard of the killings
10 down at Tardy's? About what time did you -- did you hear?

11 A. About 11:00.

12 Q. Okay. Were you still at work?

13 A. Yes.

14 Q. Now, on that particular day, did you see -- strike
15 that. First of all, did Doyle have a car back then?

16 A. Yes.

17 Q. And what kind did he have?

18 A. I don't know the name of it. I know it was a, a
19 light and dark brown car.

20 Q. I show you three exhibits, State's Exhibit 100-A,
21 State's Exhibit 99-A, State's Exhibit 101-A. For the time
22 being, let's look at State's Exhibit 99-A. That car, you
23 recognize that car?

24 A. Yes.

25 Q. Who is it? What is it?

26 A. I can't tell, you know, name of the car.

27 Q. Who does it -- I am not asking -- I'm sorry. I'm
28 confusing you. Who was the owner of that car at some point?

29 A. Doyle.

1 Q. Okay. Your brother.

2 A. Yes.

3 Q. And you have seen that car many times.

4 A. Yes.

5 Q. At your house and all over the place.

6 A. Yes.

7 Q. Now, did you see that car at all on the day that the
8 murders occurred?

9 A. Yes.

10 Q. And what time did you see it?

11 A. It was between 9:30 and 10:00.

12 Q. Okay. And where were you at and what were you doing
13 at the time you saw it?

14 A. I was out on the front porch at Winona Manor.

15 Q. And Winona Manor is located where?

16 A. On 82.

17 Q. Is that that new 82, or is it that -- let me see
18 now. Okay. Is there a old 82 and a new 82 in this town? Or
19 just one 82? I don't know. I am not trying to confuse you.
20 But you saw this car on 82. And what direction was it going
21 towards?

22 A. McDonalds light. McDonalds.

23 Q. Going by McDonalds.

24 A. Um-hum.

25 Q. Okay. And you know for a fact that that was that
26 car.

27 A. Yes.

28 Q. Were you able to see who was in it?

29 A. No.

1 Q. Did it -- who did you think was in it?

2 MR. EVANS: I object, Your Honor. That is
3 completely improper.

4 THE COURT: I sustain. I mean if she didn't
5 see. She can't testify to who she thought was in it if
6 she couldn't see who was in it. That would be totally
7 speculative.

8 Q. Okay. Now, how many times did you see that car?

9 A. Twice.

10 Q. Okay. Now, how far were you from it? Where
11 would -- how far away was -- were you from the car? If I had
12 to -- was it further than the back of the building?

13 A. Trying to think what -- well, yes.

14 Q. Further than that?

15 A. No. Let me see.

16 Q. I realize you are guessing, so --

17 A. Yeah, I'm just guessing.

18 Q. Are you good at distance?

19 A. No.

20 Q. Okay. So okay, now, the first time you saw it it
21 was going which way again? It was on 82 doing what?

22 A. It was going towards McDonalds.

23 Q. Going towards McDonalds. And you saw it another
24 time. And what time was that?

25 A. It was like 10 (inaudible).

26 THE COURT: It was like what? I couldn't hear
27 you. Can you repeat that? I didn't hear you.

28 Q. Just the best you can. I mean I realize you are
29 guessing, so the best you can. Did you answer? Did you say?

1 A. Was it later than first time?

2 MR. EVANS: Your Honor, I object to him
3 leading.

4 MR. CARTER: How is that leading?

5 Q. Was it later or before the other time that you
6 described?

7 A. It was between like 10:30 and -- I mean 9:30 and --

8 THE COURT: Can you speak up, ma'am? They are
9 having trouble hearing you over there. And I am having
10 trouble hearing you.

11 Q. Wait. Miss Campbell, try to relax.

12 A. Okay. And don't be intimidated by anybody.

13 MR. EVANS: Your Honor, I think that was
14 improper. But I think it is very clear she is trying to
15 answer the questions and can't. Now, he should --

16 MR. CARTER: Your Honor --

17 MR. EVANS: -- not be able to lead --

18 MR. CARTER: She doesn't have --

19 MR. EVANS: -- and --

20 COURT REPORTER: Judge, they are talking at the
21 same time.

22 THE COURT: I don't need any side argument.

23 All I asked Miss Campbell to do is speak up.

24 And Miss Campbell, just speak up like -- I know you
25 are talking out in front of a lot of people and sometimes
26 that makes people nervous, but don't be nervous and just
27 be calm and steady. And if you will speak loud, so those
28 ladies and gentlemen over there can hear you.

29 Q. Okay. So you testified, Miss Campbell, that you saw

1 the car. You know you saw the car.

2 A. Yes.

3 Q. And you know -- if I'm not mistaken you said you saw
4 it between 9:30 and 10:00 the first time, and you said it was
5 by McDonalds, I believe; is that correct?

6 A. Going towards McDonalds.

7 Q. Going towards McDonalds. And that would be going --
8 is that going toward Greenwood or is it going --

9 A. Going towards Greenwood.

10 Q. Going towards Greenwood, which would be west. And
11 you saw it again; is that --

12 A. Coming back going towards --

13 Q. Going the opposite direction you saw it again. Is
14 that what you are saying?

15 A. Um-hum.

16 Q. Now, you were on the porch at Winona Manor at --
17 where were you both times you saw it?

18 A. On the front porch.

19 Q. Front porch. So you saw it going towards McDonalds.
20 You were sitting on the front porch. Then you saw it go back
21 in the other direction and you were still on the front porch.

22 A. Um-hum.

23 Q. And you are absolutely sure it was that car.

24 A. Yes.

25 MR. HILL: Your Honor, I believe that is
26 leading.

27 THE COURT: I --

28 Q. Whose car -- okay. Let me --

29 MR. HILL: We would like a ruling on that.

1 THE COURT: It is leading. You need to avoid
2 that.

3 MR. CARTER: I will restate it, yes, sir, Your
4 Honor.

5 Q. You saw that saw car and based on having seen that
6 car before, who did you know that car belonged to?

7 A. To Doyle.

8 Q. Okay. Any doubt about that being Doyle's car?

9 A. No.

10 Q. Now, Curtis is your relative. Doyle is your
11 relative. Close relative too, isn't it?

12 A. Yes.

13 Q. And you are not by testifying intending to --

14 MR. HILL: Objection to her intent.

15 MR. CARTER: What? She can't have an intent?

16 MR. HILL: No, sir. That is clearly improper
17 for him to be suggesting what her intent is.

18 THE COURT: I sustain. I mean at this point it
19 sounds like you are heading towards a leading question to
20 me.

21 Q. You are just telling the Court what you saw; is that
22 correct?

23 A. Yes.

24 MR. CARTER: We tender, Your Honor.

25 CROSS-EXAMINATION BY MR. EVANS:

26 Q. Good evening, Miss Campbell.

27 A. Good evening.

28 Q. Curtis Flowers is your nephew; is that right?

29 A. Yes.

1 Q. And he is the one that is charged with something
2 here today, isn't he?

3 A. Yes.

4 Q. And you definitely have a reason to want to help
5 him, don't you?

6 A. I would like to help everybody if I could.

7 Q. You would like to help everybody.

8 A. If I could, yes.

9 Q. Now, how far off of Highway 82 is Winona Manor?

10 A. How far off from it?

11 Q. How far away?

12 A. It's not that far from highway.

13 Q. Have they moved it lately?

14 A. No, they hadn't.

15 Q. It was a pretty good ways off the highway last time
16 I saw it.

17 A. But you can -- but you can see the highway from it.

18 Q. You can see the highway.

19 A. Yes.

20 Q. But it's a long ways, isn't it?

21 A. It's not that far off.

22 Q. It's not that far off?

23 MR. CARTER: We object to long. We don't --
24 can we get some direction on what he is talking about?

25 MR. EVANS: Your Honor, I believe this is
26 cross.

27 THE COURT: I --

28 MR. CARTER: What does that mean?

29 THE COURT: The objection is overruled. He can

1 ask his questions.

2 Q. It's a long way off the highway, isn't it?

3 A. I can see the highway from, from the front porch.

4 Q. Okay. And you just happened to be sitting out there
5 on the front porch while you were at work just watching the
6 cars go by.

7 A. No, I was out there with a patient.

8 Q. And you just happened to be looking out there both
9 times you say this car that looked like Doyle's went by.

10 A. We, we were sitting out on the front porch. I was
11 out there with one of the patients. We can go out there and
12 sit with the patient.

13 Q. Well, I'm not questioning that. My question is how
14 come you just happened to be instead of taking care of the
15 patient looking at the cars go by both times?

16 MR. CARTER: Your Honor, that is just
17 ludicrous. I object, Your Honor. That is badgering the
18 witness.

19 MR. EVANS: Your Honor, this is
20 cross-examination.

21 THE COURT: Overruled.

22 Q. You may answer the question.

23 A. Because we can sit and talk to our patients on the
24 front porch.

25 Q. All right. And you don't know how far it is, but
26 you'll agree with me it's a long ways off the highway.

27 A. But you can see the cars that goes up and down the
28 highway.

29 Q. Yes, ma'am. You can see that the cars are going up

1 and down the highway. You can do that, can't you?

2 A. Yes, you can.

3 Q. But you couldn't even tell who was driving the
4 vehicle, could you?

5 A. I can't look inside because the windows was up on
6 the car.

7 Q. All right. And it was so far away, you couldn't
8 even see.

9 A. No. It wasn't far away from the building that you
10 could see -- could not see the car.

11 Q. Windows on Doyle's car aren't tinted, are they?

12 A. I...

13 Q. You don't have to look at the poster. Answer me.

14 A. Well, I couldn't see the person that's --

15 Q. The windows on Doyle's car are not --

16 MR. CARTER: Your Honor, she --

17 MR. EVANS: Your Honor, I object to him --

18 MR. CARTER: She is trying --

19 MR. EVANS: -- interrupting before --

20 MR. CARTER: She is trying --

21 MR. EVANS: -- she --

22 COURT REPORTER: Judge.

23 THE COURT: You can't all talk at the same
24 time.

25 MR. EVANS: I object to him --

26 MR. CARTER: She is trying --

27 THE COURT: I just said make your objection.

28 Then he can respond.

29 MR. CARTER: Okay. Your Honor, she tried to

1 answer the question. She tried to follow-up. The same
2 thing he has been complaining about the whole trial, and
3 he wouldn't even let her finish.

4 THE COURT: You can complete your answer. Then
5 he can follow-up his question. If you were not finished
6 with your answer, then you may finish.

7 THE WITNESS: (No response.)

8 THE COURT: I take it you were finished.
9 You may ask the next question.

10 Q. When I asked you if Doyle's windows were tinted, you
11 turned around to look at the picture of the car, didn't you?

12 A. I just turned around.

13 Q. Yes, ma'am. And that is where he had shown you the
14 pictures of the car a few minutes ago, wasn't it?

15 A. Well, I really don't know about the tint on the car.

16 Q. You don't know much about that car, do you?

17 A. I know it was dark -- light and dark brown. I do
18 know that.

19 Q. So you are saying --

20 A. Because it sit in my front yard all the time.

21 Q. A light and dark brown car went down Highway 82 in
22 front of Winona Manor.

23 A. Yes.

24 Q. But you couldn't see who was driving. You don't
25 even know if Doyle's car has tinted windows; is that right?

26 A. I didn't say I didn't know it was tinted windows.

27 Q. Are they tinted?

28 A. I couldn't see the person that was in the car.

29 Q. Are they tinted windows?

1 A. (No response.)

2 Q. That is a simple question.

3 MR. CARTER: Your Honor, I object.

4 I thought you said --

5 Didn't she say she didn't know whether they were
6 tinted or not. What else he want her to do?

7 MR. EVANS: Your Honor, she said she didn't
8 say. I am asking her.

9 Q. Are the windows tinted on Doyle's car?

10 A. I could not tell you if they are tinted or not.

11 Q. Thank you. And you would like to help everybody
12 out.

13 A. Yes, I would.

14 MR. EVANS: Nothing further, Your Honor.

15 REDIRECT EXAMINATION BY MR. CARTER:

16 Q. Miss Campbell.

17 A. Yes.

18 Q. Is your reason for -- what do you mean by -- first
19 of all, is your reason for coming here and testifying --

20 MR. EVANS: Your Honor, I object to leading.

21 MR. CARTER: He said -- he asked her if she
22 would like to come in and help people out.

23 MR. EVANS: And I object to leading.

24 THE COURT: I'll --

25 Q. What, what is your --

26 THE COURT: You can ask her what she meant by
27 that if that is what you are --

28 Q. What do you mean by that, Miss Campbell?

29 A. I wouldn't want any child -- nobody's child to go

1 anywhere if they had did anything.

2 Q. Okay. Now, let's go back in. Did you see Doyle's
3 car?

4 A. Yes.

5 Q. You know for a fact that you saw it.

6 A. Yes.

7 Q. Once and twice.

8 A. Yes.

9 Q. Right. And you, you said you couldn't tell who was
10 actually driving, but you know that was the car.

11 A. Yes.

12 Q. And you don't know whether the windows were tinted
13 or not. But however they were, you were not able from the
14 distance you were sitting to actually see who was driving the
15 car; is that correct?

16 A. Yes.

17 Q. Now, on this stuff about tending to the patient and
18 not look, are there any rules or were you given any
19 instructions that when you go outside with a patient that you
20 can't look around, that you basically keep your eyes on the
21 patient?

22 A. No.

23 Q. So you were free to look wherever you wanted to; is
24 that correct?

25 A. Yes.

26 MR. EVANS: Your Honor, every question is
27 leading, and I object.

28 THE COURT: I agree, Mr. Carter. You are
29 engaging in leading the witness.

1 MR. CARTER: Yes, sir, I'll stop.

2 Q. Now, this car that's in S-99-A, you've seen this car
3 numerous times. Is that fair to say?

4 A. Yes.

5 Q. And were there any more cars like that around town,
6 if you knew.

7 A. I really couldn't tell you --

8 Q. Okay.

9 A. -- because I...

10 Q. Now, and I believe you told me earlier that you are
11 here to tell what you saw; is that correct?

12 A. Yes.

13 Q. Is that the only thing you are here to do?

14 MR. EVANS: Your Honor, object to leading.

15 A. Yes.

16 THE COURT: Sustained as to leading.

17 Q. Now, you testified a few minutes ago that you didn't
18 want -- wouldn't want to see anybody's child go to jail for
19 something they didn't do.

20 A. That's right.

21 Q. And does that include Mr. Simpson too?

22 MR. EVANS: That calls for a conclusion and
23 it's improper.

24 A. Yes.

25 THE COURT: I'll sustain the objection.

26 MR. CARTER: Wait a minute, Your Honor.

27 Q. Miss Campbell, you just told me that you were here
28 to tell --

29 MR. EVANS: Your Honor, I object to bolstering

1 the witness, and it has been asked answered several
2 times.

3 THE COURT: He hadn't even finished his
4 question yet. So I don't think an objection is
5 appropriate until a question has been asked.

6 Q. You said you were here and only here to tell what
7 you saw; is that correct?

8 A. Yes.

9 MR. EVANS: And that's exactly what he was
10 starting to say. I do object. It's --

11 THE COURT: You are being repetitive at this
12 point.

13 MR. CARTER: Okay. That's, that's all I've
14 got, Your Honor.

15 THE COURT: And I assume Miss Campbell is free
16 to go.

17 MR. CARTER: She is.

18 THE COURT: Miss Campbell, you may step down.
19 You are free to go wherever you would please at this
20 time.

21 Court will stand in recess for 15 minutes.

22 (A BREAK WAS TAKEN.)

23 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
24 AND THE DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS
25 WERE AS FOLLOWS:)

26 MRS. STEINER: Your Honor, the next witness
27 that we would call at this point would be Mr. Billy
28 Glover. Unfortunately, as the clerk's records will
29 reflect, Mr. Glover was -- subpoena was issued

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1 specifically for Mr. Glover.

2 The clerk's records indicate that it was transmitted
3 to Sheriff Nix, who ascertained that Mr. Glover lives in
4 Carrollton, North Carrollton. It was transmitted to the
5 Carroll County Sheriff for service. It was returned
6 served.

7 And unfortunately, when it became clear we were
8 going to be starting our case, and after the service, we
9 learned that despite having been served with the
10 subpoena, Mr. Glover, who apparently works offshore, went
11 to the coast, got on the boat or airplane, whatever. And
12 we were told, and we confirmed with the cell phone
13 conversation that he is actually offshore now. Now, I
14 believe he went off on a 14-day shift. As far as I know,
15 that means he would not ordinarily be back.

16 He is a witness who we consider important to the
17 case. He has testified -- we weren't expecting him not
18 to be here. So I haven't -- I have found testimony from
19 the first trial held here in Winona, and I had pulled one
20 copy and had my people mark it. And I'd like to call him
21 as an unavailable witness.

22 Now, I realize -- he, he is physically unavailable
23 today. Rather than seek a recess, I would like to offer
24 his testimony from the prior trial. I'd like to allow
25 the State to review the testimony I'm prepared to offer.
26 And then also, if -- assuming the Court will allow us to
27 proceed, there is, at the end of the testimony, a -- at
28 the end of the cross-examination an objection to a
29 question that was sustained. And I would, if we are

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1 allowed to read it, ask that neither the question nor the
2 objection be read into evidence since it was a sustained
3 objection.

4 THE COURT: Well, I will first declare him to
5 be unavailable based on your representations.

6 MRS. STEINER: All right.

7 THE COURT: And I will allow his testimony to
8 be read. And if there was a question that was asked then
9 that was sustained then there is no point in reading it.

10 MRS. STEINER: All right. Your Honor, I did --
11 I am going to hand --

12 MR. EVANS: Your Honor.

13 MRS. STEINER: This is my transcript. You can
14 review it. And then the transcript, I'll have my people
15 cross out what should not be read on it. I will ask them
16 to review and make sure they agree it was a sustained
17 objection.

18 Your Honor, I located another copy so there will be
19 three of them.

20 THE COURT: Okay.

21 MR. EVANS: Your Honor, it is mighty convenient
22 that the very important question about the time is what
23 they object to, and he is conveniently not here so that
24 we can rephrase the question now.

25 THE COURT: Well, I will tell you what, Mr.
26 Evans. I am not going to continue the case for two weeks
27 for somebody to be flown in from the Gulf of Mexico or
28 for the county to fly somebody down there to bring him
29 back.

1 He did answer a subpoena. He was served a subpoena,
2 and he will -- make a motion to hold him in contempt and
3 certainly the Court would issue a warrant for him for
4 contempt. But at this point, the option would be to
5 continue the case for an extended period of time while
6 this witness got back offshore or proceed. And I am
7 choosing to proceed.

8 MR. EVANS: Yes, Your Honor. I understand.
9 The Court is going to issue a warrant for him?

10 THE COURT: If the State prepares one, I will
11 certainly sign it.

12 MR. EVANS: We will prepare one.

13 THE COURT: For failing to appear in court
14 under subpoena.

15 And I need a copy of the -- I don't know if there
16 was any objection --

17 MRS. STEINER: Yes, sir.

18 THE COURT: -- that was made during anything,
19 but I -- if it is, I need to --

20 MR. EVANS: If we are going to use this, I need
21 a copy of it too.

22 MRS. STEINER: I have got a copy with the
23 redaction for the State.

24 Your Honor, I will mark here my pencil on the copy I
25 am giving you where I would propose that the matter cease
26 and then -- and then resume. Two lines through there and
27 --

28 THE COURT: Why don't you draw an "X" through
29 it, because if the court reporter -- for the benefit of

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1 the court reporter, when she -- I assume it is all right
2 with you if the court reporter just --

3 MRS. STEINER: Absolutely.

4 THE COURT: Without having to type what
5 somebody is reading.

6 So if you will just give her the redacted copy at
7 the conclusion of this proceeding so that she can have
8 that in her notes.

9 MRS. STEINER: All right.

10 MR. EVANS: If I may inquire. And I agree. I
11 wouldn't want a continuance either. I am ready to get
12 this thing over with. What I would ask is that if she
13 has other witnesses that she is going to put on that we
14 have a chance to review his other transcripts and see if
15 that question was asked in a manner that was not
16 objectionable in another transcript.

17 THE COURT: I don't know. I have no --

18 MRS. STEINER: You can put on rebuttal.

19 THE COURT: I have tried it once. I don't know
20 if this --

21 MR. EVANS: All I'm asking is if she has other
22 witnesses for today to give us until in the morning until
23 this one is presented.

24 THE COURT: Have you got some live witnesses
25 that you can call or other --

26 MR. EVANS: No, sir. What I'm saying --

27 THE COURT: No. I'm, I'm addressing this to
28 Mrs. Steiner. I think that is appropriate to see.

29 MRS. STEINER: We, we do have some live

1 witnesses. This one -- it just -- we are going into a
2 different subject matter that we wanted -- this is our
3 only witness on this subject matter, and we would want to
4 get that done so we can turn directions.

5 I'm -- you know, I'm at the Court's disposal. I
6 think they are permitted to impeach or have read into the
7 record or -- I mean, I suppose I could even recall the
8 witness.

9 THE COURT: Well, why don't we call somebody
10 else and then this can be considered and looked at and
11 they can look through the past transcripts?

12 MRS. STEINER: Okay. All right.

13 THE COURT: Rather than to have this person's
14 testimony part of it read and then turn around and have
15 part of it read tomorrow. It would be not only breaking
16 up the flow of the testimony, but I'm concerned that it
17 might confuse the jury.

18 MRS. STEINER: Okay. Why don't we have the
19 proposed testimony as proposedly redacted marked for
20 identification --

21 THE COURT: You can do that.

22 MRS. STEINER: -- the next exhibit?

23 THE COURT: Exhibit as in just allowing it to
24 be read?

25 MRS. STEINER: For identification, yes. As we
26 did with the other transcript.

27 THE COURT: And then we can -- if there is more
28 testimony that he has offered at some other time, that
29 could also be considered. Then we will take a look at it

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1 in the morning.

2 MR. EVANS: Yes, sir.

3 MRS. STEINER: Your Honor, may I confer?

4 (A TRANSCRIPT OF THE TESTIMONY OF BILLY GLOVER WAS MARKED
5 DEFENDANT'S EXHIBIT NUMBER 19 FOR IDENTIFICATION.)

6 MRS. STEINER: Actually, the -- Mr. Glover was
7 one subject matter. The next subject matter we were
8 going to have was also going to be a transcript and then
9 a live witness. And we could certainly complete that
10 today.

11 That is Stacey Wright. She has -- is the lady who
12 has moved to Missouri. We, we were very hopeful she
13 might be down here, and we could get her and make her
14 stay. We tried. The sheriff tried. She was unable to
15 be served here. All the information that both the
16 sheriff and we got was that she continues to reside in
17 Missouri.

18 In both the fourth and the fifth trials, we actually
19 did the interstate subpoena. Your Honor gave a
20 certificate of necessity. The Court summoned her in
21 Missouri the first time and took evidence from her and
22 made specific findings that are in an order in the court
23 file that the judge would not order her to return given
24 it would cause significant hardship. Not only would
25 there be the expense, which the .10 a mile and \$40 a day
26 does not actually cover, but that the person would
27 miss -- that she would miss work and not have care for
28 her family.

29 The second time we did that the Court in Missouri,

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1 the same court, elected simply to conclude that there
2 could not be changed circumstances and that the total
3 amount -- and they did not compel her return in both --
4 in the fourth trial.

5 THE COURT: I, I recall prior to the -- prior
6 to trial five my ruling was that her testimony from a
7 previous proceeding could be offered because of her
8 unavailability.

9 MRS. STEINER: And this is just the same
10 transcript. It's from the Gulfport trial. And I had a
11 copy for me to read, and a copy for the witness to read.
12 I thought it had been previously marked as an exhibit for
13 identification. If not, I can have someone run and make
14 a couple more photocopies of it for identification.

15 THE COURT: Well, as long as both sides have a
16 copy, and I have got a copy.

17 MR. EVANS: I am going to have to get a copy,
18 Your Honor. I thought there was one in here but there is
19 not.

20 THE COURT: Well, if you will just run across
21 the hall and get something xeroxed?

22 MRS. STEINER: May I be excused from the
23 courtroom?

24 THE COURT: Certainly. Or one of your
25 associates.

26 MRS. STEINER: Your Honor, while we are waiting
27 for the duplicate copies, I would also state for the
28 record that at the commencement of this individual's
29 testimony, after she identifies herself to the Court,

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1 there is a lengthy bench conference.

2 I'll read into the record what I think we are not
3 going to be reading aloud when this is marked for
4 identification. It will be at Page 2510, starting at
5 Page 12 -- Line 12 of the -- Mr. Horan says, "Your Honor,
6 can we approach for just a minute?" I would propose --
7 the witness's identified herself as Stacey Wright.

8 I would propose that in reading this we delete Lines
9 12 through 16 on -- Lines 12 on Page 2510 through Line 16
10 on 2512, because that is a bench conference. And just
11 commence the examination after she has spoken her name in
12 response to the judge's request, with the question that
13 begins on Line 17 on Page 2512. Question, yes, ma'am.
14 Can you tell the ladies and gentlemen, etc.

15 THE COURT: That, that is fine. We are
16 certainly not going to read any bench conferences in the
17 record.

18 MRS. STEINER: I have one to be marked.

19 Your Honor, may I have the court reporter also mark
20 the transcript, and she does not need to take the
21 testimony.

22 (THE TRANSCRIPT OF THE TESTIMONY OF STACEY WRIGHT WAS
23 MARKED DEFENDANT'S EXHIBIT NUMBER 20 FOR IDENTIFICATION.)

24 THE COURT: If you'll find somebody to be Miss
25 Wright.

26 MRS. STEINER: I have. Your Honor, this is
27 Miss Pria Brandis. She is a law student interning with
28 our office.

29 THE COURT: Okay. If you will just come around

1 and have a seat. Then she will hand you that transcript.

2 (MISS BRANDIS WAS SEATED ON THE WITNESS STAND.)

3 THE COURT: I will bring the jury in now.

4 (THE JURY RETURNED TO THE COURTROOM.)

5 THE COURT: Court will come back to order.

6 Ladies and gentlemen, we have got another witness
7 who's not available now. Stacey Wright at some previous
8 time had given sworn testimony, and her sworn testimony
9 is now going to be read for your benefit.

10 (THE TRANSCRIPT OF THE TESTIMONY OF STACEY WRIGHT WAS
11 READ.)

12 MRS. STEINER: Your Honor, for purpose --

13 THE COURT: We pick back up after bench
14 conference was over, starting on Page 2517, Line 20.

15 (THE READING OF THE TRANSCRIPT CONTINUED THROUGH TO
16 CONCLUSION.)

17 THE COURT: Who do you have next?

18 MR. CARTER: I don't know if I have got anybody
19 short, Your Honor.

20 THE COURT: We can start and then we will
21 recess at some point.

22 MR. CARTER: Latarsha Blissett, Your Honor.

23 (THE WITNESS ENTERED THE COURTROOM.)

24 THE COURT: I need you to come around, please,
25 face the bench. Raise your right hand and take the oath.

26 Do you solemnly swear or affirm the testimony you
27 give in this case will be the truth, the whole truth and
28 nothing but the truth, so help you God?

29 THE WITNESS: I do.

1 THE COURT: Come around please and have a seat.

2 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

3 THE COURT: For the record, state your name,
4 please.

5 THE WITNESS: Latarsha Blissett.

6 THE COURT: You may proceed.

7 LATARSHA BLISSETT, Called on behalf of the Defendant,
8 having been duly sworn, was examined and testified as follows:

9 DIRECT EXAMINATION BY MR. CARTER:

10 Q. How old are you at this point, Miss Blissett, if you
11 don't mind?

12 A. Thirty-five years old.

13 Q. Okay. And where do you live?

14 A. Thirty-two. Thirty-two years old.

15 Q. Okay. Where do you live?

16 A. In Winona, Mississippi.

17 Q. Okay. And you been here all your life?

18 A. Yes.

19 Q. Okay. And what -- are you employed?

20 A. Yes.

21 Q. Okay. And do you remember the, the time that the
22 murders happened down at Tardy's Furniture store?

23 A. Yeah. I, I remember the time.

24 Q. And I'm not asking if you remember the date. You
25 might not -- do you remember the date? But if you don't, it's
26 all right.

27 A. I just remember the year.

28 Q. Okay. And do you know a Clemmie Fleming?

29 A. Yes.

1 Q. Are you kin to her?

2 A. Yes.

3 Q. Do you know Stacey Wright?

4 A. Yes.

5 Q. You any kin to her?

6 A. No.

7 Q. Okay. Now, were you interviewed by anyone as a, a
8 witness in the case involving the Tardy murders? Were you
9 ever interviewed by anybody with the police department?

10 A. Yes, I was.

11 Q. And tell us about -- tell us what happened.

12 A. I was at school one day, and I got picked up by --

13 Q. How old were you?

14 A. Huh?

15 Q. How old were you then?

16 A. I don't -- I can't remember. I'm not -- I can't
17 remember how old I was at the time they picked me up from
18 school.

19 Q. You were at school. What school?

20 A. I was at Winona Vo-Tech building.

21 Q. Okay. And someone came to pick you up. Do you
22 remember who it was?

23 A. It was John and Miss Vanhorn.

24 Q. Okay. John Johnson.

25 A. Um-hum.

26 Q. And Miss --

27 A. Miss Vanhorn. I don't know. Miss Vanhorn. The
28 lady police that's here in Winona.

29 Q. Liz Vanhorn, I believe. And what happened? They

1 came to school about what, if you recall?

2 A. It was early part of the day.

3 Q. And what did they do once they got there?

4 A. Well, I walked across the street to the
5 superintendent's little building they got over there. And I
6 got in the car with them, and we left and went to Greenwood.

7 Q. Okay. And where did you go in Greenwood?

8 A. It was to the highway patrol office, little building
9 around the back. It gotta be hooked together, because it's
10 right there, right off the interstate, off the highway.

11 Q. Would that be 82?

12 A. Yeah.

13 Q. Okay. And when you got there, what happened?

14 A. They asked me some questions.

15 Q. Okay. You went inside to a -- some room, I assume.
16 Is that...

17 A. Yeah. We went inside this room. And I was sitting
18 in a chair. And the guy that was sitting across from me asked
19 me some questions. It was a little, small room. And it had
20 this other little room over here with a window where you could
21 see people's shadow behind it. But you can't just actually
22 see the people, but you can see the dark shadows of different
23 people.

24 Q. You were not a adult at this time; is that correct?

25 A. No, I wasn't. I was a minor.

26 Q. Were your mom with you?

27 A. Nope.

28 Q. And --

29 A. I didn't call her.

1 Q. Okay. Is there any reason why you didn't?

2 A. Because when they asked me to go with them, I just
3 got in the car with them and left because they was officers.
4 They were polices. And I didn't know why or what, but I went
5 with them. I thought maybe they might have contact my
6 parents.

7 Q. And did you understand that you were going to be
8 taken to Greenwood before you got in the car?

9 A. I didn't know where we was going.

10 Q. Okay. And was it a patrol car or, or city police
11 car? Or do you remember what kind of car it was?

12 A. I, I can't remember what kind of car it was.

13 Q. When you got there, who questioned you?

14 A. Johnny. The man.

15 Q. Okay. Now, did they question you on the way to
16 Greenwood? Were you being asked questions on the way to
17 Greenwood?

18 A. Huh-huh. On the way to Greenwood we rode and talked
19 all the way over there. It was just a nice, friendly
20 conversation. They knew my dad. They just let me, you know,
21 know they knew my parents and stuff like that.

22 Q. Okay.

23 A. I felt real comfortable riding with them.

24 Q. Okay. And once you got to Greenwood, you went
25 inside this room with the little window where you could see
26 shadows. And what happened after that?

27 A. They asked me was I trying to -- well, they told me
28 they knew I was trying to buy a mobile home, me and my
29 boyfriend at the time. And they told me that they knew a lot

1 about me, what I was trying to get and do. Told me my social
2 security number. They just letting me know they, they knew me
3 real well.

4 Q. Okay. And, and they told you they knew you wanted a
5 trailer. What else did they do?

6 A. They asked me if I knew what \$30,000 can do. And I
7 said yeah, I know. And they well, you trying to buy a mobile
8 home, aren't you? Yeah, I am.

9 Q. Okay. And why did they bring up the money? What
10 did they want you to do?

11 A. I guess they was letting me know that if I had
12 \$30,000 that could go towards me getting a mobile home,
13 because I was just looking at mobile homes.

14 Q. You had been looking at mobile homes, and, and they
15 knew that.

16 A. Yeah. I don't know how they knew but they knew.

17 Q. Okay. And what -- did they ask eventually about the
18 Tardy murders or any witnesses? What, what else did they ask
19 you?

20 A. They asked me if, if I knew what size shoes Curtis
21 wore, or did I know anything about his shoes size. I, I
22 couldn't help them in that area, because I did not know.

23 Q. Okay. You told them you didn't know. Anything else
24 you -- stands out that you remember about that incident?

25 A. No more than after I couldn't help them with the
26 shoes, then they asked me what size shoes my boyfriend wore.
27 And I told them what size he wore. They asked me if I knew
28 what 30,000 could do. And they just kept asking me about
29 that. And yeah, I know, you know.

1 Q. And who was your boyfriend?

2 A. It was Earl Campbell at the time.

3 Q. How long did they keep you down there?

4 A. I was there when -- had to been -- when I got back
5 to Winona, school was out. I had to get my things together
6 and get ready to go home. The whole school was out.

7 Q. How did you get home?

8 A. I walked.

9 Q. They didn't even take you back home? They didn't
10 take you home?

11 A. No, they didn't take me home. When I got home, I
12 told my momma about what happened. She didn't even know
13 nothing about it.

14 Q. Now, now, the time that you spent in Greenwood, was
15 the entire time spent in this with these two individuals?

16 A. In the room it was just right there. I was sitting
17 in the chair, and the guy was there. And he recorded
18 everything that we talked about. It was just me and him right
19 then. Miss Vanhorn wasn't in the room.

20 Q. Okay. Did she come into the room at some point?
21 Miss Vanhorn?

22 A. I, I don't think she did.

23 Q. Okay. And once you were not able to help them, what
24 did they do? Said let's go? What happened?

25 A. Yeah. We got up and left and came back and
26 everything was okay.

27 Q. Is that the only time they talked to you, only time
28 Mr. Johnson talked to you about this case?

29 A. Um-hum.

1 Q. Now -- one moment.

2 I believe you testified that Clemmie is your cousin; is
3 that correct?

4 A. Yeah, she is.

5 Q. And how close? What cousin - first, second, third?

6 A. She is my first cousin.

7 Q. First cousin. Okay. So y'all's mom's -- how y'all
8 first cousins?

9 A. My dad and her dad, they --

10 Q. Brothers?

11 A. -- brothers. Or they grew up together as brothers,
12 and that's how we first cousins. Bob Fleming, that's her dad.
13 And my dad's name is James Fleming.

14 Q. Okay. Now, have you and Clemmie ever had any
15 discussion about the case and about what she saw or didn't
16 see?

17 A. Yes, we did. It was after the first trial.

18 Q. And where did this take place? Do you recall?

19 A. At my house the first time.

20 Q. And what did she say?

21 A. She told me that -- if she talked to people, that
22 she saw Curtis running from the store that they would pay off
23 her furniture note or give her some money for her furniture.
24 That is what she said she was going to do. That is what they
25 asked her.

26 Q. Okay. Did she say she actually saw him? Did she
27 really see him running?

28 A. She told me she didn't see him, and that they
29 haven't gave her no money.

1 Q. She said she didn't see Mr. Flowers running and that
2 she was saying that she saw him for that purpose of not paying
3 for her furniture or getting some money?

4 A. Her furniture was going to be free and she was --
5 they were going to give her the money to do away with the bill
6 if she would have said she saw Curtis. So that is what she
7 done for the money, for the furniture.

8 Q. Okay. Now, this -- did this happen more than one
9 time?

10 A. Yeah. We had the conversation a second time. It
11 was over the phone.

12 Q. Okay. And what did she say on that occasion, if you
13 recall?

14 A. She said that she didn't change her story, didn't,
15 didn't tell the people that what she told them was a lie
16 because if they -- if she told them that she was lying they
17 was going to take her kids, and she was going to go to jail.
18 And she didn't want to lose her children.

19 Q. Okay.

20 MR. CARTER: We tender, Your Honor.

21 CROSS-EXAMINATION BY MR. EVANS:

22 Q. Good evening, Miss Blissett.

23 A. How you doing?

24 Q. I'm doing all right. How about you?

25 A. I'm fine.

26 Q. I believe when the officers talked to you, you were
27 18 years old; is that right?

28 A. I don't know.

29 Q. You were 18 years old, weren't you?

1 A. If you say I was, then...

2 Q. So you weren't a minor.

3 MR. CARTER: Your Honor.

4 THE COURT: I wasn't no 18 years old.

5 MR. CARTER: Your Honor, may --

6 MR. EVANS: Your --

7 MR. CARTER: I think she testified on direct
8 that she didn't remember how old she was.

9 Q. In one of the previous trials you testified you were
10 18 when you were picked up. How old were you?

11 A. I don't know how old I was when they picked me up.

12 Q. You wouldn't deny the fact that you've testified at
13 a previous trial that you were 18.

14 A. I don't know that I said I was 18. I don't remember
15 that.

16 Q. And you know for a fact that Miss Vanhorn did call
17 your mother, didn't she?

18 A. No, she did not call my mom. Miss Liz will tell you
19 that.

20 Q. Yes, she will. Now, you want this jury to believe
21 that John Johnson just happened to know that you were looking
22 for a house trailer.

23 A. Yeah, because he --

24 Q. How did he do that? Has he got psychic ability?

25 A. He could have been following me around.

26 Q. Oh, he could have been following you around.

27 A. That's what investigators do.

28 Q. So what you want them to believe is that he offered
29 you a house trailer if you would tell him what size shoes

1 Curtis Flowers wore.

2 A. No. He did not offer me a house trailer. He asked
3 me if I knew what \$30,000 can buy.

4 Q. Okay. And he was going to give you \$30,000 to tell
5 him what size shoes Curtis Flowers wore.

6 A. I don't know if he was going to give it to me or
7 not. He just asked me if I knew what it could buy.

8 Q. Wouldn't it be a whole lot cheaper to just go ask
9 Curtis what size shoes he wore?

10 A. Well, I am sure he probably did.

11 Q. According to what you are telling this jury, he
12 asked you what size shoes Curtis wore and what size shoes Earl
13 Campbell wore and they carried you back to Greenwood when you
14 didn't know.

15 A. Repeat your question.

16 Q. The only thing that you told Mr. Carter that he
17 asked you is what size shoes Curtis Flowers wore and what size
18 shoes Earl Campbell wore. And they carried you back to Green
19 -- back to Winona.

20 A. Well, he asked me that and asked me do I know what
21 \$30,000 can buy. Because Earl Campbell was my boyfriend, and
22 Earl Campbell kin to Curtis Flowers.

23 Q. Earl -- I am fixing to get into that. Earl is the
24 defendant's cousin, isn't he?

25 A. Um-hum.

26 Q. And Earl was your boyfriend.

27 A. Right.

28 Q. You had a lot of reasons to want to help out, didn't
29 you?

1 A. No, I did not.

2 Q. But you want this jury to believe that for \$30,000
3 all you had to do is say well, I know what size shoes Curtis
4 Flowers wears.

5 A. If I would have knew what size shoes he wore, I
6 would have told them. But I did not know.

7 Q. I would to for \$30,000.

8 A. Even if I did know, for \$30,000 -- if I want to just
9 be dirty, I could have just made up a size.

10 Q. But they didn't ask you --

11 A. \$30,000 --

12 COURT REPORTER: Judge.

13 THE COURT: Wait. Excuse me.

14 Repeat that.

15 Q. They didn't ask you to make up anything, did they?

16 A. No. They didn't ask me to make up nothing. But
17 offering me that kind of money, that is what they was
18 expecting for me to do. Lie. Make up a size.

19 Q. That is what you are doing here today, isn't it?

20 A. No. I am telling the truth today. Like I have --

21 Q. You want this jury --

22 A. -- the rest of the time.

23 Q. You want this jury to believe that one, John Johnson
24 has psychic ability and knew you wanted --

25 MR. CARTER: Your Honor, I object to that.

26 A. No. He is an investigator.

27 MR. CARTER: I object, Your Honor.

28 MR. EVANS: May I --

29 MR. CARTER: I object --

1 MR. EVANS: -- finish --

2 COURT REPORTER: Judge.

3 THE COURT: She is on cross.

4 MR. CARTER: Psychic ability, Your Honor.

5 THE COURT: He can phrase his -- she can answer
6 that question.

7 Q. You want this jury to believe that John Johnson has
8 psychic ability, knew you wanted a house trailer and he
9 offered you \$30,000 just to answer one question - what size
10 shoes does --

11 A. No.

12 Q. -- the defendant wear?

13 A. No. I don't want them to believe that John Johnson
14 is a psychic. If he followed me around -- he could have had
15 you or anyone else to follow me around. But he asked me those
16 questions, and I answered the questions. The truth is what I
17 gave him.

18 Q. And that is what he asked and what your answer was.

19 A. The question he asked me, I answered them clearly to
20 him.

21 MR. EVANS: No further questions, Your Honor.

22 THE COURT: Redirect?

23 MR. CARTER: I don't know that I need to, Your
24 Honor.

25 REDIRECT EXAMINATION BY MR. CARTER:

26 Q. But Miss Blissett, you are absolutely sure that what
27 you testified to is, is the truth; is that correct?

28 A. Yes.

29 Q. Thank you very much. No further questions.

1 She can leave.

2 THE COURT: She is finally excused.

3 Miss Blissett, you are excused.

4 THE WITNESS: Thank you.

5 THE COURT: You are free to go wherever you
6 need to at this time.

7 Ladies and gentlemen of the jury, we are going to
8 recess. If you will step in the jury room for a few
9 minutes.

10 If you will get my night bailiffs. I want to
11 instruct them like I usually do.

12 If you will just step in the jury room. They will
13 get your transportation, and you can leave shortly. And
14 don't discuss the case with anyone or among yourselves.
15 (THE JURY LEFT THE COURTROOM.)

16 THE COURT: I need quiet.

17 Miss Hall, I will tell you this, and you can pass --
18 I am telling y'all this every day. Again, please be
19 zealous in making sure that the jury does not have any
20 outside influences --

21 BAILIFF HALL: Okay.

22 THE COURT: -- that are coming about to let
23 them know any knowledge of this case. And just please
24 continue to be faithful in taking care of their needs.
25 And again, I'll remind you that they can't discuss the
26 case with anyone or among themselves.

27 BAILIFF HALL: Okay.

28 THE COURT: And, of course, I know you know
29 this, but you and the other bailiff can't discuss the

1 case with them either.

2 And if you will pass that along to him.

3 BAILIFF HALL: I will.

4 THE COURT: I am doing it every day just about.
5 Anyway, I just don't think it ever hurts to re-emphasize
6 things, and I have every confidence that you are
7 following my instructions.

8 And if he was not doing something else, he would be
9 standing here with you. So I didn't single you out. I
10 wanted you to know that too. Anyway, that is all, ma'am.
11 And y'all have a good night.

12 BAILIFF HALL: Okay. Thank you.

13 THE COURT: Court will stand in recess until
14 9:00 in the morning.

15 (THE PROCEEDING ON THIS DATE CONCLUDED.)
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GLOVER TESTIMONY READ

1 (THE FOLLOWING PROCEEDINGS WERE HAD IN
2 OPEN COURT ON JUNE 17, 2010, WITH THE
3 COURT, THE COURT REPORTER, ALL COUNSEL FOR
4 BOTH SIDES, THE DEFENDANT AND THE CIRCUIT
5 CLERK PRESENT, OUTSIDE THE HEARING AND
6 PRESENCE OF THE JURY, TO-WIT:)

7 **BY THE COURT:** I know there was some
8 witness that was unavailable, and there was
9 some discussion about whether there was more
10 than one transcript of his testimony.

11 **BY MR. EVANS:** Your Honor, I think the
12 transcripts are all pretty similar. We have no
13 objection to that particular transcript being
14 used.

15 **BY THE COURT:** Okay. That will be fine,
16 then. If you'll bring the jury in, please. At
17 the appropriate time, I need the copy of the
18 transcript at some point, when it's being read.

19 **BY MR. CARTER:** Have you got another one
20 here, Alison?

21 **BY MS. STEINER:** Yes. That's what I'm
22 trying to pull out for you.

23 (THE FOLLOWING PROCEEDINGS WERE HAD IN
24 OPEN COURT WITH THE JURY PRESENT, TO-WIT:)

25 **BY THE COURT:** Morning, ladies and
26 gentlemen of the jury. And Court will come
27 back to order.

28 (To Ms. Steiner) And you can take your
29 time.

GLOVER TESTIMONY READ

1 **BY MS. STEINER:** Your Honor, I believe my
2 reader is in the back along with his copy of
3 the transcript. May I be excused?

4 **BY THE COURT:** Certainly.

5 (PAUSE)

6 **BY MS. STEINER:** Here, Your Honor, is the
7 bench copy.

8 (MS. STEINER HANDS TRANSCRIPT TO COURT)

9 **BY THE COURT:** And is Mr. Glover the next
10 testimony --

11 **BY MS. STEINER:** Yes, Your Honor. We
12 would have Billy Glover. And I am attempting
13 to find the third copy of the transcript.

14 **BY THE COURT:** And ladies and gentlemen,
15 let me explain. You've seen this procedure
16 already. But Mr. Glover is not available at
17 this time as a witness. I'm understanding that
18 he's out of state. And so testimony from a
19 previous trial will be read at this time. And
20 the gentleman that's going to be reading
21 Mr. Glover's testimony is going to be speaking
22 Mr. Glover's words. And when you're listening
23 to it, you should consider that that is
24 Mr. Glover who's speaking. And he was under
25 oath at the time his testimony was given.

26 **BY MS. STEINER:** Your Honor, I'm afraid
27 that we're still one shy. Can I get this
28 copied? Do y'all all --

29 **BY MR. EVANS:** I've got one.

GLOVER TESTIMONY READ

1 **BY MS. STEINER:** Okay. I can either stand
2 next to the witness and read it or if you'll
3 excuse me --

4 **BY THE COURT:** If you want to step out --

5 **BY MS. STEINER:** Thank you.

6 **BY THE COURT:** -- it's not going to take
7 but a minute to make these copies.

8 (PAUSE)

9 (THE TRANSCRIPT OF DEFENSE WITNESS
10 BILLY GLOVER WAS THEN READ IN OPEN COURT)

11 **BY THE COURT:** Who would be your next
12 witness?

13 **BY MR. CARTER:** Kittery Jones.

14 **BY THE COURT:** What's the name?

15 **BY MR. CARTER:** Kittery, Kittery Jones.

16 **BY THE COURT:** If you'll come around
17 please, but I first need to swear you in. Do
18 you solemnly swear or affirm that the testimony
19 you give in this case will be the truth, the
20 whole truth and nothing but the truth, so help
21 you God?

22 **BY THE WITNESS:** Yes, sir.

23 **BY THE COURT:** If you'll come around,
24 please, and have a seat. State your name for
25 the record, please.

26 **BY THE WITNESS:** Kittery Jones.

27 **BY THE COURT:** And, Mr. Jones, that
28 doesn't amplify. It just records your voice.

29 **BY THE WITNESS:** Oh, okay.

KITTERY JONES - DIRECT

1 **BY THE COURT:** If you'll look over at the
2 ladies and gentlemen and try to talk as loud as
3 you can for them.

4 **BY THE WITNESS:** Okay.

5 **BY THE COURT:** You may proceed.

6 **DIRECT EXAMINATION**

7 **BY MR. CARTER:**

8 Q. What is your occupation, sir?

9 A. I work on air conditioning and
10 refrigeration.

11 Q. And what else do you do?

12 A. I'm a pastor.

13 Q. And where?

14 A. Here in Winona.

15 Q. What's the name of your church?

16 A. Word of Truth.

17 Q. How long you been a pastor?

18 A. Probably seven, eight years.

19 Q. And do you live in Winona?

20 A. Yes, sir.

21 Q. How long have you lived here?

22 A. All my life.

23 Q. How old are you?

24 A. Thirty-nine.

25 Q. Thirty-nine. And what were you doing back
26 at the time that the incident happened at Tardy's
27 back in 1996? What was your occupation?

28 A. I wasn't preaching.

29 Q. What was your occupation?

KITTERY JONES - DIRECT

1 A. I was working at Tyler Holmes Hospital.

2 Q. Okay. Now, do you remember hearing about
3 an incident that happened on July 16th, 1996, at
4 Tardy Furniture Store?

5 A. Yes, sir.

6 Q. How did you hear?

7 A. My mom had called me.

8 Q. Okay. And after you heard -- what time
9 was it when you heard?

10 A. I don't remember the time.

11 Q. Okay. And were you concerned about it?

12 A. Yes, sir.

13 Q. And why? In an unusual way, why?

14 A. Because I thought that Curtis Flowers
15 worked down there.

16 Q. You knew he used to work down there?

17 A. Yes, sir.

18 Q. And you -- did you check to find out
19 whether he did or not?

20 A. Yes, sir.

21 Q. And what did you learn?

22 A. I went by his house and he came out.

23 Q. And he wasn't -- did he -- was he still
24 working there at the time that this happened?

25 A. I didn't know that.

26 Q. You didn't know that? Now, at some point,
27 you were -- were you interviewed?

28 A. Yes, sir.

29 Q. Okay. And who interviewed you?

KITTERY JONES - DIRECT

1 A. John Johnson and -- and Doug Evans.

2 Q. And how many times were you interviewed?

3 A. I think it was like twice at the station,
4 and they came upon my job. They came up to Tyler
5 Holmes.

6 Q. And who exactly came up there?

7 A. It was John Johnson, and I think it was
8 the Horan guy.

9 Q. Okay. And they talked to you at Tyler
10 Holmes?

11 A. Yes, sir.

12 Q. And did they -- did you write a report?

13 A. No, sir.

14 Q. Did they write one?

15 A. Not that I know of.

16 Q. Did they have a tape recorder going?

17 A. I didn't see one.

18 Q. Now, had they asked you to write a report
19 concerning that conversation, you could have done
20 it, couldn't you?

21 A. Yes, sir.

22 Q. Okay. Because you went to school, and you
23 can read and write; is that correct?

24 A. Yes, sir.

25 Q. Okay. And what did they ask you on that
26 occasion?

27 BY MR. EVANS: Your Honor, I object to
28 hearsay.

29 BY THE COURT: Sustained.

KITTERY JONES - DIRECT

1 BY MR. CARTER:

2 Q. What kind of things did they talk to you
3 about? What was the subject matter?

4 A. The first time at the station?

5 Q. Did the first conversation happen at the
6 station?

7 A. Yes, sir.

8 Q. Okay. Tell us what happened at the
9 station.

10 A. Okay. I went down to the station, and
11 they introduced themselves. And then they began to
12 ask questions about did I know anything about the
13 Tardy murders or did I know Curtis Flowers and
14 questions like that.

15 Q. How long were you there?

16 A. I don't remember how long.

17 Q. Okay. And how did you get there to the
18 station that day?

19 A. They picked me up.

20 Q. Okay. And you rode in a patrol car?

21 A. Yes, sir.

22 Q. And who exactly picked you up, was it
23 Mr. Jones (sic)? I mean, was it John Johnson?

24 A. No, sir.

25 Q. Was it a uniformed police officer?

26 A. Yes, sir.

27 Q. From Winona?

28 A. Yes, sir.

29 Q. Black or white?

KITTERY JONES - DIRECT

1 A. Black.

2 Q. Male or female?

3 A. Male.

4 Q. Okay. And you came back -- they brought
5 you back home?

6 A. They carried me back.

7 Q. Excuse me -- to what? Your job?

8 A. Yes, sir.

9 Q. And how long thereafter did they talk to
10 you again?

11 A. I don't remember.

12 Q. Okay. Where did your next conversation
13 take place?

14 A. It was at the station.

15 Q. How did you get to the station that time?

16 A. I drove.

17 Q. And how did you know you needed to go to
18 the station?

19 A. They sent word.

20 Q. For you to come down there?

21 A. Yes, sir.

22 Q. And you complied and went on?

23 A. Yes, sir.

24 Q. Okay. And what did they say to you this
25 time? What happened this time?

26 A. We began to talk and talk about Curtis
27 again. And then all out of nowhere, Mr. Johnson
28 reached up and grabbed a piece of paper and he said,
29 "You know the reward went up, don't you?" And then

KITTERY JONES - DIRECT

1 he talked if I came up with something that could
2 link Curtis or said that Curtis did this, I could
3 get the reward money.

4 Q. How much was that at the time? Do you
5 know?

6 A. 15,000.

7 Q. 15,000. How long were you at the police
8 station that day?

9 A. I don't remember.

10 Q. Okay. Who was present?

11 A. Doug Evans and John Johnson.

12 Q. Okay. So they said -- held up a piece of
13 paper and showed you the reward has gone up, and
14 then said if you can tell them something about
15 Curtis' involvement in the crime, you can get the
16 reward?

17 A. Yes, sir.

18 Q. Okay. Is that the extent of what happened
19 on that occasion?

20 A. Yes, sir. Mr. Johnson told me that I
21 could go purchase me a vehicle. But at the time
22 that I told him that I had just bought a truck and I
23 didn't need one. And then he stated that he didn't
24 know nobody that didn't need \$15,000 in their bank
25 account. And I told him -- I said, "Yeah, I need
26 it, but I wouldn't lie on him to get it, lie on a
27 man to get it."

28 Q. Okay. Now, who else did you say was at
29 that meeting that particular time?

KITTERY JONES - DIRECT

1 A. Mr. Doug Evans.

2 Q. The district attorney?

3 A. Yes, sir.

4 Q. And what else happened? Is that all that
5 happened? What else do you recall, if anything,
6 that happened on that occasion?

7 A. That was about it.

8 Q. Okay. And after this conversation, what
9 did you do? Where did you go?

10 A. I just left and went home.

11 Q. Went back home?

12 A. Yes, sir.

13 Q. Now do you know if this conversation was
14 being taped on that occasion?

15 A. I was told that it was.

16 Q. Did you see a tape recorder?

17 A. No.

18 Q. Did you see anybody writing down notes?
19 Did you see either Mr. Evans or Mr. Johnson writing
20 notes?

21 A. They had note pads.

22 Q. Now, did they ask you to write a statement
23 on that day?

24 A. No, sir.

25 Q. Had they asked you, you could have; is
26 that correct?

27 A. Yes, sir.

28 Q. Now, did they talk to you again after
29 that?

KITTERY JONES - DIRECT

1 A. They came to my job.

2 Q. Okay. And what happened when they came to
3 your job?

4 A. He just came in and came in the shop where
5 I was at and he said --

6 Q. Were you still at Tyler Holmes at that
7 time?

8 A. Yes, sir.

9 Q. Okay. They came to the shop where you
10 were at. What happened?

11 A. And they told me, you know, We got
12 concrete evidence against Curtis. And I was
13 wondering why were they coming to tell me, because
14 it didn't have nothing to do with me. And they just
15 stated that and they left.

16 Q. Now, did Mr. Johnson state something to
17 you? I'm sorry. Mr. Evans --

18 **BY MR. EVANS:** I object to hearsay.

19 A. Mr. Evans wasn't there.

20 **BY MR. CARTER:**

21 Q. Mr. Evans wasn't there on that occasion?

22 A. No.

23 Q. Okay. Now, on this occasion that
24 Mr. Evans was present, did he make some comment to
25 you?

26 A. Yes. He told me once that I could get
27 locked up for obstructing justice.

28 Q. Now, were you doing anything to obstruct
29 justice?

KITTERY JONES - DIRECT

1 A. No, sir.

2 Q. Now, are you related to Curtis?

3 A. Yes, sir.

4 Q. What -- how?

5 A. He's my cousin.

6 Q. And what degree? Do you know?

7 A. First cousin.

8 Q. First cousin. Now, you said Mr. Horan was
9 with Mr. Johnson one time he came to see you?

10 A. Yes, sir, the last time.

11 Q. The last time. What -- did Mr. Horan say
12 anything?

13 A. I don't recall him saying much.

14 Q. Okay. Now, this guy that came and picked
15 you up, did you say Townsend? Is that what you
16 said?

17 A. Yes, sir.

18 Q. What did he say to you, if anything?

19 A. Nothing.

20 Q. Okay.

21 A. But on the way back, the chief carried me
22 back.

23 Q. Who carried you back?

24 A. Chief Hargrove.

25 Q. And did he say anything to you?

26 A. Yes, sir.

27 Q. What did he say?

28 A. He said that they were barking up the
29 wrong tree.

KITTERY JONES - DIRECT

1 Q. What do you mean -- is that all he said?

2 BY MR. EVANS: I object to hearsay, Your
3 Honor.

4 BY THE COURT: That is hearsay. I'll
5 sustain.

6 BY MR. CARTER: Okay. One moment.

7 BY MR. CARTER:

8 Q. And your testimony is that when
9 Mr. Johnson offered you the money, Mr. Evans was --
10 was there. Is that your testimony?

11 A. Yes, sir.

12 Q. And what did Mr. Evans do, if anything, in
13 response to Mr. Johnson saying that to you?

14 A. Nothing.

15 Q. Did you see anything, any behavior,
16 demeanor that showed disapproval, any disapproval of
17 that?

18 A. No, sir.

19 BY MR. CARTER: One moment, Your Honor.

20 BY MR. CARTER:

21 Q. Now, did you say earlier that you went to
22 check on Curtis --

23 A. Yes, sir.

24 Q. -- when this crime happened? And why was
25 that?

26 A. Because I thought he was still working out
27 there, and I thought he might have been one of the
28 ones that had gotten killed.

29 Q. Okay. Thank you.

KITTERY JONES - CROSS

1 **BY MR. CARTER:** We tender, Your Honor.

2 **CROSS-EXAMINATION**

3 **BY MR. EVANS:**

4 **Q.** Mr. Jones, do you know who Doug Evans is?

5 **A.** Yes, sir.

6 **Q.** That's me?

7 **A.** Yes, sir.

8 **Q.** I have never been present when you were
9 interviewed, have I?

10 **BY MR. CARTER:** Objection, Your Honor.

11 **BY THE COURT:** On what basis?

12 **BY MR. CARTER:** One moment, Your Honor.
13 I'll withdraw it, Your Honor.

14 **BY MR. EVANS:**

15 **Q.** I have never been present when you were
16 interviewed, have I?

17 **A.** Yes, sir.

18 **Q.** And that's as true as everything else
19 you've said?

20 **A.** You have been there.

21 **Q.** And that's as true as everything else
22 you've said today?

23 **A.** You've been there.

24 **Q.** Now, you are Curtis' cousin?

25 **A.** Yes, sir.

26 **Q.** And what time did you go by his house to
27 check on him?

28 **A.** It was around lunchtime.

29 **Q.** Around lunchtime. So you don't know where

KITTERY JONES - CROSS

1 he was at the time all these murders were committed?

2 A. No, sir.

3 Q. And you're not trying to alibi him; you're
4 saying that he was at home at twelve something?

5 A. He was at home before lunch. It was
6 around lunchtime.

7 Q. And this happened in 1996, and this is
8 2010. And for the first time, you're saying that I
9 was present during the interview --

10 BY MR. CARTER: Your Honor, I object to
11 the form. He's saying this happened. What is
12 this?

13 BY MR. EVANS: I think everybody in this
14 courtroom --

15 BY MR. CARTER: I object to the form.

16 BY MR. EVANS: -- knows what happened in
17 1996.

18 BY MR. CARTER: I object to the form.

19 BY THE COURT: I'll overrule the
20 objection.

21 BY MR. EVANS:

22 Q. This is the first time in all these years
23 you're telling anybody that I was present during an
24 interview?

25 A. I never even knew you before.

26 Q. You didn't know me then either, did you?

27 A. Before I went down there, I didn't even
28 know your name.

29 Q. But you have a pretty good reason to lie,

KITTERY JONES - CROSS

1 don't you?

2 **A.** No. I wouldn't lie on you or lie for you.

3 **BY MR. EVANS:** I don't have anything
4 further of this witness, Your Honor.

5 **BY MR. CARTER:** Neither do I, Your Honor.
6 Thank you very much.

7 **BY THE COURT:** I assume Mr. Jones is
8 excused as a witness?

9 **BY MR. CARTER:** Yes, sir.

10 **BY MS. STEINER:** Yes.

11 **BY THE COURT:** Mr. Jones, you may step
12 down. You're free to go and released from the
13 subpoena.

14 **BY THE WITNESS:** Thank you, sir.

15 (PAUSE)

16 **BY MR. CARTER:** You ready, Your Honor?

17 **BY THE COURT:** Yeah. I'm waiting to hear
18 who your next witness was.

19 **BY MR. CARTER:** Connie Moore. Oh, wrong
20 one, Your Honor. I got my list messed up.
21 Mary Ella Fleming.

22 **BY THE COURT:** If you'll come around,
23 please, and face the bench, raise your right
24 hand and take the oath. Right here. Do you
25 solemnly swear or affirm that the testimony
26 that you give in this case will be the truth,
27 the whole truth and nothing but the truth, so
28 help you God?

29 **BY THE WITNESS:** Yes, sir.

FLEMMING - DIRECT

1 **BY THE COURT:** If you'll come around,
2 please, and have a seat. State your name for
3 record, please.

4 **BY THE WITNESS:** Mary Ella Fleming.

5 **BY THE COURT:** Ms. Fleming, you're
6 probably going to need to speak louder. That
7 does not record -- I mean, that does record; it
8 doesn't amplify. So if you'll look over toward
9 these ladies and gentlemen and speak loud
10 enough for them to hear.

11 **BY THE WITNESS:** Mary Ella Fleming.

12 **DIRECT EXAMINATION**

13 **BY MR. CARTER:**

14 **Q.** Okay. Ms. Fleming, how old are you, Ms.
15 Fleming?

16 **A.** Forty-three.

17 **Q.** And you're here under subpoena today; is
18 that correct?

19 **A.** Yes, sir.

20 **Q.** And you have any sisters and brothers?

21 **A.** Yes, sir.

22 **Q.** How many?

23 **A.** Joanne, Lisa, Robert, Jr., Timmy, Clemmy,
24 and I have one that died.

25 **BY THE COURT:** I think you need to speak
26 up a little louder. I've got an indication
27 that maybe the back row of the jury can't hear
28 you very well, so if you'll speak louder,
29 please.

FLEMMING - DIRECT

1 **A.** My sisters Joanne, Lisa, Robert Jr.,
2 Timmy, Clemmy and Clarissa. She the one that
3 passed.

4 **BY MR. CARTER:**

5 **Q.** Okay. And do you remember back in
6 July 16th, 1996, when the terrible incident happened
7 down at Tardy Furniture store in Winona, Mississippi
8 on Front Street?

9 **A.** Yes, sir.

10 **Q.** And about what time did you hear about
11 this?

12 **A.** Around about 12:00 or one o'clock.

13 **Q.** Okay. And where was you when you heard?

14 **A.** At home.

15 **Q.** Who was at home with you?

16 **A.** My two sisters Lisa, Clemmy and a friend
17 B.T.

18 **BY THE COURT REPORTER:** I'm sorry. Lisa,
19 Clemmy and who?

20 **BY THE WITNESS:** B.T.

21 **BY MR. CARTER:**

22 **Q.** Okay. And where were you living back
23 then?

24 **A.** At 202 Academy Street.

25 **Q.** Okay. And how long had all y'all been
26 together that day?

27 **A.** All morning.

28 **Q.** All morning? Okay. Now, at the time you
29 heard about that incident at Tardy's, all of those

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

Curtis Giovanni Flowers v. State of Mississippi

Kathy Gillis, Clerk

TRIAL COURT # : 2003-0071-CR

FLEMMING - DIRECT

1 same people were at your house?

2 A. Yes, sir.

3 Q. And upon hearing about the incident at
4 Tardy's, what happened?

5 A. After we heard about it, we all jumped in
6 the car and went down there to where the Tardy's
7 Furniture's at.

8 Q. Okay. And what did you see when you got
9 down there?

10 A. I seen Johnny Glen Hargrove with that
11 yellow sign, with the yellow thing --

12 Q. Tape?

13 A. Yes, sir.

14 Q. And what else did you see, if anything?

15 A. It was a lot of people standing out.

16 Q. And could you get close to the place at
17 all?

18 A. We just rode around and kept on going.

19 Q. Okay. Did Clemmy make any remarks at that
20 time?

21 A. We talked about it earlier, about we were
22 going down there because Clemmy had to pay a bill,
23 but we didn't go that morning. And I just told her
24 that I'm glad we didn't go because we would have
25 been caught in there.

26 Q. Right. You might have been in there when
27 it happened?

28 A. Yes, sir.

29 Q. Okay. Now, what time did you first see

FLEMMING - DIRECT

1 Clemmy that morning?

2 A. About 7:30 or eight o'clock that morning.

3 Q. Okay. And what time was she out of your
4 view or not with you?

5 A. About three that evening.

6 Q. So if she testified that she saw
7 Mr. Flowers running from Tardy's somewhere around
8 9:30 to ten-something, could that have been
9 possible?

10 A. No, sir.

11 Q. And it couldn't have been possible because
12 she was with you --

13 A. Yes, sir.

14 Q. -- her sister? Which one of you is the
15 oldest?

16 A. I am.

17 Q. You love your sister, don't you?

18 A. Yes, sir.

19 Q. You wouldn't lie on her, would you?

20 A. No, sir.

21 Q. Now, you're aware that she's been
22 testifying repeatedly in the case, aren't you?

23 A. Yes, sir.

24 Q. And do you have any idea of why she's
25 doing this if she didn't actually see anything?

26 A. No, sir.

27 Q. But you do know that she couldn't have
28 seen what she claimed she saw; is that correct?

29 A. That's correct.

FLEMMING - DIRECT

1 Q. You know that for a fact, don't you?

2 A. Yes, sir.

3 Q. Now, did she even -- ever even tell you or
4 try to convince you that she was actually at Tardy's
5 and saw this?

6 A. No, sir.

7 Q. Now, did anyone from the police department
8 ever come interview you?

9 A. No, sir.

10 Q. And do you know if they interviewed
11 anybody else in your family, your sisters and
12 brothers?

13 A. I heard that when I was up there working
14 at Tyler Holmes. One of the housekeepers said that
15 a police came and got Clemmy one evening.

16 Q. But as far as you know, they didn't
17 question any other of your siblings?

18 A. No, sir.

19 Q. Now, had they wanted to interview you or
20 talk to you, would you have been available?

21 A. Yes, sir.

22 Q. And you wouldn't have resisted it? Would
23 you have resisted it?

24 A. No, sir.

25 Q. Now, you've answered all my questions
26 truthfully; is that correct?

27 BY MR. EVANS: Your Honor, I object.

28 That's not appropriate.

29 BY THE COURT: I'll sustain. That's just

FLEMMING - DIRECT

1 bolstering the testimony. That's not an
2 appropriate question.

3 **BY MR. CARTER:**

4 Q. Now, Mr. Flowers is not any kin to you, is
5 he?

6 A. No, sir.

7 **BY MR. CARTER:** One moment, Your Honor.
8 Thank you very much, Ms. Fleming. I tender.

9 **CROSS-EXAMINATION**

10 **BY MR. EVANS:**

11 Q. Good morning, Ms. Fleming.

12 A. Good morning.

13 Q. I think we've meet like this a couple of
14 times, haven't we?

15 A. Yes, sir.

16 Q. Now, you have tried several times to get
17 your sister not to testify, haven't you?

18 A. No, sir.

19 Q. You've even tried right before every trial
20 to get to her not to, haven't you?

21 A. No, sir.

22 **BY MR. CARTER:** Your Honor, I object to
23 that unless he had some basis or some proof --

24 **BY MR. EVANS:** Your Honor, she test- --
25 Clemmy testified that she had tried to get her
26 not to --

27 **BY THE WITNESS:** It --

28 **BY THE COURT:** Wait, wait, wait. I'll
29 overrule the objection. You may continue.

FLEMMING - DIRECT

1 **BY MR. EVANS:**

2 Q. You say then in a prior statement that
3 somebody dropped Clemmy off at your house, didn't
4 you?

5 A. I don't know if -- I don't know how Clemmy
6 got there. Clemmy said that Ray Harris dropped her
7 off.

8 Q. Roy Harris?

9 A. Roy Harris. I don't know how she got
10 there. I know she was there.

11 Q. All right. And Robert Flemming is your
12 brother; is that correct?

13 A. Yes, sir.

14 Q. Now, Clemmy had a furniture bill at Tardy
15 Furniture, didn't she?

16 A. Yes, sir.

17 Q. And it was cosigned by your brother
18 Robert; is that right?

19 A. Yes, sir.

20 Q. And Robert was sued --

21 **BY MR. CARTER:** Your Honor, I object to
22 relevance.

23 **BY MR. EVANS:** Your Honor, it's very
24 relevant. Robert was sued over this bill.

25 **BY THE COURT:** Wait. You need to get
26 it --

27 **BY THE WITNESS:** No, sir.

28 **BY THE COURT:** You were saying relevant,
29 and I was going to say you've got to tie it up

FLEMMING - DIRECT

1 pretty quick if it's relevant.

2 **BY MR. EVANS:**

3 **Q.** Robert was sued over this bill at Tardy's
4 Furniture after the murders, wasn't he?

5 **A.** No, sir.

6 **Q.** I want to hand you Exhibit 126, and I'll
7 ask you to look at this before you answer that.

8 **BY MR. CARTER:** Your Honor, I object to
9 this as not being relevant. This witness had
10 no reason to know what happened with respect to
11 her brother and some furniture that
12 Mr. Flemming -- that Ms. Clemmie Fleming got.
13 She hadn't testified that he cosigned or had
14 anything to do with it whatsoever. This is
15 improper, a desperate impeachment.

16 **BY MR. EVANS:** Your Honor, this witness
17 testified that he cosigned it with her and --

18 **BY THE COURT:** Well, she testified that
19 she did not know whether there had been a
20 lawsuit so I'll sustain the objection, and this
21 witness is not the appropriate witness to try
22 to get into any matter concerning that.

23 **BY MR. EVANS:**

24 **Q.** Robert Flemming is your brother; is that
25 correct?

26 **A.** That's correct.

27 **Q.** What is his address?

28 **A.** 802 Oak Lane.

29 **Q.** Where did he live back in '96?

FLEMMING - DIRECT

1 **A.** He lived with me.

2 **Q.** And what is that address?

3 **A.** 802 Campbell -- I mean, 202 Academy
4 Street.

5 **Q.** Are you aware of the amount of the bill?

6 **A.** No, sir.

7 **Q.** And who is Roy Harris?

8 **A.** That's the guy that Clemmy says she --
9 that dropped her off at my house.

10 **Q.** All right. Roy would routinely, for a
11 fee, carry people around town; is that right?

12 **A.** That's correct.

13 **BY MR. EVANS:** Your Honor, I have nothing
14 further of this witness.

15 **BY MR. CARTER:** I tender as well, Your
16 Honor.

17 **BY THE COURT:** And she's excused?

18 **BY MR. CARTER:** Yes, sir, she's excused.

19 **BY THE COURT:** Ms. Fleming, you may step
20 down. You're free to go, and you are released
21 from the subpoena. It looks like you were at
22 work, so you can go back to work.

23 **BY THE WITNESS:** Thank you.

24 **BY THE COURT:** Who would your next witness
25 be?

26 **BY MR. CARTER:** Connie Moore, Your Honor.

27 **BY THE COURT:** If you'll come around,
28 please, and face the bench and raise your right
29 hand. This direction.

MOORE - DIRECT

1 **BY THE WITNESS:** Oh, okay.

2 **BY THE COURT:** Do you solemnly swear or
3 affirm that the testimony you give in this case
4 to be the truth, the whole truth and nothing
5 but the truth, so help you God?

6 **BY THE WITNESS:** Yes, sir.

7 **BY THE COURT:** If you'll come around over
8 here, please, and have a seat. Would you state
9 your name, please.

10 **BY THE WITNESS:** Connie Moore.

11 **BY THE COURT:** And, Ms. Moore, that is
12 just recording. It's not going to make your
13 voice louder, so if you'll look over in the
14 direction of the ladies and gentlemen and speak
15 as loud as you can.

16 **BY THE WITNESS:** Okay.

17 **BY THE COURT:** And if you need any water
18 or anything, let us know that.

19 **BY THE WITNESS:** Okay.

20 **BY THE COURT:** And, as I say, if you'll
21 look over in that direction, he's going to ask
22 questions of you shortly.

23 **BY THE WITNESS:** Okay.

24 **BY MR. CARTER:** One moment, Your Honor.

25 **DIRECT EXAMINATION**

26 **BY MR. CARTER:**

27 **Q.** Good morning, Ms. Moore.

28 **A.** Good morning.

29 **Q.** Ms. Moore, do you know Elaine Goldstein?

MOORE - DIRECT

1 A. Yes, sir.

2 Q. How do you know her?

3 A. I work with her.

4 **BY THE BAILIFF:** She's got to speak up.

5 **BY THE COURT:** Ms. Moore, they can't hear
6 you so you're going to need to speak a lot
7 louder.

8 **BY MR. CARTER:** And, also, that microphone
9 doesn't magnify your voice.

10 **BY THE COURT:** Just speak like everybody
11 in here is hard of hearing.

12 **BY THE WITNESS:** Okay.

13 **BY MR. CARTER:**

14 Q. Did she live anywhere near you?

15 A. Yes, sir, across the street.

16 Q. Directly in front of you?

17 A. Yes, sir.

18 Q. About how far did she live from you?

19 A. About 107 feet.

20 **BY THE COURT:** Speak up.

21 A. 107 feet.

22 **BY MR. CARTER:**

23 Q. How do you know it's that far?

24 A. We measured it yesterday.

25 Q. Okay. So she certainly doesn't live any
26 25 feet from you? Doesn't live 25 feet from you?

27 A. No, sir.

28 Q. And do you know a Patricia Hallmon?

29 A. Yes, sir.

MOORE - DIRECT

1 Q. And did y'all used to be real good
2 friends?

3 A. No, sir.

4 Q. Did she used to live anywhere near you?

5 A. Yes, sir.

6 Q. Did you see her after the incident at
7 Tardy's took place?

8 A. Yes, sir.

9 Q. Did she remain your neighbor for a little
10 while after that? Did y'all remain neighbors after
11 the --

12 A. Yes, sir.

13 Q. Did y'all interact, conversate after the
14 murders?

15 A. Yes, sir, we talked.

16 Q. Did you ever see her children with any
17 Grant Hill Filas?

18 A. No, sir.

19 Q. Now, do you know Curtis Flowers?

20 A. Yes, sir.

21 Q. And did y'all have a relationship back at
22 the time when the murders at Tardy's took place?

23 A. Yes, sir.

24 Q. In fact, y'all used to live together; is
25 that correct?

26 A. Yes, sir.

27 Q. Do you have any children?

28 A. Yes, sir.

29 Q. And what are their names?

MOORE - DIRECT

1 **A.** Marcus, Lamarcus, Marissa and Brittany.

2 **Q.** Now, do you know if Patricia Hallmon --
3 strike that. Did you have an occasion to go buy
4 your kids some tennis shoes that allegedly were
5 popular back in 1996 and allegedly had something to
6 do with this case? What type -- did you go buy
7 your -- some tennis shoes -- some Fila Grant Hill
8 tennis shoes at some point?

9 **A.** Yes, sir.

10 **Q.** And where did you get them from?

11 **A.** Greenwood.

12 **Q.** Okay. And who took you there?

13 **A.** Priscilla.

14 **Q.** And what did you buy?

15 **A.** Some Grant Hill Filas, two boxes.

16 **Q.** How many pair?

17 **A.** Two.

18 **Q.** And who did you buy them for?

19 **A.** My kids.

20 **Q.** Which kids?

21 **A.** Marcus and Marissa.

22 **BY THE COURT:** I didn't hear that second
23 name.

24 **A.** Marcus and Marissa.

25 **BY MR. CARTER:**

26 **Q.** Okay. And did you come to buy another
27 pair for your other child as well?

28 **A.** Yes, sir.

29 **Q.** And where did you buy those from?

MOORE - DIRECT

1 **A.** At the foot store in Winona.

2 **Q.** And do you remember the name of the shoe
3 store you bought the shoes for Marissa and Marcus?

4 **A.** Shoe Department.

5 **BY THE BAILIFF:** Your Honor, the jury
6 cannot hear.

7 **BY THE COURT:** If you'll speak up, ma'am,
8 a little louder, please.

9 **A.** The Shoe Department.

10 **BY MR. CARTER:**

11 **Q.** Now, what size did you buy?

12 **A.** A ten-and-a-half and a 12-and-a-half.

13 **Q.** You bought a ten-and-a-half for Marcus?

14 **A.** Yes, sir.

15 **Q.** And a twelve-and-a-half for --

16 **A.** Marissa.

17 **Q.** How old is Marissa?

18 **A.** In '96?

19 **Q.** How old is she now?

20 **A.** Twenty.

21 **Q.** And in '96, she was -- so about four at
22 the time?

23 **A.** Yes, sir.

24 **Q.** So that 12-and-a-half you bought was a
25 12-and-a-half for a child?

26 **A.** Yes, sir.

27 **Q.** And do you recall what size you bought
28 Lamarcus?

29 **A.** A seven, I think.

MOORE - DIRECT

1 Q. And do you remember the police coming to
2 your house?

3 A. Yes, sir.

4 Q. Do you remember who they were?

5 A. Not all the officers. I remember Officer
6 Hargrove came and John Johnson, but the rest of the
7 officers I couldn't remember.

8 Q. Okay. And how many times did they come to
9 your house? Do you remember?

10 A. Several times.

11 Q. And each time you -- did they ask you for
12 things and did they -- did they pass you a paper to
13 sign? A search warrant? Did they issue a search
14 warrant?

15 A. Yes, sir.

16 Q. And they wanted to search for some things?

17 A. Yes, sir.

18 Q. And you allowed them to search for those
19 things?

20 A. Yes, sir.

21 Q. You didn't stop them in any way, did you?

22 A. No, sir.

23 Q. And they came back a second time searching
24 for some things?

25 BY MR. EVANS: Your Honor, object to
26 leading.

27 BY MR. CARTER:

28 Q. When they came back the second time, what
29 did they come back for?

MOORE - DIRECT

1 A. They got the shoe box.

2 Q. They came back -- did they give you a
3 search warrant on that occasion, the second time?

4 A. I can't remember.

5 Q. Did they ask you for the shoe box?

6 A. Yes, sir.

7 Q. Did you resist in any way?

8 A. No, sir.

9 Q. What was in that shoe box?

10 A. Some bows.

11 Q. And what was in the other shoe box?

12 A. Bows. One was Christmas bows, and one was
13 hair bows.

14 Q. Bows as in Christmas. And what did you
15 say?

16 A. Christmas bows and one was hair bows.

17 Q. Hair bows.

18 A. Yes, sir.

19 Q. Now, did they take any clothes out of your
20 apartment?

21 A. No, sir.

22 Q. You don't remember?

23 A. No, sir.

24 Q. I'm --

25 A. They looked in my washing machine, but I
26 don't remember them getting any clothes.

27 Q. You don't remember them getting anything
28 there? Did they look in the closets or any other
29 place?

MOORE - DIRECT

1 **A.** Yes, sir, they looked.

2 **Q.** And as far as you know, they didn't take
3 anything from them other places?

4 **A.** No, sir.

5 **Q.** But if they did take something you -- you
6 can't dispute. You're just saying --

7 **BY MR. EVANS:** Your Honor, I object.
8 That's not proper.

9 **BY THE COURT:** Well, you're leading the
10 witness, and I agree. If she -- she can't
11 testify about something she doesn't know.

12 **BY MR. CARTER:**

13 **Q.** Okay. As far as you can recall, they got
14 a shoe box when they came. And can you recall them
15 getting anything else, taking anything else from the
16 house?

17 **A.** No, sir.

18 **Q.** Okay. Where were you working back then?

19 **A.** Richardson Brothers.

20 **Q.** And what were your hours back then?

21 **A.** 7:00 to 3:00.

22 **BY MR. CARTER:** One moment, your Honor. I
23 have -- I may be finished.

24 **BY MR. CARTER:**

25 **Q.** Now, Ms. Moore, when the police came to
26 your house on one occasion, did they do anything
27 with respect to your bed?

28 **A.** Yes, sir.

29 **Q.** What happened?

MOORE - DIRECT

1 **A.** They checked my bed, my headboard. I had
2 a big water bed, and it had drawers up the side of
3 it, and I had money in it. And they counted it, but
4 they gave it back to me.

5 **Q.** They counted it and give it back to you?

6 **A.** (Nodding head).

7 **Q.** And they never came back to get it; is
8 that correct? Or did they?

9 **A.** No.

10 **Q.** Now, this shoe box they took, what size
11 was it?

12 **A.** A ten and a half.

13 **BY MR. CARTER:** Thank you so much. I
14 tender, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MR. EVANS:**

17 **Q.** Good morning, Ms. Moore.

18 **A.** Good morning.

19 **Q.** Ms. Moore, you were living with Curtis
20 Flowers when these murders were committed; is that
21 right?

22 **A.** Well, he was living with me, yes, sir.

23 **Q.** Y'all were living together?

24 **A.** Yes, sir.

25 **Q.** Where were you living?

26 **A.** 702A McNutt Drive.

27 **Q.** How long had y'all lived together?

28 **A.** It was a month, I think.

29 **Q.** And --

MOORE - CROSS

1 **BY THE BAILIFF:** They're still having
2 trouble hearing.

3 **BY THE COURT:** If you can speak up a
4 little louder, ma'am.

5 **BY MR. EVANS:**

6 **Q.** Elaine Goldstein was a neighbor of yours
7 at that time; is that correct?

8 **A.** Correct.

9 **Q.** Patricia Hallmon was a neighbor of yours
10 at that time; is that correct?

11 **A.** Correct.

12 **Q.** Curtis was wearing a size ten-and-a-half
13 shoe at that time, wasn't he?

14 **A.** No, sir.

15 **Q.** Now, why do you say that?

16 **A.** He wasn't.

17 **Q.** Are you aware that the shoes that came off
18 of him were ten-and-a-halves?

19 **A.** No, sir.

20 **Q.** Do you recognize these shoes?

21 **A.** Yes, sir.

22 **Q.** Those are Curtis' shoes, aren't they?

23 **A.** No, sir.

24 **Q.** Oh, they're not?

25 **A.** No, sir.

26 **Q.** Was he wearing somebody else's shoes when
27 the officers took them off his feet?

28 **A.** No, sir.

29 **Q.** So you're saying that those aren't even

MOORE - CROSS

1 his shoes?

2 A. No, sir.

3 BY THE COURT: Is that a --

4 BY MR. EVANS: Your Honor, for the record
5 this is Exhibit 125, 125-A and 125-B, Your
6 Honor.

7 BY THE COURT: I just wanted that clear on
8 the record.

9 BY MR. EVANS:

10 Q. So if the officers said they took these
11 off his feet, they'd be lying; is that right?

12 A. Yes, sir.

13 Q. Well, let me show you Exhibit 79-A. Is
14 that the Fila shoe box that came out of your house?

15 A. Yes, sir.

16 Q. Fila shoe box that was empty the first
17 time the officers got there; is that right?

18 A. No, sir.

19 Q. And you're saying it had bows in it?

20 A. Yes, sir.

21 Q. You know of any reason the officers would
22 say it was empty when they arrived?

23 A. No, sir.

24 BY MR. CARTER: Your Honor, I object to
25 that. I object to that, Your Honor.

26 BY THE COURT: Overruled.

27 BY MR. EVANS:

28 Q. How many times did the officers come to
29 your house looking for the shoes?

MOORE - CROSS

1 **A.** They came several times.

2 **Q.** And you knew those shoes were important to
3 whether or not Curtis had committed the murders,
4 didn't you?

5 **A.** Yes, sir.

6 **Q.** You didn't do anything to help the
7 officers find those shoes, did you?

8 **A.** Well, I called my son and he had -- he had
9 moved out, but I looked and they wasn't there.

10 **Q.** You never got the shoes for the officers?

11 **A.** They wasn't there.

12 **Q.** And I think like you testified last time,
13 you didn't want those shoes found, did you?

14 **A.** Yes, sir. I wanted them found.

15 **Q.** Didn't last time when I asked you if it
16 wasn't true that you didn't want them found you
17 said, Yes, sir, that's true?

18 **A.** Oh, I didn't hear the question correctly.

19 **Q.** Oh, you didn't hear that question? You
20 knew that Curtis had been fired from Tardy's, didn't
21 you?

22 **A.** Yes, sir.

23 **Q.** He wasn't very happy about that, was he?

24 **A.** He didn't say.

25 **BY THE COURT:** Speak up.

26 **BY MR. CARTER:** I'm sorry. I didn't hear.

27 **BY THE COURT:** If you'll speak up, ma'am.

28 **BY THE WITNESS:** Okay.

29 **BY MR. EVANS:**

MOORE - CROSS

1 Q. You need to answer. He wasn't very happy
2 about that, was he?

3 A. He didn't complain about it.

4 Q. Your son Marcus was wearing a size seven
5 when the officers came to your house, wasn't he?

6 A. No, sir, it was Lemarcus.

7 Q. All right. Which is the youngest and
8 which is oldest?

9 A. Marcus is the oldest, Lamarcus is the
10 youngest.

11 Q. All right. The youngest, Lamarcus, was
12 wearing a size seven, wasn't he?

13 A. Yes, sir.

14 Q. The oldest one was wearing a size twelve
15 already, wasn't he?

16 A. No, sir. He's wearing a 12 now.

17 Q. How much money did the officers find in
18 your headboard?

19 A. It was two-something.

20 Q. Two hundred-something?

21 A. Yes, sir.

22 Q. In cash?

23 A. Yes, sir.

24 Q. Do you remember what bills?

25 A. I know some 20s and ones.

26 Q. What time did you get up that morning?

27 A. Probably around 6:00.

28 BY THE COURT: Speak up, now.

29 BY MR. EVANS:

MOORE - CROSS

1 Q. Speak up, please.

2 A. Probably around 6:00.

3 Q. What did you do after you got up?

4 A. Got ready for work.

5 Q. And what time did you leave?

6 A. Might have been about ten or 15 'til.

7 Q. 'Til 7:00?

8 A. Yes, sir. I had to be in around 7:00.

9 Q. What was Curtis doing when you got up?

10 A. I don't know whether he was up or laying
11 down. I can't remember.

12 Q. You don't remember?

13 A. No, sir.

14 Q. What was he doing when you left the house?

15 A. I don't -- like I said, I can't remember.

16 BY THE COURT: You've got to speak up.

17 BY THE BAILIFF: They can't hear you.

18 BY MR. EVANS:

19 Q. So you don't know what he was doing when
20 you got up. You don't know what he was doing when
21 you left the house?

22 A. No, sir, I don't remember.

23 Q. And according to you, he didn't wear the
24 shoes that the officers took off of him?

25 A. No, sir.

26 Q. Didn't wear a size ten-and-a-half?

27 A. No, sir.

28 BY MR. EVANS: I don't have anything
29 further, Your Honor.

MOORE - REDIRECT

1 **BY MR. CARTER:** One moment, Your Honor.

2 **REDIRECT EXAMINATION**

3 **BY MR. CARTER:**

4 Q. Now, Ms. Moore.

5 A. Yes, sir.

6 Q. This money you had, whose money was that?

7 A. Mine.

8 Q. And how did you get it?

9 A. I worked for it.

10 Q. Okay. Now, your testimony is that -- did
11 you ever see Mr. Flowers wearing these shoes?

12 A. No, sir.

13 Q. Now, Mr. Evans asked you something about
14 Curtis being fired. Now, Curtis worked for Tardy's.
15 Did he work for Tardy's any time prior to the 4th of
16 July?

17 A. I don't remember.

18 **BY THE COURT:** Speak up.

19 A. I can't remember.

20 **BY MR. CARTER:**

21 Q. You can't remember?

22 A. Unh-unh.

23 **BY MR. CARTER:** I tender, Your Honor. No
24 further questions.

25 **BY THE COURT:** I assume she's excused?

26 **BY MR. CARTER:** Yes, sir.

27 **BY THE COURT:** Ms. Moore, you're excused
28 as a witness. You may step down. You're free
29 to go wherever you please.

JOHNSON - DIRECT

1 **BY MR. CARTER:** Judge, my next one is --
2 could we have a couple of minutes to talk about
3 it? My next one is John Johnson. It's
4 probably going to be several --

5 **BY THE COURT:** Ladies and gentlemen, if
6 you'll step in the jury room. We'll take about
7 a ten-minute-or-so recess.

8 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
9 CONTINUED IN OPEN COURT WITH THE JURY
10 PRESENT FOR THE FOLLOWING, TO-WIT:)

11 **BY THE COURT:** Court will come back to
12 order. I believe you said your next witness
13 would be Mr. Johnson; is that correct?

14 **BY MR. CARTER:** Yes, sir.

15 **BY THE COURT:** If you'll bring in
16 Mr. Johnson.

17 If you'll come around, please, and raise
18 your right hand and take the oath. Do you
19 solemnly swear or affirm that the testimony you
20 give in this case to be the truth, the whole
21 truth and nothing but the truth, so help you
22 God?

23 **BY THE WITNESS:** I do, sir.

24 **BY THE COURT:** Come around and have a
25 seat. State your name for the record, please.

26 **BY THE WITNESS:** John Johnson.

27 **BY THE COURT:** You may proceed,
28 Mr. Carter.

29 **BY MR. CARTER:** Yes, sir.

JOHNSON - DIRECT

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DIRECT EXAMINATION

BY MR. CARTER:

Q. Mr. Johnson, how far did you go in school?

A. I went to Hinds Junior College for a year.
I didn't complete anything beyond that.

Q. Can you speak up so everybody can hear you? You say you went to Hinds Junior College for a year, and you didn't complete the year or --

A. That's true.

Q. Okay. And what did you major in while you were down there?

A. Just general courses.

Q. Just general courses. And you ever been in the armed services?

A. I was in the national guard for six years.

Q. And you ever worked for the Winona Police Department?

A. I did.

Q. How long?

A. I worked a number of years there, and I went to Grenada and worked in Grenada. Then I went back to Winona.

Q. How many years did you work in the Winona Police Department?

A. I think about 12 years.

Q. What ranks and positions did you hold?

A. I was a lieutenant, then assistant chief and then chief of police.

Q. Okay. Lieutenant, assistant chief, then

JOHNSON - DIRECT

1 chief. How long were you lieutenant? Did you start
2 as a lieutenant?

3 A. No. I was --

4 Q. What did you start as?

5 A. -- patrolman.

6 Q. How long were you a patrolman?

7 A. I don't remember exactly.

8 Q. Give it your best guess.

9 A. A few years. I don't remember.

10 Q. A few years though. Okay. Was it less
11 than five?

12 A. Probably.

13 Q. Okay. And then you got promoted to
14 lieutenant?

15 A. I did.

16 Q. And how long were you a lieutenant?

17 A. Probably a year.

18 Q. And then you got promoted to assistant
19 chief?

20 A. I did.

21 Q. How long were you assistant chief?

22 A. Four years.

23 Q. And how long were you chief?

24 A. Six years.

25 Q. And you said you went to the Grenada
26 Police Department?

27 A. I did.

28 Q. How long were you there?

29 A. About two and half years.

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1 Q. And what position did you have there?

2 A. Patrolman.

3 Q. And was this before you started working
4 for the Winona -- the Winona Police Department or
5 was it in the --

6 A. I worked for Winona for a year or so and
7 went to Grenada, worked a couple, two and a half
8 years, I think, and came back to Winona.

9 Q. And after your six years as chief, what
10 did you do and where did you go work?

11 A. I went to work for the district attorney
12 in this district.

13 Q. And that would be Mr. Doug Evans; is that
14 correct?

15 A. That's correct.

16 Q. And how long had you been working for
17 Mr. Evans at the time that the crime occurred down
18 there at Tardy's?

19 A. About four years.

20 Q. Okay. Now, at what point did you go to
21 the police academy in Jackson or somewhere?

22 A. I think in 1972, I believe.

23 Q. 1972 you went to the police academy.
24 Where were you working then?

25 A. Winona Police Department.

26 Q. And what rank did you have then?

27 A. Patrolman.

28 Q. Patrolman. And did you have the occasion
29 to go back again or to get further studies and

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1 training from there or somewhere else?

2 **A.** I've been to a lot of different seminars
3 and training, both through the state police academy.
4 I attended a forensic science seminar with Chester
5 Quarles at Ole Miss. I've been to at least three
6 different seminars where Dr. Henry Lee was the
7 instructor, both in Mississippi Prosecutors
8 Association meetings and -- let's see -- Mississippi
9 Division of International Association of
10 Identification. I'm a member of both of those
11 organizations. I've attended many seminars there
12 and conducted and held seminars here in this
13 courtroom when I was police chief and supported by
14 Holmes Junior College, the FBI and other seminars
15 that we shared with other local agencies while I was
16 chief.

17 **Q.** There is a noted doctor - criminalist from
18 Massachusetts that teaches classes all across the
19 country on how to investigate and all that kind of
20 stuff?

21 **A.** He does. I've also been to a school at
22 Fort George, Georgia Military Police school in civil
23 disorder and organized control.

24 **Q.** Okay. And many, if not all of those
25 training sessions that you went to, some portion are
26 homicide investigation, documentation and
27 organization of files related to crime scenes
28 were -- are discussed and told; is that fair to say?

29 **A.** Yes.

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1 Q. Now, the job with Mr. Evans, you went
2 there as a what? What is your position called?

3 A. Investigator.

4 Q. Okay. And did you take any further
5 training during the time you worked for Mr. Evans?

6 A. No, but I continued membership with the
7 Mississippi Division of International Association of
8 Identification, also a member of the Mississippi
9 Prosecutors Association, and we have a conference
10 where guests are invited to give instruction on
11 investigations.

12 Q. Okay.

13 **BY THE BAILIFF:** Your Honor, the jurors
14 ask that he speak up.

15 **BY THE COURT:** Mr. Johnson, if you'll
16 speak up a little.

17 **BY THE WITNESS:** Yes, sir.

18 **BY MR. CARTER:**

19 Q. Okay. Now, I might jump around a little
20 bit. I apologize for that. Now, where were you
21 when you heard about the crime down at Tardy's?

22 A. The district attorney's office in Grenada.

23 Q. And how did you hear about this crime?

24 A. We received a phone call from Chief
25 Hargrove.

26 Q. Okay. And asking for what?

27 A. Assistance.

28 Q. And who went? Who showed up to assist
29 from your office -- from Doug Evans' office?

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1 **A.** Mr. Evans and myself.

2 **Q.** And is that all? Anybody else from that
3 office?

4 **A.** I think his son was there at some point,
5 but I don't know about early on.

6 **Q.** Is his son a police officer?

7 **A.** He is.

8 **Q.** Was he a police officer back then?

9 **A.** No, sir.

10 **Q.** Okay. Why was he there? Do you know?

11 **A.** He was just in Winona, and I saw him later
12 after the crime scene.

13 **Q.** And you told him, Come on, let's go to the
14 crime scene?

15 **A.** No. We didn't go to the crime scene. He
16 didn't that I'm aware of.

17 **Q.** Now, you say Mr. Evans' son was there.
18 Are you talking about at the office or the crime
19 scene?

20 **A.** No, he was just in Winona. I saw him
21 later in Winona. You said -- asked who went there.
22 I thought you were talking about Winona.

23 **Q.** Did you see Mr. Evans' son at the crime
24 scene?

25 **A.** I didn't see him there.

26 **Q.** Now, when you got to the -- the crime
27 scene, tell us what happened. Who did you see? Who
28 was the first person you saw?

29 **A.** Chief Hargrove was there. I saw numerous

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1 officers at the front door and on Front Street.

2 Q. Who were they? Tell me who they were.

3 A. At some point I saw Bill Thornburg, James
4 Taylor Williams, I think Vincent Small. That's the
5 only officers I remember seeing there when I came
6 in.

7 Q. Okay. Did you ever write their names down
8 in a document as being present when you got there?
9 Did you make a report setting forth that you saw
10 these people upon arriving at Tardy's Furniture
11 Store?

12 A. No, sir. They were there. I didn't -- I
13 don't remember writing their name in a report to say
14 that they were there, but I knew they were there,
15 yes.

16 Q. Okay. And you got there and you saw
17 Mr. Thornburg and you saw Mr. Williams and you saw
18 Mr. Small. And did you and Mr. Evans get there
19 together? Did y'all ride together?

20 A. No.

21 Q. Who got there first?

22 A. We were -- I think I was behind him.

23 Q. Okay. Mr. Evans got there, you got there
24 and you saw Mr. Thornburg, you saw Mr. Williams and
25 you saw Mr. Small. What did you do at that time?
26 Got out of the car, I assume. What did you do after
27 you got out of your car?

28 A. We went inside the store. Chief Hargrove
29 gave us an overview of what was going on there. The

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1 EMTs had been there and retrieved Mr. Stewart.

2 Q. Let me stop you for a minute. You said
3 Chief Hargrove gave you an overview. Did say you or
4 us an overview?

5 A. I know he was talking to me and whoever
6 was around me. And I --

7 Q. Okay. And that overview, did you ever put
8 that in a -- in a record, in a document? Did you
9 ever document this overview or this briefing that
10 Chief Hargrove gave you?

11 A. No, sir.

12 Q. And he briefed you and do you know if
13 Mr. Thornburg or Mr. Small or Mr. Williams or
14 Mr. Evans was present and heard the conversation as
15 you were being briefed?

16 A. I would think some of them did, but I
17 can't tell you which ones did.

18 Q. Okay. So you got briefed. And what --
19 what'd you do after that? Continue. I'm sorry. I
20 interrupted you. Go ahead.

21 A. The way the furniture store is laid out,
22 it's a large building. It's somewhat divided, like
23 one side is lower than the other. And the area
24 where we knew the EMTs had been and retrieved the
25 body of Mr. Stewart, we walked back near the area of
26 where the other bodies were still laying and just
27 made a visual look around. And myself and Jack
28 Matthews went into the south end of the building,
29 the northeast south part of the building where we

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1 sat down and started to interview anybody that was
2 on the scene or anybody that could tell us anything.

3 Q. Okay. You said we walked back. Who is
4 we?

5 A. Jack Matthews and myself.

6 Q. Okay. So --

7 A. They got there a few minutes after we did.

8 Q. Okay. Do you know if Mr. Matthews -- Jack
9 Matthews was also present when Chief Hargrove
10 briefed you?

11 A. I'm sure -- I don't know the answer to
12 that. No, sir.

13 Q. Okay. And you made no record of that that
14 set forth whether he was or not; is that fair to
15 say?

16 A. Likely, yes, sir.

17 Q. Okay. And you walked back, looked around,
18 and you made -- you and Mr. Matthews set up an area
19 where you started interviewing people. What --

20 A. We were at the front of the building.
21 There's a glass front and lighted where we could
22 see. We sat at a table and started just trying to
23 find out what was going on.

24 Q. After you talked to Chief Hargrove, who
25 did you start inter- -- who was the first person you
26 interviewed?

27 A. We talked to Chief Hargrove, and he
28 informed us about the situation with Mr. Stewart and
29 what he had found, that Sam Jones had been there and

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1 found -- first one on the scene. We made quick and
2 casual -- I wouldn't say casual but quick interviews
3 with people on the scene including -- and some of
4 them maybe by phone -- by cell phone or whatever,
5 including like with Sam Jones and different ones.

6 Q. Okay. Let's see. Mr. Hargrove briefed
7 you. Mr. Jones was there or had been there. Did
8 you interview Mr. Jones at the scene?

9 A. Not at the scene.

10 Q. You interviewed him later where?

11 A. I believe we called him to the police
12 department at the EOC building in Winona.

13 Q. Now, you agree that Mr. Sam Jones is a
14 very important witness; is that fair to say?

15 A. Sure.

16 Q. Did you make a contemporaneous written
17 report or a video recording or record his statement
18 of his conversation?

19 A. We audio taped his statement, yes, sir.

20 Q. Okay. When did you do it?

21 A. I don't remember the date, but we did talk
22 to him on the day of the murder either by phone --

23 Q. Did you audiotape it on the day of the
24 murders?

25 A. No, sir. He was so emotional we felt like
26 it would be better suited to wait a few days.

27 Q. So you interviewed Mr. Jones, Chief
28 Hargrove. Who else did you interview?

29 A. We were making contact back and forth with

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1 the EMTs that had been there and anybody that could
2 tell us anything about the scene. I called Julia
3 James, the director of the crime lab and asked --
4 you know, they told me the crime lab was already
5 called but I knew her, and I called her and asked
6 her to -- told her the situation and the severity of
7 what we were dealing with and asked, you know, for
8 their help.

9 Q. Okay. Now, the EMT people: Did you
10 interview them?

11 A. At some point, yes, sir.

12 Q. Did you do it on the 16th, that morning?

13 A. No, sir. They were, I assume, doing their
14 job in transporting people and doing what they do.

15 Q. Okay. Transported Bobo Stewart. Do you
16 know if they transported him to Jackson, too?

17 A. At some point they did. I know that, yes,
18 sir.

19 Q. And did you make a written statement of
20 their findings at some point or a recorded statement
21 of the EMT's finding at some point?

22 A. I don't think so. I talked directly to
23 Barry Eskridge who's the head of that Med-Stat
24 organization.

25 Q. And did you get a recorded statement of
26 him or a written statement that day?

27 A. Not that day, no.

28 Q. Now, isn't it a fact that Mr. Eskridge was
29 actually there when you got -- was he there when you

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1 got there?

2 A. I don't remember that.

3 Q. You don't remember seeing him?

4 A. At some point he was there, yes, sir.

5 Q. What time did you see him or what did time
6 did you talk to him, as best you can recall?

7 A. I had a problem with that because
8 Mr. Matthews and I were in this isolated area of the
9 building. We stayed there and stayed out of the
10 crime scene area and, you know, we were trying to
11 document and learn as much as we could from -- as to
12 what was going on.

13 Q. Okay. Now, what were the positions that
14 you and Mr. Matthews assumed? What did y'all see
15 yourselves as with respect to this crime?

16 A. As investigators.

17 Q. Okay. Both of you were investigators.
18 And which one of -- which of you was the lead
19 investigator?

20 A. I don't know that that was ever brought
21 out or brought as way of a discussion, but I knew
22 that we were there to support the investigation
23 wherever it went. And I felt like that Mr. Matthews
24 and I was -- you know, I considered him probably to
25 be the head --

26 Q. Okay.

27 A. -- investigator.

28 Q. Who did the most work in this case, you or
29 Mr. Matthews? And what I'm talking about here is

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1 who conducted the most interviews, who remained on
2 the case the longest between you and Mr. Matthews?

3 A. Well, you know, that's hard to answer. I
4 know that Mr. Matthews and the state crime lab and
5 the state investigators were involved in handling a
6 lot of physical evidence and took over the crime
7 scene and such that day. And I know they did a lot
8 of work that I may and may not know about. I know
9 about some.

10 Q. Who was the crime scene released to that
11 day? Who did Johnny Hargrove release the crime
12 scene to, you or Mr. Matthews?

13 A. I would assume the State.

14 Q. State?

15 A. Investigators, yes, sir.

16 Q. Let me ask you about something I've been
17 puzzled with a long time. Now, this incident
18 occurred in Winona, Mississippi, Montgomery County,
19 and we had a police chief by the name of Johnny
20 Hargrove; is that correct?

21 A. We did.

22 Q. And Johnny Hargrove didn't lead anything,
23 did he? Was he leading -- was he the investigator?
24 Did he lead in any way? Anything?

25 A. Chief Hargrove recognized the severity of
26 this crime scene, you know, with four victims in it,
27 and I think he knew that he needed assistance with
28 it. The city of Winona Police Department -- the
29 city of Winona doesn't have the funds and the

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1 personnel or the equipment to handle something on
2 this volume by himself. I think he -- I think he
3 was wise in turning it over to the state highway
4 patrol investigators, which is a very common thing
5 with large felony crimes throughout the state.

6 Q. Right. I agree with you. For once, I
7 agree with you. I think he did a wonderful thing by
8 calling CSI, the crime scene folks. He called for
9 help. He called the EMT people. And then you and
10 Mr. Matthews came upon the scene -- is that
11 correct -- and became investigators, and
12 Mr. Hargrove was relegated to -- to what? To
13 nothing, I guess. What role did Mr. Hargrove play
14 once -- Mr. Hargrove, the chief of police of Winona,
15 Mississippi, play after he did that good work of
16 getting CSI people there, getting you there, getting
17 the EMT people, what role did he play after that?

18 A. Chief Hargrove and his staff were
19 supportive the full time of the investigation, both
20 to me and to the State. I know that they worked
21 with us in trying to locate witnesses, canvassing
22 the scene that day and many days to follow. His
23 department and he -- and Mr. Hargrove himself worked
24 long and hard hours supporting whatever was needed
25 in this investigation.

26 Q. Okay. That's admirable. What canvassing
27 did Chief Hargrove do --

28 A. I know that --

29 Q. -- that you saw?

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1 **A.** -- I asked Chief Hargrove at different
2 times on that day and many days to follow. We
3 physically walked, physically viewed the scene in
4 later days. We walked the routes as the witnesses
5 pointed out where people had been. And we went door
6 to door, and that was done by police officers,
7 deputies and highway patrol and was a continued
8 thing.

9 **Q.** Okay. Where is the -- the documented
10 report that sets forth what routes you and Chief
11 Hargrove walked? Where can I find that? Or do you
12 have it with you today, Mr. Johnson?

13 **A.** I think it's noted many times by numerous
14 witnesses where the Defendant was seen on the --
15 that day, and I physically walked those positions,
16 talked to witnesses on those locations. And I think
17 the witness statements are very clear where we
18 walked. I physically asked the city of Winona
19 street department supervisor to pull up the manhole
20 covers on every street that we thought the exit
21 might have been made, looking for evidence. I
22 walked the ditches and the streets myself. I had
23 other deputies to do that. Police officers, highway
24 patrol physically got on top of the buildings,
25 searched the buildings as well --

26 **BY MR. CARTER:** Your Honor, I object to
27 that --

28 (MR. CARTER AND MR. EVANS ARE SPEAKING
29 SIMULTANEOUSLY THROUGHOUT THIS EXCHANGE)

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1 **BY MR. EVANS:** Your Honor, he has asked
2 the question, and he has the right to answer --

3 **BY MR. CARTER:** I am tired of you stopping
4 me from talking --

5 **BY MR. EVANS:** Your Honor, we're going to
6 have more than just talking --

7 **BY MR. CARTER:** Well, do it then --

8 **BY THE COURT:** Listen, I don't want to
9 hear that from either one of you.

10 **BY MR. CARTER:** Well, it's really --

11 **BY THE COURT:** Mr. Carter, you address
12 comments to this Court. You do not address
13 comments to opposing counsel. And I want to
14 know the basis of your objection. You asked a
15 question, and it seemed to me that he was
16 responding to the question.

17 **BY MR. CARTER:** Your Honor, I asked him
18 where is the report that set forth these things
19 that he's saying.

20 **BY MR. CARTER:**

21 **Q.** What did -- what is it called? When did
22 you do it, Mr. Johnson? Where is the report?

23 **A.** I don't have an overview report that shows
24 specifically the walking of town or that kind of
25 thing, if that's what you're asking for.

26 **Q.** Do you have a report showing the manholes
27 being pulled up and that kind of stuff?

28 **A.** No, I don't.

29 **Q.** That was my question. Do you have a

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1 report showing and setting forth which officers --
2 do you have a report setting forth which officers
3 were canvassing the scene and which houses they went
4 to, the exact location and that kind of thing? Is
5 there a report showing that? Did you do a report
6 showing that?

7 A. No, sir.

8 Q. Now, within the police investigation team,
9 Mr. Johnson, is it fair to say that Chief Hargrove
10 was the first responder?

11 A. Yes, sir.

12 Q. And isn't that something --

13 A. Well, yes, sir.

14 Q. -- in particular that a first responder is
15 supposed to do? And did he do it?

16 A. I think he secured the scene and called
17 for the assistance.

18 Q. Did he ever make a report?

19 A. I'm not aware of it if he did.

20 Q. And did you ever ask him for one?

21 A. I don't think so.

22 Q. You didn't even want one, I don't guess.

23 BY MR. EVANS: Your Honor, I object.

24 BY MR. CARTER:

25 Q. Did you want one, Mr. Johnson, a report
26 from Chief Hargrove of his duties that he performed
27 upon getting there set forth in writing? Did you
28 want that? Did you ask for it?

29 A. I knew what his response was. I was well

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1 aware of what he did there that morning.

2 Q. Okay. But you didn't get him to set it
3 forth in writing, did you?

4 A. I don't think so, no.

5 Q. And since we find ourselves here 14 years
6 later, don't you think it would have been a good
7 idea if he had set it forth in writing as a
8 permanent record? It's not a good idea?

9 A. I didn't say it was not a good idea.

10 Q. Is it a good idea?

11 A. It may have been.

12 Q. Let me ask you something. I want to jump
13 around a little here. How many pair of shoes did
14 y'all take from Mr. Flowers?

15 A. I didn't take any from him.

16 Q. As one of the investigators who was
17 responsible for compiling reports, receiving
18 evidence, making sure that was an organized
19 investigation and that the left hand knew what the
20 right hand was doing, did you ever find out what was
21 taken from Mr. Flowers' house or body? What
22 clothes?

23 A. I was told two pair, I think.

24 Q. And what sizes were those?

25 A. Ten-and-a-half.

26 Q. Both?

27 A. Yes.

28 Q. You're sure?

29 A. That's all I knew about was

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1 ten-and-a-halves.

2 Q. Did you take -- and your testimony is
3 there wasn't an 11 found, just -- also?

4 A. I've never seen an 11.

5 Q. Okay. Now, was there a record made of the
6 shoes that were taken? Did you make a record?

7 A. I didn't make a record; I didn't take
8 them.

9 Q. Do you know if anybody made a record?

10 A. No, sir, I'm not aware of it.

11 Q. And wouldn't it have been a good idea if
12 no record was made, shouldn't a record have been
13 made of what shoes and what items were taken off of
14 Mr. Flowers?

15 A. It would have been a good idea to have a
16 record, I would think.

17 Q. In fact, on a major homicide
18 investigation, there should be records made of
19 everything, shouldn't it, in a multiple homicide?

20 A. I think it would have been a good idea to
21 have a good record, yes, sir.

22 Q. Now, what particular officers -- strike
23 that. How long did you remain at the scene that
24 day? At Tardy's is what I'm talking about.

25 A. I don't know the exact time but it would
26 have been pretty late.

27 Q. What time did you get there?

28 A. Probably 10:40, 10:45, something like
29 that.

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1 **Q.** Did you make a record of that anywhere of
2 what time you got there?

3 **A.** I don't know for sure. I'm not -- I
4 don't -- don't know that I did.

5 **Q.** Now --

6 **A.** I know Chief Hargrove called us and we had
7 his time that he called, and I want to say that it
8 was --

9 **Q.** Okay.

10 **A.** -- within 15 minutes from that time.

11 **Q.** Now, when you and Mr. Matthews went inside
12 and you found this place and you sat down and you
13 created this -- this place for -- to conduct
14 interviews, to receive documents, what else was this
15 place created for, if anything?

16 **A.** We sat down there and, you know, we were
17 not -- our intent -- we were communicating with
18 people that had been on the scene, a lot of it by
19 phone or whatever. We just needed a place to sit
20 down and to -- and I made notes and --

21 **Q.** I'm sorry. I didn't get the last part.
22 She was coughing.

23 **A.** I was -- that was it. That was the
24 purpose, to sit down there.

25 **Q.** Now, did Chief Hargrove did leave the
26 outside and come in and take a seat and participate
27 with you and Mr. Matthews?

28 **A.** I think Chief Hargrove stayed on the
29 front. There was a very large crowd there, and --

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1 Q. It was a very large crowd. Who were these
2 people? Who was in the crowd?

3 A. I don't know the people in the crowd. I
4 was inside. I don't know who was in the crowd.

5 Q. You were able to see them out the window?

6 A. There were people out there.

7 Q. And do you know if anybody made a record
8 of who they were?

9 A. No, I don't.

10 Q. You think one should have been made?

11 A. It probably would have been good, yes.

12 Q. Did you and Chief Hargrove work together
13 as fellow officers of the Winona Police Department?

14 A. We did.

15 Q. And was he your assistant chief?

16 A. He wasn't the assistant chief there, no.

17 Q. Okay.

18 A. He was a captain.

19 Q. Captain. Is that one step away from
20 assistant chief? I mean, I don't know. I'm just
21 asking.

22 A. At the time, I don't know if we had an
23 assistant chief there part of the time. That was
24 the first assistant chief.

25 Q. So the next rank after captain would have
26 been the chief?

27 A. That's right.

28 Q. So he was next in rank to you --
29 Mr. Hargrove?

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1 **A.** He would have been.

2 **Q.** Okay. Now, Mr. Thornburg, I believe you
3 said, was either there when you got there or shortly
4 thereafter. At the time you saw Mr. Thornburg,
5 what, in fact, was Mr. Thornburg engaged in?

6 **A.** I was communicating with people that --
7 and some of this would have been coming secondhand,
8 but I knew he was investigating a burglary and theft
9 of a vehicle where a pistol was stolen at some point
10 there shortly after we got there.

11 **Q.** Okay. Now, you saw Mr. Thornburg early
12 upon your arrival at Tardy's; is that fair to say?

13 **A.** I didn't say he was there on the scene
14 when I got there but he was there at some point.

15 **Q.** Okay. What was he doing at the scene at
16 Tardy's when you saw him? I understand you don't
17 really know; you didn't see him someplace else, but
18 at the time --

19 **A.** All I know is he was relaying information
20 about that theft, and we were communicating with him
21 and through the --

22 **Q.** Which theft are you talking about? Theft
23 of what?

24 **A.** Doyle Simpson's pistol out of his car on
25 Angelica.

26 **Q.** Okay. Didn't that happen around 10:30 and
27 the information concerning that actually got back to
28 Tardy's around 10:30 or 11:00? Is that the first
29 time you saw Mr. Thornburg around this time?

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1 **A.** I can't swear exactly what time I saw him,
2 but I was communicating with him or someone else
3 through him that he was investigating the theft of a
4 pistol. In fact, I think --

5 **Q.** So as far as you can remember, you don't
6 remember him doing anything or you don't remember
7 what he was doing prior to the information about the
8 theft?

9 **A.** I don't.

10 **Q.** Now, James Williams, at what point did you
11 see him?

12 **A.** At some point he came to the location at
13 the scene and reported that -- what he knew about
14 the theft of the gun.

15 **Q.** Right. Is that your first time seeing him
16 that day? Is that your testimony that's your first
17 time seeing him that day?

18 **A.** You know, I live in Winona. I come
19 through here. I could have seen him that morning,
20 but I don't remember seeing him prior to that day.

21 **Q.** Okay. And you don't remember seeing him
22 prior to that at Tardy's; is that -- is that
23 correct?

24 **A.** I think he was there initially, and I
25 think he was on -- yes, I believe he was on the
26 scene.

27 **Q.** Okay. Now, Vincent Small: Where did you
28 see Vincent Small at and when was the first time you
29 saw him?

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1 **A.** He was at the door, the front door of
2 Tardy's.

3 **Q.** Okay. Doing what?

4 **A.** Stopping people from wanting to come in
5 the scene, that kind of thing. They were securing
6 the scene.

7 **Q.** And was he -- was he doing anything else
8 beside standing there and making sure people didn't
9 come in? Was he writing anything?

10 **A.** I don't know the answer to that.

11 **Q.** Okay. And he allowed you to go in; is
12 that correct?

13 **A.** He did.

14 **Q.** Did you give him any instructions?

15 **A.** I did.

16 **Q.** What did you tell him?

17 **A.** He told me that a lot of people were
18 trying to get in and that kind of thing, and I told
19 him to get a piece of paper and write down the names
20 of anybody that attempted to come in, to write down
21 their name, their title, the date, the time, the
22 purpose for going in, exactly what they touched,
23 stepped on or anything else.

24 **Q.** Did he do it?

25 **A.** He did that, and I don't think anybody
26 else wanted to come in.

27 **Q.** Okay. You saw that report?

28 **A.** I don't think there was any report,
29 nothing was written down. I don't know that anybody

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1 else came in after that point.

2 Q. Okay. I don't want to confuse you, but
3 what I'm asking you is did he write the names
4 down -- oh, you're saying nobody else came in.
5 Okay. Did you -- and since nobody else came in,
6 there's no report made of that; is that your
7 testimony?

8 A. I never saw a report describing that, yes.

9 Q. Now, let me tell you something else that
10 bewilders me.

11 BY MR. EVANS: Your Honor, I object to his
12 comments. He can ask questions but he needs to
13 leave his comments out.

14 BY THE COURT: I'll sustain the objection.

15 BY MR. CARTER:

16 Q. Mr. Johnson, what did Mr. Evans do at the
17 scene?

18 A. I -- all I know he was talking to people
19 and investigators. I don't know what he did. I was
20 busy doing what I was doing.

21 Q. Okay. Did he go into the crime scene and
22 go inside the building?

23 A. I think he went inside the building.

24 Q. Did you see exactly where he went?

25 A. He was with me when I -- like I told
26 y'all, where I walked, then we walked to the front
27 of the store and that was it.

28 Q. Did you write a report documenting that
29 you and Mr. Evans walked into the store and you went

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1 to the rear of the store?

2 A. No.

3 Q. Do you know if he did? Do you know if
4 Mr. Evans did?

5 A. No.

6 Q. Now, you remain at the scene -- correct me
7 if I'm wrong -- until the CSI people got there? Is
8 that fair to say?

9 A. The CIB is central -- the highway patrol
10 investigators, I was working with them from that
11 point, so if -- I don't know if --

12 Q. I think I confused you, Mr. Johnson. I
13 meant the crime scene people from Jackson.

14 A. The crime scene people were there. Yes, I
15 was there when they were there.

16 Q. Okay. And you were there from the time
17 you got there until they got there, and you never
18 left the facility, is that fair to say, until they
19 got there?

20 A. That's true.

21 Q. Okay. Now, other than Mr. Matthews and
22 Mr. Miller, who worked with the highway patrol, and
23 Mr. Williams, was anyone else there from the highway
24 patrol department?

25 A. Like I said, I was limited to where I was
26 sitting and concentrating on what we were doing.
27 I -- you know, I don't know the answer to that
28 beyond that.

29 Q. Okay. Were there individuals also showing

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1 up from Duck Hill, various other police departments,
2 sheriff's departments, once they heard of this crime
3 had taken place?

4 A. I didn't see them. They may have. I
5 don't know.

6 Q. Okay. Did you see a dog come inside the
7 building?

8 A. No, I didn't.

9 Q. And your testimony is that you were inside
10 the building from the first time you got there until
11 the crime scene people got there. And that if a dog
12 and a dog trainer came inside the building and went
13 upstairs and checked up there or wherever else to
14 see if somebody else was in the building, you didn't
15 see any of that?

16 A. I don't remember seeing anything like
17 that.

18 Q. Okay. But had you seen it, you probably
19 would have documented it, wouldn't you have?

20 A. I may have.

21 Q. You may have and you may not have; is that
22 fair to say?

23 A. Probably, yes, sir.

24 Q. Now, did Chief Hargrove play any role
25 whatsoever in determining who would become the
26 investigators in this case? I mean, I know he
27 called for backup. And after y'all arrived, did he
28 make any assignments or -- to you or to
29 Mr. Matthews?

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1 **A.** I understood he called the highway patrol
2 investigators, Jack and Wayne, and I know he called
3 us, I assume to assist and to work with all of them
4 on the case.

5 **Q.** Did he give you any specific instruction
6 or assignments that he wanted you to conduct?

7 **A.** He said he wanted it done right.

8 **Q.** Oh, he said investigate this case and do
9 it right; is that what he said?

10 **A.** He said he wanted it done right. That's
11 the reason he called everyone.

12 **Q.** And you and -- did you or Mr. Matthews
13 make any assignment to Chief Hargrove?

14 **A.** Chief Hargrove and I are good friends. We
15 worked together a long time. I trust him and
16 respect him.

17 **Q.** Did you make any assignments to Chief
18 Hargrove --

19 **A.** We communicated on a regular basis. We
20 know each other.

21 **Q.** I take that to mean that you did make some
22 assignments, so tell me what they were. What
23 assignments did you make to Chief Hargrove?

24 **A.** Chief Hargrove and his people -- he
25 assigned people to work with us and, you know,
26 offered his support from the start.

27 **Q.** Mr. Johnson, did you make any assignments?

28 **A.** To Chief Hargrove?

29 **Q.** Chief Hargrove.

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1 **A.** I don't remember directly assigning him to
2 do anything particular, no, sir.

3 **Q.** I'll take that as a no. And Chief
4 Hargrove didn't make any assignment to you except to
5 investigate it or do it right; is that fair to say?
6 Is there anything else you don't remember; is that
7 fair to say?

8 **A.** I don't remember anything else now, no.

9 **Q.** Is it fair to say that -- okay. Correct
10 me if I'm wrong. You came inside the building.
11 Mr. Matthews came inside the building. You went
12 down near the bodies, and then you and Mr. Matthews
13 found an area, northeast I believe you said, where
14 y'all could sit down and talk to people and do
15 interviews?

16 **A.** Southeast corner of the building.

17 **Q.** Southeast. Did you walk through the whole
18 building?

19 **A.** No.

20 **Q.** Did you do that at any point, walk through
21 the whole building?

22 **A.** Not that day.

23 **Q.** Okay. And did Mr. Jack Matthews walk
24 through the whole building that day?

25 **A.** I couldn't answer that.

26 **Q.** You didn't see him do it, did you?

27 **A.** No.

28 **Q.** And you didn't see Mr. Miller walk through
29 the whole building, did you?

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1 A. I'm not --

2 Q. Wayne Miller.

3 A. I'm not aware of it.

4 Q. Okay. Now, what role did Mr. Wayne Miller
5 play? Did he also come to Tardy's and come into
6 this area that you and Mr. Matthews had made as, I
7 guess, your headquarters for the receipt of
8 information and to dispatch and so on? Did
9 Mr. Miller ever become a part of that -- that lead
10 team?

11 A. He -- he may have come and went there. He
12 was busy. I don't know what he was doing.

13 Q. Okay. Now, did you record anything, did
14 you document anything that he did on that particular
15 day?

16 A. No, sir.

17 Q. Now, Mr. Miller is also an investigator;
18 is that correct?

19 A. Yes.

20 Q. In fact, he had a higher rank than Jack
21 Matthews, I believe?

22 A. Correct.

23 Q. And how is it that you and Mr. Matthews
24 became the, I guess, the leaders and Mr. Miller
25 didn't?

26 A. I don't know. I would assume that Wayne
27 would have assigned Jack to that duty, but I don't
28 know the answer to that.

29 Q. Okay. Who assigned you to the duty to be

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1 one of the primary investigators? Was it Mr. Evans?

2 A. I would assume Mr. Evans would assign me
3 to do that.

4 Q. And what exactly did he tell you to do?

5 A. To assist and to help with the
6 investigation.

7 Q. Okay. And that's as personal as it got?

8 A. Yes, sir.

9 Q. Now, at some point, you spoke with Porky
10 Collins; is that correct?

11 A. I did.

12 Q. And was Mr. Matthews present?

13 A. He was.

14 Q. Who else was present when it happened?

15 A. I think James Taylor may have been present
16 then. I know that -- I know that Jack and I were
17 there.

18 Q. Okay. And this happened at this -- this
19 place that y'all designated from which to do the
20 interviews and dispatch and all that?

21 A. A little after 12:00. It had been a
22 couple of hours.

23 Q. So Porky Collins came inside the building?

24 A. He did, came to that -- he was brought to
25 that table. I think James Taylor brought him, but I
26 wouldn't swear to it.

27 Q. Maybe I didn't ask you when. Did you say
28 it was a little after 12:00?

29 A. Yes, sir, probably. I don't know exactly,

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1 12:30 or so. I don't know.

2 Q. Okay. Did you write down what time?

3 A. I did.

4 Q. What did you write it on?

5 A. It's written down on a note. I made a
6 note of Porky Collins.

7 Q. Okay. And how many times did you see
8 Porky Collins on that day?

9 A. I don't -- I don't know if I remember
10 exactly how many times I saw him that day. I don't
11 know if that --

12 Q. Let's talk about that day first. You know
13 he came to you -- Jack Williams (sic) brought him to
14 you one time. And on that occasion Jack Williams
15 (sic) brought him to you, did you take a recorded
16 statement from him?

17 A. No.

18 Q. Did you get a written statement from him?

19 A. No.

20 Q. Did you set forth any permanent way what
21 he told you or said to you at that time?

22 A. I made -- in my notes, I wrote down that
23 he had seen two men in front of Tardy's.

24 Q. Okay.

25 A. And that he talked -- I know that he had
26 talked to Carmen. He also told me at that time that
27 he thought he might could identify the person or
28 people.

29 Q. Okay. Are you sure you put all of that in

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1 your notes?

2 A. I did.

3 Q. Now, isn't it a fact that Mr. Williams
4 brought Porky Collins to you a second time that day
5 as well? Or did he? I'm not saying he did or
6 didn't.

7 A. I think he did. When he brought him in, I
8 think they went and got a receipt for the -- where
9 he had been to the post office or had purchased
10 something.

11 Q. Okay. Now, on the second occasion that
12 you saw him, did you have him to write out a
13 statement?

14 A. No.

15 Q. Did you tape record him?

16 A. No.

17 Q. Did you videotape him?

18 A. No.

19 Q. In fact, wasn't it several months before
20 you ever got a recorded statement from him?

21 A. It was sometime, yes, sir, two or three
22 months.

23 Q. In fact, it was -- now sometime. Wasn't
24 it months? Wasn't it, in fact, months?

25 A. There was two or three months, I think.

26 BY MR. CARTER: One moment, Your Honor.

27 BY THE COURT: Sure.

28 BY MR. CARTER:

29 Q. Hold on, Mr. Johnson. Now, Mr. Johnson,

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1 isn't it a fact, Mr. Johnson, that you took a
2 statement from Porky Collins on March the 10th,
3 1997, or somewhere around in there?

4 **A.** I think that's correct.

5 **Q.** And that's a -- that's about seven or
6 eight months, isn't it?

7 **A.** Yes, sir.

8 **Q.** And could you tell the ladies and
9 gentlemen of the jury what kept you so busy and kept
10 you from getting his statement until March 10th,
11 1997?

12 **A.** We knew basically what Porky was telling
13 us. I mean, he was very clear on it. One of the
14 problems we had when we tried to set up a meeting,
15 you know, to discuss it with Porky, his
16 brother-in-law Fuzzy Jones was deathly sick and ill
17 and was in the hospital a lot, and he was in Jackson
18 with them some. I want to say Porky was ill part of
19 the time, too. But when we could set it up and we
20 did set it up, and we did get a statement from him.

21 **Q.** Is it your testimony that you couldn't get
22 it earlier? Is that your testimony, what that
23 commentary was about? Are you saying you couldn't
24 have gotten it earlier?

25 **A.** I'm not saying we couldn't have done it
26 earlier, but we did not do it earlier.

27 **Q.** You didn't do it, but you're not saying
28 you were unable to do it earlier, are you?

29 **A.** No.

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1 **Q.** Now, you saw Mr. Collins a second time and
2 didn't he relate to you some information that he
3 hadn't related to you the first time, on the same
4 day, I believe, July 16th?

5 **A.** What was that? I'm not familiar -- I
6 don't remember.

7 **Q.** Okay. You don't remember, and you don't
8 remember making a report of it, either, do you, a
9 contemporaneous report --

10 **BY MR. EVANS:** Your Honor, I'd like to
11 know what he's referring to.

12 **BY MR. CARTER:** Well, he investigated it.

13 **BY MR. EVANS:** But I'd like to know what
14 the question is.

15 **BY MR. CARTER:** Your Honor, my question is
16 to Mr. Johnson. I'll stop right there.
17 Whatever else I want to say is --

18 (MR. CARTER AND MR. EVANS ARE SPEAKING
19 SIMULTANEOUSLY)

20 **BY MR. EVANS:** He's answered the question.

21 **BY MR. CARTER:** -- I'll move on to the
22 next question.

23 **BY THE COURT:** All right. Well, he's said
24 he's moving on to the next question.

25 **BY MR. CARTER:** Your Honor, I didn't hear
26 the answer. I saw him just shaking his head
27 over there.

28 **A.** Repeat the question, please.

29 **BY MR. CARTER:**

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1 Q. Okay. We know you saw Mr. Collins at
2 least on one occasion, and he told you he saw some
3 people. I think that's what you testified to
4 earlier, isn't it?

5 A. That's correct.

6 Q. And Mr. Williams, I think, brought him to
7 you -- to you and Mr. Matthews, I think?

8 A. That's correct.

9 Q. And I believe you saw him again or did you
10 see him again later that day and did he give you
11 some additional information that he didn't give you
12 the first time?

13 A. We talked to him several times. I think
14 later in the day we did talk to him in reference to
15 going to the post office or something on that order.

16 Q. And just so the record will be clear, on
17 July the 16th, how many times did you talk to him?

18 A. I don't remember. If we talked to him
19 twice, that would probably be it. I don't remember
20 talking to him a third time.

21 Q. Okay. One moment. And is it fair to say
22 that all you remember doing regarding the
23 information that he gave you about maybe seeing
24 something at Tardy's was made some personal notes to
25 yourself? Is that the extent of what you did with
26 respect to talking to him the first time?

27 A. I made a note to that, yes.

28 Q. And a note was made to yourself for your
29 own edification if you needed it at some point?

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1 **A.** To be used if we needed it, yes.

2 **Q.** Okay. And Mr. Collins' signature wasn't
3 on it anywhere, was it?

4 **A.** No.

5 **Q.** So it wasn't a statement that Mr. Collins
6 made; is that fair to say?

7 **A.** Yes.

8 **Q.** Okay. Now, at some point that day, you
9 learned that a gun had been taken or stolen from
10 somewhere; is that correct?

11 **A.** Yes.

12 **Q.** And how did you learn that?

13 **A.** Through the sheriff's office or James
14 Taylor Williams one.

15 **Q.** Okay. And is it your testimony that
16 Mr. Collins didn't have anything to do with this
17 information getting to you?

18 **A.** I think Porky mentioned something about
19 that, too.

20 **Q.** Okay. And did he mention it to you or did
21 he mention it to somebody else and you learned about
22 it?

23 **A.** I think he mentioned it to me, yes.

24 **Q.** To you, okay. And did you take a
25 statement from him regarding that?

26 **A.** No, sir, not on the 16th.

27 **Q.** Now, if four people been killed in a major
28 homicide and you're getting information that a gun
29 has been stolen, you didn't think it was a good idea

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1 to make a written report of that? You didn't think
2 it was proper?

3 A. The sheriff's office was investigating
4 that theft at the time. I knew that the other law
5 enforcement officers agencies were involved in it.

6 Q. So you didn't make a report that day
7 because the sheriff's department was investigating.
8 At some point, Mr. Hargrove -- I'm sorry --
9 Mr. Thornburg and Mr. James Williams came to you
10 also and gave you information regarding some
11 information they had learned concerning a gun being
12 taken from Angelica; is that correct?

13 A. Correct.

14 Q. And that point, did you make a written
15 report of it?

16 A. No.

17 Q. Now, at some point you learned that the
18 gun stolen was the same caliber of the gun that
19 was -- that matched a shell casing found at Tardy's
20 Furniture Store; is that correct?

21 A. Yes.

22 Q. And did you learn that on July 16th, 1996?

23 A. Not factually, but we suspected that. I
24 think there were .380 hulls that would obviously be
25 that or close that caliber and I think everybody was
26 suspicious of a .380 at that time, yes.

27 Q. And at the point you became suspicious,
28 did you make a report of that setting forth that?

29 A. No.

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1 Q. Now, do you remember what time of the day
2 that you learned that the stolen gun matched the
3 shell casings down there at Tardy's? Was that after
4 the CSI people had gotten there or what time was it
5 when it happened?

6 A. It would have been sometime after, I would
7 think, yes, sir.

8 Q. Sometime after what -- the CSI people had
9 got there?

10 A. After the state investigators were there,
11 yes.

12 Q. Did you learn this from them, also?

13 A. Specifically what were you asking, please?

14 Q. Now, you told me -- apparently you got the
15 mental impression or you were told that the gun
16 stolen was the same caliber as the hulls that were
17 found at -- at Tardy's, and I asked you if you made
18 a report at that point and you said no.

19 Now, I'm asking you when the CSI
20 people got there and looked around, began their
21 investigation, did they tell you that there were --
22 well, first of all, did you tell them -- did you
23 tell the CSI people -- did you inform them -- did
24 you brief them that a gun had been reported missing
25 and that that gun was the caliber of the shell
26 casings or hulls found there?

27 A. I think they learned that the same time I
28 did.

29 Q. How did you learn?

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1 **A.** Through --

2 **Q.** Well, first of all -- I thought -- so
3 you're saying at the time that you got suspicious or
4 had these this mental impression, were the CSI
5 people there at that time?

6 **A.** They were there at the same time I was
7 there. They -- I would -- I'm sure that they heard
8 James Taylor and others relay to us that a .380 had
9 been stolen from Doyle Simpson's vehicle.

10 **Q.** I'm trying to be clear. I'm trying to
11 make a record. Did you know, as far as you know,
12 before then that the gun at Angelica's was the same
13 caliber as the shell casings found at Tardy's? Did
14 y'all learn that at the same time or did you learn
15 before?

16 **A.** I don't know when they learned it any
17 different than I did. They were present. I would
18 assume they learned the same time I did.

19 **Q.** Okay. And if they learned it the same
20 time that you did, how did you learn or who told
21 you? How did you discover it for a fact? How did
22 you gather that information?

23 **A.** Like I said, I think James Taylor
24 mentioned to us or Bill Thornburg may have called me
25 on the cell phone and told me what they were
26 investigating. I communicated with them. It was
27 communicated to us that a .380 automatic was stolen
28 from Doyle Simpson's car.

29 **Q.** How long prior to CSI people getting there

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1 did you see the shell casings?

2 A. My view was very limited of the crime
3 scene that morning.

4 Q. Okay. With your limited view of the crime
5 scene, did you see the shell casings?

6 A. I saw the shell casings, yes.

7 Q. You saw shell casings. Did you get close
8 enough to determine the caliber?

9 A. No.

10 Q. Is it a fact that at some point at the
11 crime scene, technicians recovered the shell
12 casings. And upon recovering them, they told you
13 that the shell casings recovered were, in fact, a
14 .380 caliber? Did they give you that information at
15 some point?

16 A. Yes.

17 Q. And at what point was that?

18 A. I don't -- some -- I would think sometime
19 that afternoon, but I don't know that.

20 Q. Okay. Did you make a report or a note of
21 what time you learned? Did you --

22 A. I don't remember if I made a note of that
23 or not.

24 Q. A note -- but did you make a report? Do
25 you remember if you made a report of -- a full
26 report of what time you learned that and who told
27 you exactly?

28 A. No, sir.

29 Q. Okay. Now, at some point, you interviewed

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1 Doyle Simpson, also; is that correct?

2 A. Yes.

3 Q. And do you remember what time that was?

4 A. Later that day.

5 Q. Later that day. Where did that occur?

6 A. Sir?

7 Q. Where did it occur, what building? What
8 place?

9 A. I think we brought him to the EOC
10 building.

11 Q. Okay. EOC building, and --

12 A. We also went to Angelica's, and we talked
13 to a number of people.

14 Q. I'm sorry, Mr. Johnson. I didn't hear
15 that with the noise.

16 A. We also went to Angelica's and interviewed
17 people that were there, but I think Doyle was
18 brought to the EOC.

19 Q. Okay. You went to Angelica's also. Is
20 that your testimony?

21 A. I did.

22 Q. And did you go to Angelica's before or
23 after the CSI people got there?

24 A. I -- probably the same time. I don't
25 know. You said before?

26 Q. So --

27 A. Angelica's would have been late in the
28 afternoon, near dark.

29 Q. Are you saying that you -- I just want to

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1 be clear. Did the crime scene technicians go to
2 Angelica's also?

3 A. Not that I'm aware of.

4 Q. Okay. And I asked you what time --

5 A. No. I do think that they -- I don't know
6 the answer to that. I don't know if they went or
7 not.

8 Q. Okay. But you know that you went to
9 Angelica's on July the 16th --

10 A. I did.

11 Q. -- 1996. And I asked you what time, and I
12 believe your answer was that afternoon. Is that
13 what you're saying?

14 A. Later that afternoon.

15 Q. Later that afternoon. You don't know
16 exactly what time, do you?

17 A. I want to say 6:30, but I wouldn't swear
18 to it.

19 Q. But, you know, if you set it forth in
20 writing so that you'd have a permanent record in
21 case you need it --

22 A. I did make notes of that.

23 Q. You did? And what record -- or what would
24 you call that report that you set forth in? Was it
25 a summary you did or just general notes that you --

26 A. General notes of who I talked to, that
27 kind of thing.

28 Q. Okay. When you got there at 6:30 --
29 Angelica's at 6:30 p.m. -- is that correct?

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1 **A.** Well, it would have been 6:30 at least one
2 time. It might have been -- I probably was there
3 earlier because people --

4 **Q.** Okay. Let's talk about when you probably
5 were there earlier. What time did you probably get
6 there earlier?

7 **A.** Probably 5:30.

8 **Q.** Okay. And that was -- what was the
9 occasion for you to go to Angelica's at 5:30 on
10 July 16th, 1996?

11 **A.** We made a quick summary interview with
12 Doyle Simpson and Emmett Simpson and the plant
13 manager and several other people in the plant that
14 worked with Doyle Simpson. And several people,
15 the -- management of Angelica's, the management of
16 BPD or some kind of -- it was a brake company in the
17 same building on the north side of the same
18 building. And --

19 **Q.** Okay. Now I take that to mean, that long
20 answer, that you went there to interview some
21 people. Did somebody request that you come to
22 Angelica's and interview Mr. Simpson?

23 **A.** No.

24 **Q.** Did somebody assign you the task of going
25 to Angelica's to interview Doyle Simpson?

26 **A.** No.

27 **Q.** You said no?

28 **A.** No.

29 **Q.** So what in particular -- did it -- did

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1 it -- specific assignment or occurrence cause you to
2 go to Angelica's on that first day considering
3 Mr. Thornburg had already been there, Mr. Williams
4 had been there, what caused you to go, you
5 personally?

6 A. I went there to verify and to see if there
7 was something they missed or potentially to verify
8 what had happened.

9 Q. Okay. Were you alone when you went?

10 A. No, I was not alone.

11 Q. Who was with you?

12 A. I think Jack was with me.

13 Q. Jack Williams. What time -- is this the
14 first time you went or the second time?

15 A. I don't know whether he was there -- I
16 would assume he was there with me.

17 Q. I think I confused you or you didn't hear
18 me.

19 A. I would I assume he was there the first
20 time.

21 Q. My question was: The time that you went
22 with Jack Williams, was this the first occasion you
23 went to Angelica's or was this the second occasion
24 you went to Angelica's?

25 A. I think the first.

26 Q. The first. And as best you can, can you
27 tell me about what time was it when you first went
28 to Angelica's to make your verification?

29 A. I know I noted in a note talking to Doyle

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1 I think at 6:30. Beyond that, I can't get specific
2 on time.

3 Q. At this earlier time that you can't
4 recall, you can't give a specific time, did you talk
5 to Doyle on that occasion?

6 A. I don't think so. I think they had -- he
7 had left.

8 Q. Did you talk to Emmett Simpson on that
9 occasion?

10 A. I -- I talked to Emmett Simpson. I'm not
11 sure if it was that day or another day.

12 Q. Did you make a report, a written document
13 setting forth the first time you went to Angelica's,
14 the reason you went, who you talked to, what you
15 asked them, their replies? Did that occur? Did you
16 make a record of that?

17 A. I made notes of people that I did talk to.

18 Q. And you also made notes of what they said;
19 is that correct?

20 A. If they had anything to say relevant to
21 the case, yes.

22 Q. Made notes of exactly their names; is that
23 fair to say?

24 A. I put their names down, yes.

25 Q. And what they saw or knew, if anything?
26 All that would have been in your notes, too?

27 A. Everything they said would not be written
28 down in notes, but I would document it by their
29 name, social security number, date of birth, day,

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1 time, that kind of thing.

2 Q. This first encounter, which you can't give
3 a time on, that you made notes on to set forth who
4 you talked to, did you later make a written document
5 setting forth when you went, who you talked to, what
6 you asked them, what they said?

7 A. No.

8 Q. Beyond your personal note, did you make a
9 written standard report that should be compiled in a
10 major homicide?

11 A. No.

12 Q. Now, let's talk about the second interview
13 around 6:30. Where did that one happen with Doyle
14 Simpson?

15 A. I think it was at the EOC.

16 Q. I don't know what that is. What it is?

17 A. Police department. It's the police
18 department then.

19 Q. Okay. And that's located -- is it on the
20 other side of -- the east side of Front Street where
21 the probation office is located now?

22 A. Yes, sir, on Liberty Street.

23 Q. Mr. Simpson came in. Did y'all go get him
24 or what happened?

25 A. I think we asked somebody to bring him
26 down or he came on his own. I don't remember which.

27 Q. Okay. Is it fair to say that by the time
28 you got to the Winona Police Department, the old
29 Winona Police Department, that you had finished your

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1 work at Tardy's Furniture Store and the place had --
2 had been released back to the family or someone so
3 that it could be cleaned up? By 6:30, had the crime
4 scene been released back to the family?

5 A. I think it may have been later than that.

6 Q. Did you make a report setting forth what
7 time the crime scene was released back to the
8 family?

9 A. No.

10 Q. Okay. Now, Mr. Johnson, it's -- well, you
11 think it's important to do so?

12 A. It's important to document stuff but, like
13 I said, we were busy trying to talk to people,
14 communicating with other people. That crime scene
15 was turned over the Mississippi Crime Laboratory,
16 and I felt that they were competent enough to make
17 notes and to document what they had and when they
18 left.

19 Q. Okay. Mr. Johnson, that's fine. But I'm
20 not talking about what they did. I'm talking about
21 what you did.

22 A. I did not make any documentation as to
23 when the crime scene was released to the family.

24 Q. Now, at the time that you talked to -- to
25 Mr. Simpson, do you know whether Tardy's was still
26 considered a crime scene in need of further
27 investigation? Was it -- let me make it clear. Did
28 the crime scene get cleaned up and released back to
29 the family sometime on July the 16th, 1996?

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1 **A.** I don't know the answer to that.

2 **Q.** And you don't know that the crime scene
3 remained to be a crime scene longer than one day or
4 not?

5 **A.** I don't know the answer to that.

6 **Q.** Who would know? Would Mr. Matthews know?

7 **A.** I think the crime scene specialists would
8 know.

9 **Q.** So is it your testimony that the crime
10 scene specialists -- is it your testimony that once
11 the crime scene specialists came and took over that
12 you considered the crime scene specialists to be in
13 control of the crime scene and you went on to the
14 police department and you left it to the crime scene
15 people to decide when they were finished and left it
16 up to them to release the crime scene back to the
17 family and not you or somebody associated with the
18 police department; is that your testimony?

19 **A.** We released -- I released to it the crime
20 scene specialists, and Mississippi Highway Patrol
21 investigators were there that worked for the
22 Mississippi Highway Patrol. I did not release the
23 crime scene to anybody.

24 **Q.** So you left about 6:30? What time did you
25 leave that day, the crime scene?

26 **A.** I -- I don't know the time. It would have
27 been late.

28 **Q.** Okay. Did you make the record of when you
29 left?

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1 **A.** No.

2 **Q.** Shouldn't you have?

3 **A.** Probably.

4 **Q.** When you left that day, who was with you
5 when you left?

6 **A.** I don't remember.

7 **Q.** And when you had Doyle over at the police
8 department -- well, strike that. When you left the
9 scene that day, did you carry with you whatever
10 documentation you had, whatever instruments or
11 equipment you used at Tardy's to -- as you used
12 Tardy's like a little command center temporarily,
13 did you take all your equipment and files and
14 documentation and stuff with you when you left at
15 that time?

16 **A.** Yes.

17 **Q.** Okay. And when you left, did you leave
18 Jack Matthews, Wayne Miller, James Williams, Chief
19 Hargrove or any of those people still at the crime
20 scene?

21 **A.** I think Chief Hargrove was still there.

22 **Q.** Okay. Now, you think. Are you -- did
23 you --

24 **A.** Chief Hargrove was there.

25 **Q.** Okay. What was he doing?

26 **A.** Still securing the scene is all I know.

27 **Q.** And what does that mean? Standing at the
28 door making sure nobody went in? Is that what you
29 saw him doing?

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1 **A.** Well, I couldn't see what he was doing.

2 **Q.** Well, let's talk about what you did see
3 him doing.

4 **BY MR. EVANS:** Your Honor, I think we have
5 covered this so many times it's pitiful. I've
6 tried not to object, but it is so repetitive
7 that --

8 **BY MR. CARTER:** Your Honor --

9 **BY THE COURT:** I'll sustain it. You're
10 being repetitive, and you can move on.

11 **BY MR. CARTER:** Your Honor, I'm not trying
12 to be disrespectful. I'm trying to set forth
13 the facts of what happened, set forth the fact
14 that various things weren't documented that
15 should have been documented.

16 **BY THE COURT:** When you start getting
17 repetitive with the same question, it's time to
18 move on and that's what you're doing.

19 **BY MR. CARTER:** Your Honor, I don't know
20 that -- are you saying that I've asked
21 Mr. Johnson before what Chief Hargrove was
22 doing when he left? I don't know if I've asked
23 him that.

24 **BY THE COURT:** I don't know how he could
25 answer what somebody was doing once he left,
26 but if you want to ask him that question -- but
27 you are getting repetitive on your some of your
28 questions. But you can ask him --

29 **BY MR. CARTER:** Okay.

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1 BY MR. CARTER:

2 Q. Mr. Johnson, I know you can't -- you don't
3 know what he was doing when you didn't see him.

4 A. No, sir, I didn't.

5 Q. That's a good one, that one. It actually
6 kind of offends me. But what was he doing --

7 BY MR. EVANS: I object to these comments,
8 Your Honor.

9 BY MR. CARTER:

10 Q. What was he doing when you left? What was
11 Chief Hargrove doing the last time you saw him at
12 the crime scene?

13 A. Chief Hargrove was still in the front of
14 the building doing his job is all I know.

15 Q. Okay. Let's go on to -- I'm not saying
16 I'm not coming back to the crime scene, but
17 Mr. Simpson came into the old police department.
18 And that's the first interview, I assume, that you
19 made with Mr. Simpson; is that fair to say?

20 A. Yes.

21 Q. And were you alone or by yourself when
22 this interview took place?

23 A. I don't think so. I think -- I think Jack
24 would have been with me.

25 Q. Okay. Did you make a record of who was
26 available when this interview was done?

27 A. In my notes I normally would put the
28 initials of who would be there.

29 Q. Okay. Do you know if you got a recorded

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1 statement from Mr. Simpson on this occasion?

2 A. No, I don't think so.

3 Q. Do you know if Mr. Simpson wrote out a
4 statement on that occasion?

5 A. Not to my knowledge.

6 Q. Is it your testimony that Mr. Simpson --
7 you had learned that Mr. Simpson's gun had been
8 taken. You had Mr. Simpson at the police station.
9 Mr. Simpson earlier testified to you that his gun
10 had been taken; is that correct?

11 A. Yes.

12 Q. And you still didn't get a recorded
13 statement from him or a written statement that he
14 signed?

15 A. I did not. The sheriff -- excuse me. Go
16 ahead.

17 Q. Did you ask a question?

18 BY MR. CARTER: Okay. One moment, Your
19 Honor.

20 BY MR. CARTER:

21 Q. Now, is there some reason that
22 Mr. Simpson -- strike that. Mr. Simpson didn't come
23 to Tardy's as you had your command station there,
24 did he? Before you left and went to the police
25 department when you talked to him, did he?

26 A. I don't remember that. I remember making
27 a note and talking to him on the 16th. He may have
28 been brought to the -- that's right, I don't -- I
29 really don't remember. But I remember talking to

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1 him directly and him reporting to us his gun being
2 stolen from his car there at Angelica's.

3 Q. Okay. And I take it, if I'm understanding
4 you, that you remember talking to him at some point
5 before that 6:30 period of time at the police
6 department; is that what you're saying?

7 A. No, I don't. I know on the 16th I talked
8 to him, and I made a note of this.

9 Q. And the time that you talked to him was
10 more than likely at that 6:30 period of time at the
11 police department you're talking about and not some
12 other place?

13 A. I think that's correct.

14 Q. Okay. Now, was Mr. Simpson considered a
15 suspect at that time?

16 A. No.

17 Q. He had a -- at that time, you knew he had
18 a gun in his car at Angelica's. You knew he had --
19 at 6:30 at least told you that his gun had been
20 taken from his car. And at that point, did you have
21 any information that anybody else had a gun taken by
22 that time at 6:30?

23 A. Someone else had a gun taken?

24 Q. By 6:30.

25 A. I'm confused.

26 Q. Let me rephrase. By 6:30, you knew from
27 the crime scene people that there were hulls that
28 reflected a .380 caliber gun might have been used;
29 is that correct? By the time you got to the police

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1 department, you found a .380 --

2 A. Yes.

3 Q. -- likely had been used, possibly had been
4 used. And you also knew that there was a guy there
5 by the name of Doyle Simpson who said he had gun in
6 his car -- a .380 -- and a .380 had been stolen.
7 You knew that; is that correct?

8 A. Yes.

9 Q. And this guy was there to be interviewed,
10 and you didn't get a recorded statement from him;
11 you didn't get a written statement from him, and you
12 didn't consider him a suspect at that time?

13 A. Not really, no.

14 Q. Okay. And at that time, did you have any
15 suspects? At that time, 6:30 or so?

16 A. Yes.

17 Q. Who was it?

18 A. Curtis Flowers.

19 Q. Okay. How did Curtis Flowers become a
20 suspect by then, by 6:30?

21 A. I knew that the Tardy family had
22 considered Curtis a threat and that they were
23 concerned about their safety dealing with him.

24 Q. Okay. Now, did you set forth in any
25 written report that the Tardy family considered
26 Mr. Flowers a threat?

27 A. Yes.

28 Q. What report was that?

29 A. In my notes.

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1 Q. Did you ask them -- and you also knew that
2 Mr. Flowers had worked at Tardy's as a result of
3 talking to the Tardy family; is that correct?

4 A. That's correct.

5 Q. And that he had worked there for a period
6 of time and didn't come back after the 4th and he
7 eventually called and checked and was told he no
8 longer had a job; is that correct?

9 A. Yes.

10 Q. And did you have any information that he
11 had gotten in an altercation or a fight with anybody
12 at Tardy's?

13 A. No.

14 Q. What exact person at Tardy's had you
15 talked to that made you believe that Mr. Flowers was
16 a threat to them?

17 A. I talked to Tom Tardy and, of course,
18 later, I talked with Roxanne.

19 Q. Okay. Did Mr. Flowers -- did you have any
20 information that Mr. Flowers had an altercation with
21 anybody at Tardy's Furniture Store? A fight or a --

22 A. No fights.

23 Q. Any -- cuss outs or big arguments where
24 cursed out, any threats to anybody? Any report of
25 that anywhere?

26 A. No.

27 Q. So you had comments that the family was
28 concerned about Mr. Flowers. You had no evidence,
29 no facts that substantiated a threat. He was

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1 considered a suspect; is that fair to say?

2 A. A possible suspect, yes.

3 Q. And Mr. Simpson had a gun, a .380, same
4 kind used in the murders, showed up to tell you that
5 he had the gun, the gun was taken and he wasn't a
6 suspect?

7 A. At that time, I had already talked with
8 numerous people at Angelica's that verified that
9 Mr. Simpson was still at work at Angelica's during
10 the -- what we've suspected to be the time that
11 these people were killed.

12 Q. What time were they killed?

13 A. I know that Carmen was seen going in the
14 store right at 10 o'clock, within ten minutes one
15 way or the other of 10 o'clock. And we know what
16 time they were found.

17 Q. Okay. Who, in fact, told you that
18 Mr. Simpson never left out the building at
19 Angelica's that morning?

20 A. I talked with Dorothy -- I think her name
21 is Riker or Striker. She was the manager -- plant
22 manager at Angelica's.

23 Q. Did you write it down anywhere?

24 A. Yes.

25 Q. Dorothy Striker?

26 A. Yes. Well, I'm sorry. I did write it
27 down, yes.

28 Q. And what did you write it down in? Was it
29 some of your notes?

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1 A. Just notes.

2 Q. And did you ever put that in a permanent
3 record, the type that should be done in a major
4 homicide?

5 A. I did not put it in another report.

6 Q. Who else did you talk to after that, if
7 you remember?

8 A. Sir?

9 Q. Who else did you talk to beside
10 Ms. Striker?

11 A. At Angelica's?

12 Q. Yes, sir, regarding Doyle.

13 A. I talked to numerous people, many people
14 in the office and in the plant.

15 Q. Okay. Did you write all of their names
16 down and exactly what they said and put it in a
17 report?

18 A. Probably not that day.

19 Q. Did you write all those people's names
20 down, the questions you asked and their answers and
21 put it in a permanent report at some other day?

22 A. No. I made notes of the people that I did
23 talk to --

24 Q. I understand you made notes.

25 A. -- on a file.

26 Q. Did you follow it up? Did you
27 subsequently make a permanent record?

28 A. No.

29 Q. Okay. Mr. Johnson, by that time, by the

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1 time that these murders happened at Tardy's, how
2 many homicides would you say you had worked?

3 A. Numbers of them.

4 Q. Give me your best guess.

5 A. I'm going to guess, say, 50 or so.

6 Q. Okay. And with that being the case, you
7 knew how important it was to document the facts and
8 findings and impressions and statements and so on;
9 is that fair to say?

10 A. Yes.

11 Q. Now, how -- of those 50 or so, how many
12 have been multiple homicides?

13 A. Like double suicides, if you count those,
14 that would be -- I don't know multiple, just a --

15 Q. Don't count double suicides, without the
16 double suicides.

17 A. That would be it.

18 Q. Oh, so just double suicides? Okay. Now,
19 have you had any training in -- that involved double
20 homicides? Out of that litany of training you said
21 earlier you received from various agencies, did any
22 of that involve multiple homicides and how they
23 should be documented and memorialized permanently?

24 A. Yes.

25 Q. Now, why didn't you give Doyle Simpson a
26 gunshot residue test as well, since it was his gun?
27 Why didn't you do it yourself or order it or have
28 somebody else do it? Do you know how to give a --
29 and did you know then how to give a gunshot residue

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1 test?

2 A. Yes.

3 Q. Did you give Mr. Doyle Simpson one?

4 A. Mr. Matthews did. No, I'm sorry. No.

5 Q. Mr. Matthews give Doyle Simpson a gunshot
6 residue test?

7 A. No.

8 Q. Okay. Now, you know Doyle Simpson wasn't
9 given a gunshot residue test that day. He was never
10 given one at any other point that you know of?

11 A. Not that I'm aware of.

12 Q. Now, did you come to interview Emmett
13 Simpson also at some point on July 16th, 1996?

14 A. I did.

15 Q. And where did that occur?

16 A. At Angelica's.

17 Q. Okay. Did it occur around -- about or
18 around the same time as you talked to Doyle the
19 first time down at Angelica's?

20 A. Sometime close, yes.

21 Q. About what time was that?

22 A. I'm going to guess 5:30 to six o'clock,
23 something like that.

24 Q. And did you -- was Emmett still at work by
25 the time you got there or did he have to be called
26 back there?

27 A. I don't remember the answer to that.

28 Q. Okay. And you talked to him and who was
29 present?

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1 **A.** I think Jack Matthews was with me.

2 **Q.** Okay. And did y'all get a recorded
3 statement from Emmett Simpson at that time?

4 **A.** No.

5 **Q.** Did you get a written statement from
6 Emmett Simpson at that time?

7 **A.** No.

8 **Q.** And you could have if you wanted to, I
9 assume. Was there anything that stopped you from
10 doing it had you wanted to?

11 **A.** No.

12 **Q.** Okay. Would you agree with me that being
13 busy isn't a valid excuse for not documenting
14 occurrences and scenes and events as it surrounds a
15 crime scene? I mean, I know you can be busy at
16 times, but you still -- aren't you supposed to find
17 time at some point where you can find time that, in
18 fact, document, photographically, video -- through
19 videotape or through written documents at some time?

20 **A.** The crime scene?

21 **Q.** At a crime scene or after the crime scene?
22 In other words -- do you understand what I'm saying?
23 Do you need me to make it a better question?

24 **A.** I wish you would.

25 **Q.** Okay. Let me see and make sure I
26 understand it. The documentation of a major
27 homicide is a -- it's critical that that be done; is
28 that correct?

29 **A.** It's important, yes, sir.

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1 Q. It's important, and it's important that it
2 be done as thoroughly and as completely as possible.
3 Would you agree with that?

4 A. I agree with that.

5 Q. And even if events occur so fast or
6 simultaneously, you still should document when time
7 permits even if you can't do it instantaneously; is
8 that fair to say?

9 A. Yes.

10 Q. Was Emmett given a gunshot residue test?

11 A. No.

12 Q. Were you present when a search was made of
13 Emmett Simpson's van or vehicle?

14 A. No.

15 Q. You do know that occurred, right, or you
16 were told that occurred?

17 A. Yes.

18 Q. Did you make a -- was a permanent record
19 made of this at some point?

20 BY MR. EVANS: Your Honor, I object. If
21 he wasn't even present, how is he going to make
22 a report of it? This is not proper.

23 BY MR. CARTER: And I object to the not
24 proper.

25 BY MR. EVANS: Your Honor, will the Court
26 rule on the objection?

27 BY MR. CARTER: Can I respond, Your Honor,
28 before you rule? Can I respond before you
29 rule, Your Honor?

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1 **BY THE COURT:** You can respond.

2 **BY MR. CARTER:** Your Honor, Mr. Johnson
3 and Mr. Matthews were the -- the main or lead
4 investigators in this case. At some point,
5 Mr. Matthews and Mr. Johnson or somebody got to
6 compile a list of what happened, got to do
7 summaries. And all I'm trying to find out from
8 Mr. Johnson, as one of the lead investigators,
9 either the first one to get there or the second
10 one, whether or not he knew whether a report
11 was made of that. I'm not trying to trick him
12 or anything. I just want to know if he knows
13 whether or not a report was made of that as a
14 result of being one of the lead investigators
15 that people were coming to and talking to as a
16 result of assignments were made in and so on.

17 **BY THE COURT:** You can ask him if he knows
18 whether Mr. Matthews -- of course, Mr. Matthews
19 already testified, but you can ask Mr. Johnson
20 if he knows if Mr. Matthews made a report, if
21 that's what the question is.

22 **BY MR. CARTER:** Okay.

23 **BY MR. CARTER:**

24 **Q.** First of all, Mr. Johnson, I apologize if
25 I have already asked you this question, but the
26 objection made me forget what I had asked you. Did
27 you make a report of that, first of all?

28 **A.** No.

29 **BY MR. EVANS:** Your Honor, and that's what

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1 I objected to. He said he wasn't there so he
2 couldn't have made a report.

3 **BY THE COURT:** I'll sustain to that.

4 **BY MR. CARTER:**

5 **Q.** All right. Mr. Johnson, you weren't there
6 when Mr. Simpson's vehicle was searched. Were you
7 at some point informed that it was, and did you or
8 somebody make a report as to whether -- I'm sorry,
9 indicate that that vehicle had been searched?

10 **A.** I'm not aware of one.

11 **Q.** Now, do you have any information -- do you
12 know whether any weapons were found in either
13 Doyle's car or Emmett's car on the 16th?

14 **A.** No.

15 **Q.** And your answer, and what you're saying in
16 your answer is that you don't have any information
17 that any of it was found?

18 **BY MR. EVANS:** He answered the question,
19 Your Honor.

20 **BY MR. CARTER:** I want to make sure he
21 wasn't confused, Your Honor.

22 **BY MR. CARTER:**

23 **Q.** You're not saying that no weapons existed
24 in the car. You're saying you don't know whether
25 any weapons existed; is that what you're saying?

26 **A.** I'm not aware of any.

27 **Q.** Okay. I just want to be clear.

28 Now, Mr. Johnson, as an investigator
29 in this case, did you ever make a -- a summary

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1 report setting forth everything that you did,
2 everything that you witnessed, everything that you
3 observed, setting forth your mental impressions,
4 setting forth who talked to you and made statements,
5 setting forth what evidence, if any, is in addition
6 to what you've testified to, so that there was a
7 permanent record that could be reviewed by anyone?

8 A. I didn't make an overall report.

9 Q. Would you agree with me that that's
10 something that should have been done?

11 A. I don't know the answer to that. There
12 are multiple people involved in this. I documented
13 what I knew to document.

14 Q. Let me make sure I understand you. You
15 don't know whether you should have done a composite
16 report?

17 A. It may have been good; I'm not saying it
18 shouldn't have been done.

19 Q. Now, based on your training at the police
20 academy and based on all these other training places
21 that you've gone, you are saying that that training
22 that you received didn't require, didn't strongly
23 suggest that you should do a summary or composite
24 report of your findings in discovery during a major
25 homicide investigation?

26 A. It could have been suggested.

27 Q. Okay. Is that to say that you probably
28 should have done a --

29 BY MR. EVANS: Your Honor, I object. We

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1 have gone through this so many times it's
2 pitiful.

3 **BY THE COURT:** You are being repetitive
4 now. I mean, he just answered the question.

5 **BY MR. CARTER:**

6 **Q.** And the answer was it may have,
7 Mr. Johnson? Is that it?

8 **BY MR. EVANS:** Your Honor --

9 **BY MR. CARTER:**

10 **Q.** Do you have anything further on that?

11 **A.** No, sir.

12 **BY MR. CARTER:** Your Honor, I realize it's
13 nearly 12:00. Do you want me to stop and take
14 a break, Your Honor? Because I'm not finished;
15 I'm only halfway.

16 **BY THE COURT:** This would be a good time
17 to recess. Ladies and gentlemen, we'll recess
18 until one o'clock, and I'll ask you not to
19 discuss this case with anyone or among
20 yourselves.

21 (FOLLOWING THE LUNCH RECESS,
22 PROCEEDINGS CONTINUED IN OPEN COURT WITH
23 THE JURY PRESENT, TO-WIT:)

24 **BY THE COURT:** Court will come back to
25 order. And, Mr. Carter, you may proceed.

26 **BY MR. CARTER:** Thank you, Your Honor.

27 **CONTINUED DIRECT EXAMINATION**

28 **BY MR. CARTER:**

29 **Q** Mr. Johnson, why didn't y'all tape record

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1 the first statement that you got from Mr. Flowers
2 the first time you talked with him? Strike that.
3 That's not -- that's not a well-formed question.
4 Why didn't you tape record your conversation with
5 Mr. Flowers on July the 16th, 1996?

6 **A** That was our first initial contact with
7 him and, you know, we were just getting into the
8 investigation. He was cooperating with us, and we
9 did not record the first interview.

10 **Q** Was he a suspect at that time?

11 **A** I think everybody was a suspect at that
12 time on the first day.

13 **Q** Okay. And everybody who?

14 **A** Well, anybody --

15 **Q** What individual -- or anybody in the
16 community, anybody in Winona; is that what you're
17 saying?

18 **A** Nobody was ruled out as being a suspect.

19 **Q** Okay. And when you say everybody was a
20 suspect, what do you mean by that? I mean, that's
21 what you said so explain it to me.

22 **A** We didn't rule anybody out as a suspect
23 initially, tried to get the investigation open and
24 tried to base it on information and the facts that
25 we could develop.

26 **Q** Okay. So correct me if I'm wrong, but are
27 you saying that the larger Winona community was a
28 suspect at that time?

29 **A** No, sir, that's not what I'm saying.

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1 Q Well, who, in fact, was a suspect besides
2 Mr. Flowers at that time?

3 A He was the only one that was an initial
4 suspect.

5 Q And, now, he was an initial suspect;
6 that's based on the information that you got from
7 Mr. Tardy; is that fair to say?

8 A That added to it, yes.

9 Q Okay. Now, on July the 16th, we didn't
10 know what kind of shoes left the footprint down
11 there at Tardy's; is that correct?

12 A That's correct.

13 Q And at that point, you didn't know that
14 there was a shoebox -- a Fila shoebox at Ms. Moore's
15 house at the time you talked to Curtis Flowers the
16 first time; is that correct?

17 A Correct.

18 Q So there was no -- strike that. So that's
19 all -- so all you had basically was -- strike that.
20 Did you have anything else that even conjecturally
21 connected, that you thought connected Mr. Flowers
22 other than what you were told at Tardy's at that
23 time that you talked to him that first day?

24 A Not really.

25 Q Now, Mr. Flowers remained a suspect until
26 he was arrested in January of 1997; is that fair to
27 say?

28 A Yes.

29 Q Do you remember at what point you knew,

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1 you learned, you first discovered that the shoe
2 prints at Tardy's were, in fact, Fila Grant Hill
3 shoes?

4 **A** On the day of the murders, there was a
5 very distinct pattern in the blood at the crime
6 scene, and everybody knew it was a distinct pattern.
7 And it was sometime later that it was developed that
8 it was a Fila Grant Hill tennis shoe.

9 **Q** And what time later was that?

10 **A** It was some -- I don't know for sure, but
11 I think Wayne and Jack communicated with that --

12 **Q** Was it some months later?

13 **A** I don't know for sure.

14 **Q** Did you write a report setting forth when
15 you learned that it was, in fact, a Fila tennis
16 shoe?

17 **A** I did not.

18 **Q** Now, correct me if I'm wrong. I believe
19 you testified earlier that you didn't take a G-R --
20 gunshot residue test from Doyle at Angelica's within
21 a few hours of the shooting because Mr. Collins had
22 told you he saw Ms. Rigby go into the store at
23 around 10 o'clock?

24 **A** The reason we didn't do a GSR kit on Doyle
25 Simpson on that date is because we had information
26 and people telling us that he was at work at
27 Angelica's during the time of the murders.

28 **Q** Okay. Now, do you remember about what
29 time that Mr. Collins told you that he saw Ms. Rigby

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1 enter the store at Tardy's? Are you sure it was
2 10:00, and you're telling us it couldn't be earlier?

3 A I think it was about ten till 10:00, but I
4 can't swear to it. It was close to 10 o'clock a.m.

5 Q Did you write it down anywhere what time
6 he told you?

7 A I think I did.

8 Q And would that be -- where would you have
9 written it? Would that be in one of these notes --

10 A In notes.

11 Q -- that you make for yourself?

12 A That's right.

13 Q And it wouldn't have been on any standard
14 or common report that would be made in the course of
15 documenting a major homicide like this?

16 A I didn't make it in another report.

17 Q And as far as this time, 9:50, that's --
18 you were relying on your memory as best you can but
19 you're not saying that's the specific time that
20 Mr. Collins told you that, are you?

21 A No, it was close. I'm relying on my
22 memory, yes.

23 Q Okay. Do you think it could have been as
24 early as 9:30 that he said? Is that even possible
25 in your mind? Do you think --

26 A It may be possible.

27 Q Okay. Mr. Johnson, at some point, you
28 interviewed a Katherine Snow; is that correct?

29 A Yes.

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1 **Q** And what occasion caused you to interview
2 her, what event? What situation called you to
3 interview her?

4 **A** People at Angelica's told us that someone
5 was leaned against Katherine -- Doyle Simpson's
6 vehicle and Katherine Snow's name was given to us.

7 **Q** Okay. And were you still at Tardy's when
8 you got access to that information?

9 **A** I don't remember.

10 **Q** But you know you went down -- as a result
11 of getting that information, you followed up and
12 went to Angelica's; is that fair to say?

13 **A** That and also following up on the burglary
14 of the vehicle.

15 **Q** Okay. Now, I don't want to be wrong. I
16 certainly don't want to put words in your mouth.
17 Your first meeting with Ms. Snow, did it take place
18 at Angelica's?

19 **A** I think so.

20 **Q** Now, did you talk to Ms. Snow on the same
21 occasion as a result of the same trip to Angelica's
22 to see Doyle and Emmett or was that a separate trip?

23 **A** It could have been a separate trip.

24 **Q** Okay. And do you have any records that
25 would refresh your memory as to whether it was the
26 first trip, second trip or some other trip? Do you
27 have -- is there a record that sets forth exactly?

28 **A** Just the note when I talked to her.

29 **Q** Okay. When you talked to her that first

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1 time, did she tell you who she saw out there? Did
2 she give you a name?

3 A She did not.

4 Q Okay. You talked to her on another
5 occasion shortly thereafter. And where did that
6 occur?

7 A I think at the EOC in Winona.

8 Q Okay. And did she tell you on that
9 occasion who she saw? Did she give you a name?

10 A She did not.

11 Q Okay. And how many times did you talk to
12 her in all as a result of this investigation?

13 A I think that would have been three times.

14 Q Okay. And did she ever tell you that she
15 knew the name of the person before you did the photo
16 lineup?

17 A She did not.

18 Q Okay. Now, there was a photo lineup that
19 was done that involved who? You and -- who
20 conducted the photo lineup?

21 A Myself, Wayne Miller and I think -- wait a
22 minute. Myself, Jack Matthews and Robert Jennings.

23 Q And this third conversation, that took
24 place at the police department, too?

25 A Yes.

26 Q And on that occasion, she was shown
27 photographs, pictures, one of which included
28 Mr. Flowers. And after she picked out Mr. Flowers,
29 she then told you the person she saw was

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1 Mr. Flowers; is that correct? What did happen that
2 day? Tell us.

3 A When we laid the photo lineup out in front
4 on the table, she immediately said, "That's him."
5 And I looked at her and I said, "Well, you knew who
6 it was," and she smiled, and that's when she
7 indicated she didn't -- she was scared of
8 identifying him.

9 Q Okay. Now, let's -- you set the photo out
10 in front. You didn't give her any instruction, I
11 assume. You didn't say you gave her any. And you
12 sat the photo out in front. She said, "That's him,"
13 and she smiled. Is that in your report?

14 A It's in my notes that she identified
15 Curtis Flowers.

16 Q Is it in your notes that you sat the
17 pictures out there and she looked at them, she said
18 "That's him," and she smiled, and whatever else you
19 said?

20 A Not in that detail, no.

21 Q Okay. So that's something that's not in
22 your notes. Okay. Now, did she ever give you a
23 clothing description of what the person wore, wore
24 at the time that she saw him?

25 A She did.

26 Q What was that?

27 A I don't recall.

28 Q Okay. And -- but if she did, you put it
29 in writing; is that fair to say?

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1 **A** Probably.

2 **Q** But you may not have?

3 **A** May not have.

4 **BY MR. CARTER:** One moment, Your Honor.

5 **BY THE COURT:** Sure.

6 **BY MR. CARTER:**

7 **Q** Now, Mr. Johnson, whoever that person who
8 was later identified to be Mr. Flowers at some
9 point, now, that person as far as we can tell,
10 wasn't doing anything that was illegal or wrong
11 when Ms. Flowers -- I mean, when Ms. Snow saw him;
12 is that what your investigation showed?

13 **A** I'm not aware of him doing anything.

14 **Q** In fact, she said he was just kind of
15 leaning on the car; is that correct?

16 **A** That's correct.

17 **Q** One other thing I just thought about. If
18 you -- you're familiar with where Connie Moore and
19 Katherine Snow lived at the time, at McNutt Street;
20 is that correct?

21 **A** Connie Moore lived on McNutt. Katherine
22 Snow, I think, lived in Vaiden.

23 **Q** Sorry, not -- I didn't mean Katherine
24 Snow. I meant Patricia Hallmon. Patricia Hallmon
25 and Connie Moore were neighbors at that time; is
26 that correct?

27 **A** Yes.

28 **Q** Now, if you walk back behind that building
29 and if you continue straight or nearly straight,

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1 would you go near the Flowers, Archie and Lola
2 Flowers' house?

3 A If you go across that block and across the
4 school property and you'll be pretty close, yeah.

5 Q And if you continue to walk in that
6 direction, you would never, ever get to Angelica's,
7 will you, if you continue walking straight? You
8 can't get to Angelica's if you're walking straight
9 in that direction or even running in that direction?

10 A If you go straight north and don't turn,
11 you won't hit it, yes, sir.

12 Q Right. You would have to turn. And
13 you're going to have to make a right and then
14 another right if you leave McNutt and a left to get
15 to Angelica's, wouldn't you?

16 A If you follow the street, you would go
17 north. And then you would turn east on Powell and
18 go 51 and go south. Turn left on Angelica Drive and
19 you would run into Angelica's.

20 Q Now, to get to Angelica's from 702 McNutt,
21 you could have walked across a graveyard and get
22 there, couldn't you?

23 A Yes, sir.

24 Q In fact, that would be a shorter path,
25 wouldn't it?

26 A Yes, sir, a lot shorter.

27 Q And you know that because you walked it;
28 right?

29 A I walked it, yes.

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1 Q Now, do you remember talking to somebody
2 named -- while down at Angelica's, named Carol
3 Howard?

4 A I do.

5 Q Okay. And what did she tell you? Did she
6 tell you she had seen a van that morning?

7 A She did indicate she had seen a van.

8 Q Okay. And where did she say she saw the
9 van at?

10 A Somewhere in around the building, you
11 know.

12 Q Okay. Did you follow up to try to
13 determine if anybody else saw it or who owned it?

14 A I did.

15 Q What did you find out?

16 A I didn't find out anything. It was just a
17 van that was there and --

18 Q Who did you follow up and talk to?

19 A We talked to people at Angelica's. We
20 talked to people on the streets. We talked to
21 anybody that might know anything.

22 Q Okay. Did you put that in a report that
23 you followed up?

24 A I have a short note where I spoke with
25 Ms. Howard, and I made a note that she had seen a
26 van.

27 Q Okay. Now, did you also see -- now, you
28 also know that Emmett Simpson owned a van. What
29 color was Mr. Simpson's van?

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1 **A** I never viewed Mr. Simpson's van.

2 **Q** Okay. Now, you interviewed him; right?

3 **A** I did.

4 **Q** And did you know he owned a van?

5 **A** I heard he owned a van, yes.

6 **Q** You heard he owned a van, and you didn't
7 follow up to photograph it or to -- and you didn't
8 document what kind of van he had?

9 **A** I checked with people where he worked and
10 the manager of the buildings and several more, and
11 they all have testified him at being at work at IDP
12 during all that morning, and I didn't see the value
13 in following up further with that.

14 **Q** Okay. Now, were you aware that a reward
15 was posted in this case?

16 **A** Yes, sir.

17 **Q** In fact, you told some people about it; is
18 that correct?

19 **A** Told people about the reward?

20 **Q** That a reward existed. You didn't tell
21 anybody that a reward existed?

22 **A** I think -- I'm sure I've mentioned the
23 reward to people in everyday life, like everybody
24 else, yes.

25 **Q** How much did you tell them it was?

26 **A** Sir?

27 **Q** How much did you tell them the reward was?
28 What amount did you tell these people?

29 **A** I don't know that I told them an amount.

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1 The amount changed. I'm not sure when the reward
2 came out. And I know it grew from different levels,
3 but I'm not aware of when or, you know, at what
4 date, what level it was or anything there. I had
5 nothing to do with the reward.

6 Q So you weren't consulted with or talked
7 with about that; is that your testimony?

8 A I've had people to ask me about it and
9 that were -- tried to work with it, and I told them
10 that I could not be involved in that.

11 Q Okay. And are -- these people that you're
12 talking about, are they people that were responsible
13 for making the reward or coming up with the money or
14 is it independent people of the reward?

15 A I don't know really how that -- I don't
16 know that for sure if they were responsible or what.

17 Q Okay. So as far as you know, though, the
18 people you talked with, they were not the people who
19 posted the reward or put up the money?

20 A I don't know who posted the money or if
21 there was any money or what. I never saw any of it.

22 Q Now, is your testimony that a reward can
23 be put up and a reward was put up, and neither you
24 or any other of the investigators were made aware of
25 the reward before it was posted or announced?

26 A I wasn't made aware of it before it was
27 announced or posted, no.

28 Q Then you were never concerned about
29 whether it was advisable or proper to use a reward

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1 or not, were you?

2 **A** I don't know that anybody asked me that
3 question.

4 **Q** Now, when a reward is posted and is being
5 used to find leads in a crime, wouldn't you agree
6 with me that some measures should be and have to be
7 taken to ensure that people are not coming forth
8 just for money?

9 **A** I had nothing to do with this reward
10 posting. The reward -- I don't know that there was
11 ever a phone call received in reference to the
12 reward.

13 **Q** Mr. Johnson --

14 **BY MR. EVANS:** Your Honor, he's trying to
15 answer the question.

16 **BY MR. CARTER:**

17 **Q** Did you hear my question, Mr. Johnson?

18 **A** I thought I did.

19 **BY MR. CARTER:** I object to that, Your
20 Honor. That's non-responsive to anything.

21 **BY THE COURT:** It's very responsive.
22 So -- I mean, you can't object to your own
23 witness --

24 **BY MR. CARTER:** I asked him --

25 **BY THE COURT:** It's your witness,
26 and you're questioning him.

27 **BY MR. CARTER:**

28 **Q** I asked him isn't it a fact that if a
29 reward is posted that measures should be taken to

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1 make sure that people are not coming forth for money
2 and that they are, in fact, in possession of facts
3 that would help in the case?

4 **A** I've never been involved in any reward
5 offering at all.

6 **Q** Okay. Let's assume you wasn't involved in
7 any way, but you knew there was a reward offered in
8 this case. Isn't it incumbent on the police
9 officer, on the investigator, to do something to
10 ensure that people are not coming forward just
11 because money exists?

12 **A** I never offered a reward to anyone or --

13 **Q** Look --

14 **BY MR. CARTER:** Now, Your Honor, I object.
15 That is not my question. My question is not
16 complicated --

17 (MR. CARTER AND MR. EVANS ARE SPEAKING
18 SIMULTANEOUSLY)

19 **BY MR. EVANS:** The question is so
20 repetitive --

21 **BY MR. CARTER:** Your Honor, I am so tired
22 of this. I can't even talk --

23 **BY THE COURT:** I don't want you both to
24 talk at the same time.

25 **BY MR. EVANS:** I'm objecting, Your Honor,
26 to the fact that this question is repetitive,
27 and it is not relevant.

28 **BY MR. CARTER:** Well, Your Honor, maybe it
29 won't be repetitive if he answered it.

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1 **BY THE COURT:** Well, he's answered. He's
2 not saying what you want him to say. But, I
3 mean, this is your witness, and you're actually
4 leading --

5 **BY MR. CARTER:** I want to know --

6 (MR. CARTER AND THE COURT ARE SPEAKING
7 SIMULTANEOUSLY)

8 **BY THE COURT:** -- you've been leading the
9 witness the entire time.

10 **BY MR. CARTER:** It's his witness.

11 **BY THE COURT:** No, it's your witness. You
12 called him.

13 **BY MR. CARTER:** Can the Court take note
14 that Mr. Johnson is, in fact, Mr. Evans'
15 investigator and that he's, in fact, a hostile
16 witness toward me.

17 **BY THE COURT:** He testified to that, but I
18 see no display of hostility so I can't say that
19 he's a hostile witness. He does work for the
20 prosecutor.

21 **BY MR. CARTER:** And you don't think that
22 would make him hostile, Your Honor?

23 **BY THE COURT:** He's sworn and he's under
24 oath, and I would assume his testimony is sworn
25 under oath to tell the truth. He has not, as
26 far as I can gather so far, displayed any
27 hostility toward you.

28 **BY MR. CARTER:** And the ruling of the
29 Court is the fact that he is Mr. Evans's

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1 investigator doesn't in any way reflect any --
2 any obvious unstated bias of hostility? Is
3 that the Court's ruling, Your Honor?

4 **BY THE COURT:** That's not even an issue
5 before the Court. You called him as your
6 witness. You made the decision to call him.
7 This is not cross-examination. This is direct
8 examination, and you called him.

9 **BY MR. CARTER:** I know I called him.

10 **BY THE COURT:** And I have not seen that,
11 up to this point, anything that would show that
12 Mr. Johnson is displaying any hostilities
13 towards you.

14 **BY MR. CARTER:**

15 **Q** Mr. Johnson, do you deny that you offered
16 a reward and mentioned a reward to Latasha Blisset?

17 **A** I do.

18 **Q** Do you deny that you offered a reward and
19 mentioned a reward to Kittery Jones?

20 **A** I do.

21 **Q** Mr. Johnson, would you agree with me that
22 in a major homicide like this that the investigators
23 have to assemble a team to investigate the crime and
24 ensure that there is a team approach and that there
25 was a coordination and sharing of various evidence
26 that's collected and responsibility so that as to
27 make sure that everybody knows what he's going on
28 and --

29 **BY MR. EVANS:** Your Honor, I object to

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1 leading and repetitive.

2 **BY THE COURT:** It's most definitely
3 leading. I'll sustain.

4 **BY MR. CARTER:** Your Honor, I'll point the
5 Court to Rule 611-C that talks about leading
6 questions, and it says leading questions should
7 not be used on direct examination of a witness
8 except as may be necessary to develop his
9 testimony. Ordinarily, the leading questions
10 should be permitted on cross-examination. When
11 a party calls a hostile witness, an adverse
12 party or a witness identified with an adverse
13 party, interrogation may be leading questions.
14 And based on that, I think I should be able to
15 ask leading questions to this witness.

16 **BY THE COURT:** I don't see that he's
17 hostile, but I -- you can -- the entire
18 examination so far has been leading, and it has
19 not been objected to. But your last question
20 was also very leading but very confusing, so if
21 you want to rephrase.

22 **BY MR. CARTER:** I do agree, Your Honor.
23 It was misleading and too long. I can
24 certainly agree.

25 **BY MR. CARTER:**

26 **Q** Mr. Johnson, don't you agree that the
27 investigator or investigators in charge shall
28 identify specific responsibilities that are
29 necessary during the scene investigation or

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1 investigation of the crime? Do you agree with that?

2 A I don't know. But would you repeat the
3 question, please? I lost you somewhere in there.

4 Q Do you agree with me that the
5 investigators in charge shall identify specific
6 responsibilities that should be done in the process
7 of investigating a case?

8 A Ideally, yes.

9 Q And do you furthermore agree that
10 investigators in charge should share preliminary
11 information as they investigate any crime?

12 A I think we've tried to do that, yes.

13 Q Okay. And do you further agree that
14 investigators working on a major crime should
15 develop investigative plans?

16 A That would be good, yes.

17 Q Okay. And don't you agree that the
18 investigators in charge should also converse with
19 the first responder?

20 BY MR. EVANS: Your Honor, this is
21 irrelevant. He has already talked about what
22 he did, what the officers did. What this
23 officer did is relevant. Now, he's trying to
24 go into his opinions as what would be ideal in
25 perfect situations, and that is irrelevant.

26 BY MR. CARTER: Oh, that's not what I'm
27 trying to do, Your Honor. I'm trying to find
28 out what this man, what Mr. Johnson believes
29 the responsibilities are of investigators so we

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1 can --

2 BY THE COURT: It is irrelevant. He's
3 already testified in great length about what
4 was done, so --

5 BY MR. CARTER: And that makes it
6 irrelevant, Your Honor?

7 BY THE COURT: His opinion is irrelevant.

8 BY MR. CARTER: Mr. Johnson's opinion
9 irrelevant on investigations?

10 BY THE COURT: His opinion on whether they
11 should communicate with the first responder is
12 irrelevant, but I believe he's already
13 testified they did. Because he said that, that
14 he made contact with the man that owned the
15 ambulance service.

16 BY MR. CARTER: And that is irrelevant,
17 you're saying, Your Honor?

18 BY THE COURT: Mr. Eskridge -- he's
19 already been asked and answered the question
20 about communicating with Mr. Eskridge, so --

21 BY MR. CARTER: Oh, so it's been asked and
22 answered; you're not saying it's irrelevant?

23 BY THE COURT: I think his opinion is
24 irrelevant.

25 BY MR. CARTER: Okay.

26 BY MR. CARTER:

27 Q Mr. Johnson, do you agree with me that
28 that conducting a scene walk-through at a crime
29 scene provides the investigator in charge with an

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1 overview of the entire scene?

2 **A** I can't say that -- in general or are you
3 talking this case or what are you talking about?

4 **Q** In this case then.

5 **A** I don't know the answer to that.

6 **Q** Yes, sir. Mr. Johnson, wouldn't you agree
7 with me that written and photographic documentation
8 records the condition of the scene as first
9 observed, providing a permanent record?

10 **A** That's good to have, yes, sir.

11 **Q** Now, that would be good to have out at
12 Doyle Simpson's house where the cedar post was, too,
13 wouldn't it?

14 **BY MR. EVANS:** Your Honor, I don't believe
15 this witness was even at that post, and that is
16 not a proper question for this witness.

17 **BY MR. CARTER:** I agree, Your Honor. Let
18 me make sure he was there or wasn't.

19 **BY THE COURT:** Well, there's been no
20 testimony where he was. I think you already
21 asked him where he was, but you can ask him one
22 more time.

23 **BY MR. CARTER:** I don't remember the
24 answer.

25 **BY MR. CARTER:**

26 **Q** Mr. Johnson, did you go out to Doyle
27 Simpson's house at either time?

28 **A** Yes, sir.

29 **Q** Okay. Now, was it both times or one time?

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1 **A** I went to Doyle Simpson's house several
2 times.

3 **Q** Okay. Now, there were two occasions where
4 some evidence was collected. I believe a hull on
5 one occasion and a projectile on the next one. Were
6 you present on either of those?

7 **A** I know Bill Thornburg recovered some --

8 **Q** Were you present on either occasion?

9 **A** I don't remember that.

10 **Q** Did you make a record of what you did,
11 what you saw, what you collected, if anything, on
12 the occasions that you did go to Doyle Simpson's
13 mother's house?

14 **A** I did not collect anything at Doyle
15 Simpson's.

16 **Q** Did you make a record?

17 **BY MR. EVANS:** Your Honor, if he didn't
18 collect anything, how could he make a record?
19 I object. This is irrelevant.

20 **BY MR. CARTER:** Your Honor, this is so --

21 **BY MR. EVANS:** It's so ridiculous is what
22 it is.

23 **BY MR. CARTER:** Mr. Evans ought to be
24 ashamed of himself.

25 **BY THE COURT:** He can answer the question
26 if he made a record.

27 **BY MR. CARTER:**

28 **Q** If I confused you, Mr. Johnson -- I don't
29 want to confuse you, Mr. Johnson. I'm willing to

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1 take that question back and try to rephrase it,
2 because I'm really not trying to confuse you. I'm
3 really not. You went to Doyle Simpson's house on
4 several occasions, according to you, and I don't
5 know when you went, and the only way I can get
6 information is to ask you. How times did you go,
7 did you say?

8 **A** I don't really know.

9 **Q** And did you make a report setting forth
10 how many times you went to Mr. Simpson's house?

11 **A** No.

12 **Q** Did you make a report setting forth what
13 you did at Doyle Simpson's house on those occasions
14 that you did go?

15 **A** No.

16 **Q** Let me ask you another thing: With you
17 being one of the main investigators -- strike that.

18 **BY MR. CARTER:** One moment, Your Honor.

19 Let me see if I can condense a little.

20 **BY MR. CARTER:**

21 **Q** Mr. Johnson, in -- according to you --
22 your training and your experience, whose
23 responsibility is it to ensure that an officer's
24 assignments and duties are -- are documented and
25 findings are documented?

26 **A** I think every officer is responsible for
27 certain documentation. I'm -- I was not in charge
28 of the investigation. I was -- I don't know how to
29 answer your question.

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1 **Q** Okay. Does the investigator in charge, as
2 far as you know, as part of your training, have any
3 responsibility of making sure that this
4 documentation is done as a part of your job?

5 **A** Documentation is important.

6 **Q** And does the investigator -- the lead
7 investigator or a lead -- is it the responsibility
8 of the lead investigator or one of the lead
9 investigators to make sure that documentation is
10 done?

11 **A** It's important to document, yes. I'm not
12 in charge of anybody. I was assisting in this.

13 **Q** Mr. Johnson, wouldn't you agree with me
14 that a well-documented scene insures the integrity
15 of the investigation and provides a permanent record
16 for later evaluation?

17 **BY MR. EVANS:** Object to repetitiveness,
18 Your Honor.

19 **BY THE COURT:** I'll let him answer.

20 **A** I said that documentation is important.

21 **BY MR. CARTER:**

22 **Q** Okay. Does that mean that you agree with
23 the question I asked?

24 **A** Documentation is important, and it's
25 valuable if it's developed, yes.

26 **Q** So that's a yes? Okay.

27 **BY MR. CARTER:** I'm trying to condense it.

28 Wait a minute. I'm skipping some stuff.

29 **BY MR. CARTER:**

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1 Q Now, Mr. Johnson, wouldn't you agree with
2 me that the handling of physical evidence is one of
3 the most important factors of an investigation?

4 A It's important, yes.

5 Q One moment.

6 Mr. Johnson, did y'all ever have what
7 I call a crime scene debriefing? In other words --
8 well, maybe you know what that means so let me wait
9 and see if you can answer before I follow.

10 A You're talking about that day or what?

11 Q Yes, sir, that day or any day that -- that
12 you thought it was appropriate.

13 A I know we discussed the crime scene in
14 later times. A debriefing or specific meeting on
15 that, I don't know that I recall specifically one
16 day or --

17 Q And if you did have a crime scene
18 debriefing, isn't it fair to say that it wasn't set
19 forth in writing, that there's no written document
20 setting forth exactly what was said?

21 A I did.

22 Q Okay. Mr. Johnson, would you agree with
23 me that crime scene debrief- -- crime scene
24 debriefing is the best opportunity for law
25 enforcement personnel and other responders to ensure
26 the crime investigation is complete?

27 BY MR. EVANS: Your Honor, again, this is
28 opinions. It has nothing to do with the facts
29 of the case.

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1 **BY THE COURT:** I'll sustain it. It's
2 strictly an opinion that is irrelevant.

3 **BY MR. CARTER:**

4 **Q** Now, Mr. Johnson, did -- wasn't what you
5 were taught at the academy and accepted as a
6 practice, that reports and other documentation
7 pertaining to crime scene investigation shall be
8 compiled into a case file? I didn't hear you, sir.

9 **A** Basically that's taught, yes.

10 **Q** Now, wasn't you also taught that the
11 investigators in charge shall ensure that reports
12 and other documentation pertaining to a crime scene
13 are complete?

14 **BY MR. EVANS:** I object. This is
15 completely improper. He has asked him what he
16 has done, and he had has testified to it.

17 **BY THE COURT:** I'll sustain it. It's an
18 irrelevant question.

19 **BY MR. CARTER:** Yes, sir. I'll move on.

20 **BY MR. CARTER:**

21 **Q** Now, Mr. Johnson, you know, I've been
22 hearing and the jury been hearing that these Fila
23 Grant Hill shoes were popular. And I must tell you
24 I'm still looking for some evidence of that now.
25 With them being as popular as they were, who had
26 some? I know you claim Mr. Flowers had some. Who
27 else had some as popular as they were?

28 **A** I'm sure somebody did. But I checked with
29 the shoe store here. I talked with them, and they

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1 didn't have them here locally in stock. This was a
2 limited edition shoe. I know that they were
3 popular, and people bought them.

4 Q Okay. So when all this talk I heard about
5 popular, means that they are popular somewhere in
6 the nation, somewhere in the country, but they
7 wasn't popular in Winona; is that fair to say?

8 A I don't know the answer to that.

9 Q Okay. So did you ever -- did you
10 determine what Patricia Hallmon meant by saying the
11 shoes were popular? What did she mean by that if
12 they weren't?

13 A I don't know.

14 Q You don't know? Now, is it fair to say
15 that Doyle Simpson was eliminated as a suspect early
16 on?

17 A Fairly early on, yes.

18 Q Okay. And how fairly early on was that?

19 A Well, like I said, on that day it was
20 confirmed that he was at work during the times of
21 the murders.

22 Q So he -- is it fair to say that he was
23 ruled out that day then?

24 A I wouldn't say he was ruled out that day.
25 We still watched him and tried to develop something
26 in there, too.

27 Q Okay. Now, but at some point he was ruled
28 out; is that your testimony?

29 A At some point, yes.

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1 **Q** Okay. Now, was that point that he was
2 ruled out set forth in a written communication or
3 documentation setting forth when it occurred and
4 why?

5 **A** No, sir, not that I'm aware of.

6 **Q** Okay.

7 **BY THE COURT:** Mr. Carter, I'm not trying
8 to rush you. The jury has requested a recess.

9 **BY MR. CARTER:** I'm all for that, Your
10 Honor.

11 **BY THE COURT:** It's two o'clock, so I was
12 going to go ahead and just give them a
13 ten-minute recess at this time.

14 **BY MR. CARTER:** Yes, sir.

15 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
16 CONTINUED IN OPEN COURT WITH THE JURY
17 PRESENT, TO-WIT:)

18 **BY THE COURT:** Court will come back to
19 order. You may continue, Mr. Carter.

20 **BY MR. CARTER:** Thank you.

21 **CONTINUED DIRECT EXAMINATION**

22 **BY MR. CARTER:**

23 **Q** Mr. Johnson, isn't it a fact that -- I'm
24 not going to even try to lead you. How many people
25 did you talk to during the investigation of this
26 case?

27 **A** I don't really know. A lot of people.

28 **Q** Lots of people. Probably more than 100;
29 is that that fair to say?

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1 **A** Maybe.

2 **Q** Did you set forth in any document
3 summarizing exactly who you talked to and everything
4 each one of them said?

5 **A** I documented the names and location and
6 who I talked to with anybody that had anything
7 relevant to the case. If they didn't know anything
8 or familiar with anything involving the murders, I
9 did not document it.

10 **Q** Now, Mr. Johnson, you used the word
11 relevant. And what do you mean by that?

12 **A** If people were not in Winona that day, if
13 they didn't know anything about the crime, that type
14 thing.

15 **Q** So -- okay. If they didn't know anything,
16 then you didn't write it down. But if they did know
17 something, you wrote it down? You got a statement
18 from everybody who did know something?

19 **A** There were some people that I knew that
20 were close enough that could know something, that if
21 they said that they didn't know anything, I wrote
22 that down.

23 **Q** Mr. Johnson, is it fair to say that the
24 fact that you talked to so many people that you
25 were, in fact, the lead investigator in this case?

26 **A** I -- I didn't consider myself to be the
27 lead investigator.

28 **Q** Did you talk to more people that Jack
29 Matthews?

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1 **A** I don't know how many Jack talked to.

2 **Q** Okay. And -- but we do know that you and
3 Mr. Matthews were the investigators that were
4 leading this case; is that fair to say?

5 **A** I think Jack and I probably had more to do
6 than most of them.

7 **Q** And shouldn't you all have been
8 coordinating information and have known what the
9 other one was doing?

10 **A** Generally, I think we did that.

11 **Q** And, specifically, shouldn't you have
12 known what Mr. Matthews was doing? And,
13 specifically, shouldn't Mr. Matthews have known what
14 you were doing?

15 **BY MR. EVANS:** Your Honor, this is asking
16 for opinions. He can state what they did.

17 **BY THE COURT:** I'll sustain the objection.

18 **BY MR. CARTER:**

19 **Q** Mr. Johnson, there was two lineups done,
20 one on Mr. Collins -- Porky Collins -- and there was
21 one done on Katherine Snow. Did you participate in
22 either of these?

23 **A** I did.

24 **Q** Did you participate in one or did you
25 participate in both?

26 **A** Both.

27 **Q** What role did you play?

28 **A** Well, I was a witness to it and present
29 when the photo lineup was shown. That was it.

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1 Q You didn't say anything to either one
2 before or afterwards; is that your testimony?

3 A No, I didn't say that.

4 Q Well, did you say anything to Katherine
5 Snow or Porky Collins before the lineup was
6 conducted?

7 A They were told that they were going to be
8 shown a photo lineup.

9 Q Mr. Johnson, did you, John Johnson, say
10 anything to Katherine Snow before the photo lineup
11 was conducted or carried out?

12 A All I remember being said to them was,
13 We're fixing to show you a photo lineup and ask you
14 if you can identify who's in the photo lineup.

15 Q Were you the one who said it?

16 A Jack or I or Wayne or all of -- one of us
17 said it. I can't remember which one said it.

18 Q You can't remember which one said it.
19 Okay.

20 A But I know that's what was said.

21 Q Now, with respect to afterwards, did you,
22 John Johnson, the lead investigator or certainly a
23 major investigator in this case, say anything to
24 Ms. Snow after the lineup was conducted, was
25 finished or completed?

26 A Yes. I looked at her and I said -- well,
27 because she was so immediate and said, That's him,"
28 before it was even laid on the table. I said, "You
29 knew who it was." And she smiled.

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1 Q What else did you say?

2 A Well, she was just smiling in response,
3 and --

4 Q Okay. What did you mean when you said,
5 "You knew who it was"? What did you mean by that?

6 A She was so immediate. I mean, the lineup
7 hardly even hit the table, and she said, "That's
8 him."

9 Q And you followed up?

10 A Sir?

11 Q And you followed up, right, and said, "You
12 knew that's him"? Didn't you just testify that's
13 what you did?

14 A I did.

15 Q And what did you mean by that? Why did
16 you say that?

17 A She was so quick and so responsive and so
18 sure and said, "That's him." And I looked at her
19 and said, "Look, you knew who it was." And she
20 smiled.

21 Q Right. And why did you say that?

22 BY MR. EVANS: Your Honor, this has been
23 covered three times that I've counted it.

24 BY THE COURT: He has answered it, and so
25 that's been asked three times, and that's the
26 answer, so you can move on. It's being
27 repetitive at this point.

28 BY MR. CARTER: One moment, Your Honor.

29 BY MR. CARTER:

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1 Q Did you say anything else, Mr. Johnson?
2 Is that all you said?

3 A That's all I remember that was said.

4 Q Did you put that in writing?

5 A I may have put it in my notes.

6 Q Now, with respect to -- now, also, you
7 participated -- you were present when a photo lineup
8 was done by Porky Collins. That's also correct?

9 A I was present when two photo lineups were
10 shown to Porky Collins.

11 Q Okay. And where did it occur? Was that
12 at the Winona Police Department?

13 A Yes.

14 Q And did you say anything to Porky Collins
15 before the photo lineup?

16 A I know one of us told him, you know, we're
17 fixing to show him a photo lineup and ask him can he
18 identify the people.

19 Q Mr. Johnson, did you say anything to him?
20 Not one of you. Did you?

21 A I don't remember whether that was myself
22 or the other officer.

23 Q Okay. Did you say anything to Mr. Collins
24 after he made a selection from the photo lineup?

25 A I did.

26 Q What did you say then?

27 A I asked him did he know Curtis Flowers.
28 He said, "I didn't know Curtis Flowers then and I
29 don't know him now, but I know the man I just

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1 identified is the man I saw in front of Tardy's
2 Furniture Store that morning."

3 Q And did you write a report of that?

4 A I did write a note of this, yes.

5 Q You wrote a note, but it wasn't -- you're
6 talking about these same personal notes that you
7 write for yourself; is that correct?

8 A I didn't make a report.

9 Q A formal report?

10 A Put it in a formal report, no.

11 Q Okay. Now, Mr. Johnson, don't you
12 remember that there was a hearing one day to try to
13 suppress Mr. Collins' photo identification?

14 A Yes, I do.

15 Q And, in fact, the day before the hearing
16 took place, you got the photo array from your office
17 and went by Mr. Collins' house; is that correct?
18 Isn't that correct?

19 A I don't remember that.

20 Q And you haven't been asked that question
21 before and you haven't testified that you -- before
22 that you did go by there, Mr. Johnson?

23 BY MR. EVANS: Your Honor, may we
24 approach?

25 BY MR. CARTER: One moment, Your Honor.

26 (ALL COUNSEL APPROACH THE BENCH FOR A
27 CONFERENCE HELD OUT OF THE HEARING OF THE
28 JURY, TO-WIT:)

29 BY MR. EVANS: Your Honor, first of all,

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1 my objection is that Porky Collins is dead. We
2 have had this suppression hearing. He knows
3 that he is not here now to explain this like he
4 was in the hearing, and this jury cannot hear
5 this entire suppression hearing, so it's
6 improper to go into that with this witness at
7 this time. It's irrelevant.

8 **BY THE COURT:** Well, all he's doing is
9 asking Mr. Johnson if he went by Mr. Collins'
10 house with those photographs the day before the
11 hearing.

12 **BY MR. CARTER:** That's the only thing I'm
13 going to ask him.

14 **BY THE COURT:** I don't think that has
15 anything to do with Mr. Collins, so I'll
16 overrule the objection.

17 **BY MR. CARTER:** I'm sorry. What?

18 **BY THE COURT:** I've overruled the
19 objection.

20 **BY MR. CARTER:** Yes, sir.

21 (BENCH CONFERENCE WAS CONCLUDED)

22 **BY MR. CARTER:**

23 **Q** Now, Mr. Johnson, I asked you -- was your
24 answer to that question -- what was it? I don't
25 remember?

26 **A** I don't remember -- what was your question
27 again, please?

28 **Q** A suppression hearing took place.

29 **A** When did the suppression hearing take

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1 place?

2 Q Let me see if I can clear it up a little
3 for you. Are you familiar with a lawyer by the name
4 of Chokwe Lumumba?

5 A I am.

6 Q Okay. Now, you know that he, at one
7 point, represented Mr. Flowers?

8 A Yes.

9 Q And are you aware that at some point he
10 tried to suppress Mr. Collins' photo identification?
11 Do you recall that?

12 A Yes.

13 Q And unfortunately, at this moment, I can't
14 remember when the hearing took place. But a hearing
15 did take place concerning it. Is that what your
16 understanding is of the facts?

17 A I think that's right.

18 Q And did you attend that hearing?

19 A Probably.

20 Q And did you also, in fact, leave the
21 Grenada DA's office, your workplace at Mr. Evans'
22 office, and go by Mr. Porky's house to see him the
23 day before the suppression hearing?

24 A That's possible.

25 Q And is it also possible that you took the
26 photo array with you when you went by?

27 A Would that have been after he had
28 identified it?

29 Q Yes, I believe it was after.

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1 **A** That's possible.

2 **Q** And if you did, were you instructed to do
3 that or did you do it on your own volition?

4 **A** I would have done it on my own.

5 **Q** And why was it necessary?

6 **A** I don't know.

7 **Q** You don't know why you did it?

8 **A** No. I don't remember really what you're
9 talking about actually.

10 **Q** Mr. Johnson, did you make a report of
11 having gone by Mr. Porky Collins' house the day
12 before a suppression hearing was done?

13 **A** No, sir.

14 **Q** Did you testify at a hearing that you went
15 by Mr. Collins' house the day before a suppression
16 hearing was held? Did you testify in court that you
17 did?

18 **A** I may have. I don't remember that, to be
19 honest about it.

20 **Q** And do you recall Mr. Lumumba asking you,
21 "When is the last time prior to this hearing that
22 you talked to Mr. Collins?" And you said, "I spoke
23 to him yesterday. I stopped by to check and see if
24 he had been subpoenaed to be here." "Did you have a
25 discussion with him?" "Yeah." "What did y'all
26 discuss?" "Just basically asked if you and counsel
27 asked him any questions beyond what normally had
28 been discussed, and he indicated he had not." And
29 you know where Mr. Collins lives; is that correct?

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1 **A** I do.

2 **Q** And you've been to his house many times;
3 is that correct?

4 **A** Over the years, I've been to his house.

5 **Q** In fact, you even know that he had a
6 problem hearing at times as a result of a taking
7 medications, various kind of medications?

8 **A** I'm not aware of that.

9 **Q** You're not aware of that? Well, are you
10 aware that he wore glasses?

11 **A** Sometimes.

12 **Q** Are you aware that at the time he claimed
13 he saw these two people that --

14 **BY MR. EVANS:** Your Honor, that's not
15 relevant of this witness. He has asked if it
16 was asked of Mr. Collins when his testimony was
17 before the jury. This witness would have no
18 personal knowledge of his sight.

19 **BY THE COURT:** I'll sustain the objection.

20 **BY MR. CARTER:** I thought I had moved past
21 that. Okay. Yes, sir, Your Honor.

22 **BY MR. CARTER:**

23 **Q** Now, Mr. Johnson, at this same hearing, it
24 was said, "I probably mentioned to him that there
25 would be a picture lineup, the same picture lineup
26 as before."

27 **A** I did that, yes.

28 **Q** Does this refresh your memory?

29 **A** I remember that, yes.

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1 Q And no one had authorized you to do it;
2 you did it on your own?

3 A Yes.

4 Q Okay. Did you make a report of going
5 there and doing that?

6 A No.

7 BY MR. CARTER: One moment, Your Honor. I
8 think I'm about at the end.

9 BY MR. CARTER:

10 Q Mr. Johnson, did you ever measure the
11 distance from Elaine Goldstein's house to Connie
12 Moore's house?

13 A I didn't actually measure it, but it was
14 very close, yeah.

15 Q And in your opinion, what constitutes
16 close, so we can be clear on that?

17 A I'd be guessing from memory then.
18 Probably 50 yards.

19 Q Okay. Mr. Johnson, do you deny that on
20 some occasion you picked up Latasha Blisset from a
21 high school without getting permission from her
22 mother or father and took her to Greenwood,
23 Mississippi, outside the county? Do you deny that?

24 A I deny that.

25 Q Now, during this investigation,
26 Mr. Johnson, did you come across the name of Willie
27 Hemphill?

28 A I saw a Miranda sheet with his sig- --
29 name on it, but I didn't know anything about it. I

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1 hadn't dealt with him or didn't talk to him.

2 Q Do you know who did?

3 A I think Jack and Wayne may have or one of
4 them.

5 Q And you didn't think it was necessary to
6 find out from them what it was concerning?

7 A I think they talked to him for five
8 minutes. I don't think they learned anything. But
9 I didn't talk to him.

10 Q And you didn't talk to him and you
11 didn't -- so I can be clear, you didn't find out
12 from them what they talked to him about; is that
13 fair to say?

14 A I was told they didn't learn anything.

15 Q Now, what about a Jeffrey Hudson?

16 A I've heard the name, but I don't know
17 anything about that.

18 Q Okay. What about there was some -- the
19 name of a Presley and Gammit that was, I think,
20 arrested over in Alabama somewhere. And they were
21 allegedly going throughout the country and
22 committing crimes. Did you hear about these
23 individuals in any way as a result of looking beyond
24 Mr. Flowers for a possible suspect?

25 A I haven't heard anything about them. I
26 don't know nothing about it.

27 BY MR. CARTER: Almost finished. One
28 moment.

29 BY MR. CARTER:

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1 **Q** Now, Mr. Johnson, is it fair to say that
2 most of the statements or certainly many of them
3 were taken many months after you first talked to
4 these individuals and not contemporaneously or
5 anywhere close to being contemporaneous?

6 **A** I don't know what you mean by
7 contemporaneous.

8 **Q** At the time that you talked to the people
9 or closer thereby.

10 **A** We worked many hours on this. We worked
11 as -- and some of them were sometimes after. But,
12 you know, we talked to them when we learned that
13 they could possibly know anything, documented and
14 recorded those statements.

15 **Q** Mr. Johnson, based on your experience and
16 common sense, and with respect to memory and how it
17 works and what you might have experienced with
18 respect to memory, isn't it more likely that a
19 person can remember events sometimes close by the
20 time that they saw it rather than five, six, seven,
21 eight months later?

22 **BY MR. EVANS:** Again, I object. That
23 strictly calls for an opinion and is
24 speculative and is not proper.

25 **BY THE COURT:** I'll sustain the objection.
26 It would be calling for total speculation as to
27 that.

28 **BY MR. CARTER:** Yes, sir.

29 **BY MR. CARTER:**

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1 Q Mr. Johnson, did y'all have access to a
2 video recorder back at that time? Did you have one?

3 A I didn't have one.

4 Q All right. Do you know if the Winona
5 Police Department had one?

6 A They did.

7 Q Do you know if the district attorney's
8 office had one?

9 A Probably.

10 BY MR. CARTER: One moment. I think I'm
11 finished. One moment, Your Honor.

12 BY MR. CARTER:

13 Q Mr. Johnson, do you know Clemmie Fleming?

14 A I do.

15 Q And you've written out a statement for
16 her; is that correct?

17 A Sir?

18 Q You got a recorded statement from her, I
19 believe; is that correct?

20 A I did.

21 Q How many times did you talk to her?

22 A The day that I recorded her statement was
23 the first day, and I also video recorded a statement
24 from her later.

25 Q So you're telling me you got a taped
26 statement -- you got a recorded statement, and you
27 got a written statement from her?

28 A I made notes and audio taped her oral
29 statement the first time I talked to her, and

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1 sometime later also did a videotaped statement.

2 **Q** Now, when you got the recorded statement,
3 I believe that happened here in the courthouse; is
4 that correct?

5 **A** It did.

6 **Q** And the videotaped statement, where did
7 that occur?

8 **A** I think at the Winona EOC.

9 **Q** Okay. Was that when it was the police
10 department? Was it the police department then?

11 **A** Probably.

12 **Q** Okay. Then -- and you talked to her a
13 third time, as well, or did you just talk to her
14 twice?

15 **A** You know, I run into Clemmie. I knew her.
16 The fact that I live here, you know, if I saw her,
17 I'd speak to her. I don't remember another time
18 talking to her. But I would check back with her if
19 I saw her. And at times, she might know something I
20 could ask her. But she basically give me a
21 statement the first time I talked to her right here.

22 **Q** Now, did someone else -- do you know Wanda
23 Meeks?

24 **A** I do.

25 **Q** Does she have anything to do with you
26 getting the initial statement from Ms. Fleming?

27 **A** She did.

28 **Q** And did you ever take a statement from
29 Ms. Meeks?

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1 A She handwrote a statement, yes.

2 Q And did she give it to you?

3 A Yes.

4 Q When did that occur?

5 A Week or two ago, couple of weeks ago.

6 Q A couple of weeks ago, fourteen years
7 after the crime?

8 A That's right.

9 Q Now, Mr. Johnson, when did Mr. Flowers get
10 arrested and charged and arraigned for this -- this
11 crime?

12 A It was sometime later on.

13 Q Yes, sir, we know that. But at what point
14 was it?

15 A I don't remember the date, but it would be
16 noted.

17 Q What did -- do you dispute that it was
18 January of 1997? Can you dispute it?

19 A I wouldn't dispute that.

20 Q And yet the date that you talked to
21 Ms. Fleming was April the 11th, 1997, some three or
22 four months later. Can you dispute that?

23 A No.

24 Q And can you dispute that by the time she
25 came in and you talked to her and you got a
26 statement, that not only had Mr. Flowers been
27 arrested, but his arrest had made the TV news and
28 newspapers and word of mouth and everything else
29 around here?

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1 **A** I'm sure.

2 **Q** Is that fair to say?

3 **A** It did.

4 **BY MR. CARTER:** Thank you, Mr. Johnson. I
5 tender.

6 **CROSS-EXAMINATION**

7 **BY MR. EVANS:**

8 **Q** Good evening, Mr. Johnson. Mine will be a
9 lot shorter. You have been police chief here in
10 Winona; is that correct?

11 **A** Yes.

12 **Q** And you are from Winona?

13 **A** Yes.

14 **Q** Would it make more sense for you to
15 interview the people in Winona?

16 **BY MR. CARTER:** Your Honor, I object.
17 That calls for -- it's not only leading, but it
18 calls for speculation, and it calls for an
19 answer that there's no way to actually gauge,
20 check or correct.

21 **BY THE COURT:** Overruled. You may answer
22 the question.

23 **A** Yes.

24 **BY MR. EVANS:**

25 **Q** And I believe you've already stated that
26 you interviewed over 100 people; is that correct?

27 **A** Probably, yes, sir.

28 **Q** Now, of the people that had any
29 information, one way or the other about this case,

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1 did y'all make notes and take taped statements from
2 them?

3 **A** Yes.

4 **Q** And I believe we've got approximately
5 40-something taped statements that have been
6 furnished to the defense in this case; is that
7 right?

8 **A** That's right.

9 **BY MR. CARTER:** I object, Your Honor -- I
10 mean, I didn't hear it. Can --

11 **BY MR. EVANS:** I'll be glad to repeat it.

12 **BY MR. EVANS:**

13 **Q** I believe we've got over 40-something
14 taped statements from people that we've given to the
15 defense; haven't we?

16 **BY MR. CARTER:** Can you give it with
17 respect, Mr. Evans?

18 **A** Yes, sir.

19 **BY MR. EVANS:**

20 **Q** Explain -- I'm going to start and go
21 backward with a little of this. How did you have
22 contact with Clemmie Fleming? Did you go track her
23 down?

24 **A** Wanda Meeks called me and told me that she
25 knew somebody that she worked with that was real
26 upset and scared that indicated that --

27 **BY MR. CARTER:** Your Honor, I object to
28 the hearsay.

29 **A** -- she knew something about this crime.

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1 **BY MR. CARTER:** Object to the hearsay.

2 **BY MR. EVANS:** At this point, he hasn't
3 said what she told him. Said that she was
4 upset and said she knew something about the
5 crime.

6 **BY MR. CARTER:** Your Honor, yes, she did,
7 Your Honor.

8 **BY THE COURT:** I think he can't testify
9 about what this Ms. Meeks said.

10 **BY MR. EVANS:** Yes, sir. I'm not asking
11 that.

12 **BY THE COURT:** But he can testify about
13 what he did as a result of what she told him.

14 **BY MR. EVANS:**

15 **Q** After she talked to Ms. Meeks, what
16 happened next?

17 **A** I picked her and Ms. Meeks up at
18 Multicraft here in Winona, brought them right here.
19 The courtroom was locked, and she told me that she
20 had seen Curtis Flowers running from the crime
21 scene.

22 **Q** Did she describe how he was running?

23 **A** She said he was running like somebody was
24 after him, and it scared her to death.

25 **Q** Did you, in fact, take her and get her to
26 specifically show you where he was running?

27 **A** I did. And I stepped it off, like 97 of
28 my steps, 74 of her steps from the back southwest
29 corner of Tardy's to a tree there, and he was right

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1 beside that tree running.

2 **Q** You were asked about videotapes. Did the
3 highway patrol investigator have a videotape or
4 recorder the day of the crime?

5 **A** They did.

6 **BY MR. EVANS:** Your Honor, it's marked.

7 **BY MR. EVANS:**

8 **Q** I want to show you S-137 and ask if --

9 **BY MR. CARTER:** Your Honor, may I see it
10 first?

11 **BY MR. EVANS:**

12 **Q** -- you can identify this.

13 **BY MR. CARTER:** May I see it first?

14 **BY THE COURT:** Did he not provide that in
15 discovery?

16 **BY MR. EVANS:** Yes, sir.

17 **BY MR. CARTER:** I haven't seen it.

18 **BY MR. EVANS:** Then that is not true.

19 **BY MR. EVANS:**

20 **Q** Mr. Johnson, can you tell what that is?

21 **A** Yes, sir. This is the crime scene
22 videotape.

23 **Q** So the crime scene was, in fact,
24 videotaped; is that correct?

25 **A** Yes, it was.

26 **Q** That videotape basically shows the same
27 thing the picture showed; is that right?

28 **A** That's right.

29 **BY MS. STEINER:** Can we approach, Your

JOHNSON - CROSS

1 Honor?

2 (ALL COUNSEL APPROACH THE BENCH FOR A
3 CONFERENCE HELD OUTSIDE THE HEARING OF THE
4 JURY, TO-WIT:)

5 **BY MS. STEINER:** It's still just marked
6 for identification. If he proposes to actually
7 introduce the content of the videotape into
8 evidence with instructions for the jury to view
9 it, we believe that this videotape contains
10 material that's unnecessarily repetitive and
11 gruesome and should not actually be viewed by
12 the jury under Rule 403.

13 And that if he wishes to establish that
14 the videotape was taken, we have no problem
15 with them knowing that. But we would object
16 that the production of the content of that
17 videotape as being unduly inflammatory and
18 gruesome and going beyond what is necessary to
19 establish the matters that were shown in the
20 still photographs which have been called from a
21 larger set of photographs to be non- -- less
22 inflammatory and less gruesome but also would
23 be repetitive of what was shown in those
24 photographs, and it would simply be -- the
25 contents of are inadmissible under Rule 403 as
26 both repetitive and likely to inflame the jury
27 and gruesome and not necessary to publish the
28 facts of what is shown in the --

29 **BY MR. EVANS:** I don't know that I

JOHNSON - CROSS

1 followed all of that, but, Your Honor, we do
2 not intend to introduce it. But the fact that
3 they have talked about the fact that it wasn't
4 done, I do intend to explain with this witness
5 that one was done, and the reason we didn't
6 show it is that it is repetitive, and it is
7 more bloody and more gruesome so we feel it
8 would be better to go with pictures.

9 **BY MS. STEINER:** I'd rather simply offer
10 the -- no reference made to the contents and
11 have it produced for identification only and
12 not -- and I would object to production of any
13 of the content of the videotapes.

14 **BY THE COURT:** He just said he didn't plan
15 to show the tape. And I don't think
16 Mr. Johnson can testify as to why you are not
17 showing the tape. So I don't think that's
18 something -- you can ask him if it's a crime
19 scene tape. But as far as why you're not
20 producing it, I don't think he is in a position
21 to testify to that.

22 **BY MR. CARTER:** Your Honor, can I just say
23 for the record, I don't recall him ever say
24 that a videotape was taken of the crime scene.
25 But I don't think I ever said it wasn't.

26 **BY THE COURT:** You asked Mr. Johnson if he
27 took one, and the implication was certainly
28 there that it was not one done. You've made a
29 great big issue of documentation and --

JOHNSON - CROSS

1 **BY MR. CARTER:** I can just say for the
2 record that wasn't -- that wasn't the intent of
3 my question. If the Court believes I implied
4 that, that's fine. But that certainly wasn't
5 the intent.

6 **BY THE COURT:** Well, they're not going to
7 offer it so it's right now a moot issue.

8 **BY MS. STEINER:** Can we just have it
9 marked for identification?

10 **BY THE COURT:** It's definitely not going
11 to be shown for the jury. It's only marked for
12 identification.

13 **BY MS. STEINER:** Thank you.

14 (BENCH CONFERENCE CONCLUDED)

15 **BY THE COURT:** You may proceed.

16 **BY MR. EVANS:** Thank you, Your Honor.

17 **BY MR. EVANS:**

18 **Q** Mr. Johnson, there were probably hundreds
19 of photographs taken at the crime scene, too,
20 weren't there?

21 **A** That's correct.

22 **Q** Now, I believe you were present in the
23 first interview with the Defendant Curtis Flowers;
24 is that right?

25 **A** I was.

26 **Q** Did you observe what size shoes he was
27 wearing that day?

28 **A** I did.

29 **Q** What size was he wearing?

JOHNSON - CROSS

1	A	Ten and a half.
---	----------	-----------------

2 Q Did you personally check the shoe sizes of
3 either one of Connie Moore's children?

4 **A** I did.

5 | Q Which ones?

6 | **A** Lamarcus and Marcus.

7 Q What size were they wearing at that time?

8 **A** Marcus was wearing a size 12. I think
9 when it first happened, Lamarcus was wearing a seven
10 and a half and later went to an eight and a half
11 from one hearing to the next, I think.

12 Q All right. You were asked about the
13 interviews. Did any officer ever suggest who a
14 person should identify?

15 **A** Oh, no, sir.

16 Q And Katherine Snow admitted that she knew
17 that Curtis Flowers was the one that she saw beside
18 Doyle's car, too; is that right?

19 **A** She did.

20 Q And you say Porky, after he identified
21 him, he said, "I know that's the man that I saw at
22 Tardy Furniture"?

23 **A** In front of Tardy's, yes, sir.

24 Q Now, I want to also ask you a little bit
25 about -- well, let me get a diagram, first.

26 BY MR. EVANS: Your Honor, may I have the
27 witness step down?

28 BY THE COURT: Sure.

29 (WITNESS STEPS DOWN FROM STAND AND

JOHNSON - CROSS

1 TAKES A PLACE IN FRONT OF THE JURY)

2 **BY MR. EVANS:**

3 Q I want to show you for the record, S-95-A,
4 96-A, 97-A, the top three photographs on this.
5 Explain to the ladies and gentlemen of the jury what
6 that is and where it was located.

7 A This was near the back or western part of
8 the store behind the counter. This column here was
9 noted to be -- of the crimes. Ms. Tardy's body lay
10 out in this way in front of the mattress. And this
11 defect in the column stood out to me that morning,
12 and I noticed it that morning. And later, we
13 realized that the bullet that killed Ms. Tardy was
14 right here in this mattress.

15 Q And who was present when that bullet was
16 removed from the mattress?

17 A I was. That's my arm with a knife. We
18 photographed it and cut it out.

19 Q Was anything done in cutting it out that
20 would damage the projectile?

21 A No. You can see we cut high above and
22 past and then down. And as we rolled it down, it
23 was just a pristine bullet inside the nylon fiber of
24 that mattress.

25 **BY MR. EVANS:** All right. You can have a
26 seat again.

27 (WITNESS RETURNS TO STAND)

28 **BY MR. EVANS:**

29 Q And I believe in that first statement, you

JOHNSON - CROSS

1 specifically asked the Defendant if at any time on
2 the 16th he was on the east side of Highway 51,
3 didn't you?

4 **A** I did, and I went further. His daddy
5 worked at Jeffs' Store. Troy Yates had it at that
6 time. There was a part of the business across the
7 street that I think smoked foods, cooked food, was
8 part of that connection. I asked him specifically
9 did he cross the street and go to that. He told me
10 at no time did he go east of 51 Highway.

11 **Q** All right. And in your investigation, did
12 you happen to go yourself to all the places that
13 these witnesses that have testified before this jury
14 have identified him?

15 **A** Oh, I did, yes.

16 **Q** And on which side of Highway 51 is
17 Angelica?

18 **A** East.

19 **Q** Were you able to pinpoint on a map the
20 locations that he went?

21 **A** Yes.

22 **BY MR. EVANS:** Your Honor, may I have the
23 witness step down again?

24 **BY THE COURT:** You may.

25 (WITNESS LEAVES STAND AND TAKES A PLACE
26 IN FRONT OF THE JURY)

27 **BY MR. EVANS:**

28 **Q** Can you point out on that diagram where
29 Angelica is located?

JOHNSON - CROSS

1 **A** Uh-huh. Right here. This is Mark Doniger
2 Drive on an old map, but that was later changed to
3 Angelica Drive. 51 Highway is --

4 **BY MR. CARTER:** Your Honor, I object. As
5 a result of that, we again don't have any proof
6 that was actually changed.

7 **BY THE COURT:** It's not being offered for
8 the truth of the matter asserted, and he's also
9 testified of his knowledge of Winona from being
10 a patrolman on up to chief of police here in
11 the city. I think he can certainly testify
12 about what the name of the street was at the
13 time that he went out and investigated. You
14 may proceed.

15 **A** This is now Angelica Drive. This location
16 is the factory of Angelica as well as I think it was
17 DBP or it was a brake company that worked there
18 inside the north side of the building.

19 **BY MR. EVANS:**

20 **Q** I want to hand you an orange -- I think
21 it's going to be orange -- marker and if you would,
22 just place an A in the general vicinity where
23 Angelica was located.

24 **A** I'll have to mark it out to the side.

25 **Q** That's okay.

26 **A** Be there.

27 **Q** All right. Did you have an occasion to go
28 to James Edward Kennedy's house?

29 **A** Yes.

JOHNSON - CROSS

1 Q Also, I think he goes by another nickname
2 as "Bo Jack"?

3 A Yes, sir.

4 Q But did you go to his house?

5 A Yes, sir. He was located right here as
6 you turn on to Angelica Drive off 51, right there in
7 the corner.

8 Q All right. If you would, just put his
9 initials, JEK approximately by his house.

10 A (Witness complying).

11 Q You can just hang on to the marker for a
12 minute. I'll next ask you if you went to a location
13 where James -- I mean, Edward Lee McChristian and
14 some friends of his were located that day?

15 A Yes, sir. There on Academy Street.

16 Q Would you mark that, just put JLM there.

17 A J --

18 Q I mean, ELM. I'm sorry.

19 A (Witness complying). ELM.

20 Q All right. Did you have an occasion to go
21 to a person where Ms. Boniva -- a place where
22 Ms. Boniva Henry saw him?

23 A Yes, sir.

24 Q Would you mark it with just BH.

25 A It would be right here on the north side
26 right here, BH.

27 Q And how about a location where a
28 Ms. Jeanette -- Mary Jeanette Fleming saw him?

29 A This is Campbell Street that goes all the

JOHNSON - CROSS

1 way through here. It would be right in here. I'm
2 going to put a JF there?

3 Q That's fine. And where Clemmie Fleming
4 saw him running from the back of the store.

5 A That would be on Front Street at
6 Carrollton. She saw him right in here.

7 Q And where Porky Collins saw him.

8 A Right in front of the store.

9 Q On which side of Highway 51 are all of
10 these places located?

11 A East.

12 BY MR. EVANS: You may have a seat again.

13 (WITNESS RETURNS TO STAND)

14 BY MR. EVANS:

15 Q All right. I'll next show you Exhibit
16 S-5-A, and I'll ask you to step down one more time,
17 if you would.

18 (WITNESS LEAVES STAND AND TAKES A PLACE
19 IN FRONT OF THE JURY)

20 BY MR. EVANS:

21 Q Do you see the approximate location on
22 here that Clemmie Fleming told you she saw Curtis
23 Flowers running from the back of Tardy's Furniture?

24 A Yes, sir. Right here at this tree.

25 BY MR. EVANS: All right. You may take
26 your seat again.

27 (WITNESS RETURNS TO STAND)

28 BY MR. EVANS:

29 Q Is there anything unusual on a major crime

JOHNSON - CROSS

1 of different officers doing different parts of the
2 investigation?

3 A No, sir.

4 Q How many years have you been in law
5 enforcement now total?

6 A Well, according to PERS in Jackson, I've
7 got 35 years in.

8 Q Have you ever seen a crime scene this
9 major as far as how many bodies were in it?

10 A No, sir.

11 Q You and other officers were able to
12 completely eliminate Doyle Simpson and Emmett
13 Simpson as suspects; is that correct?

14 A Yes, sir.

15 Q And that's from talking to numerous people
16 where they both had been working?

17 A Yes, sir, we did.

18 Q Now, there's been some talk about the room
19 at the EOC where most of these interviews were made
20 but nothing has really been told about it. What was
21 that room used for at that time?

22 A The DA's office.

23 Q Okay. Did it stay locked?

24 A Yes, sir.

25 Q Other officers, police officers there,
26 they didn't go in and out of that room, did they?

27 A No, sir.

28 Q It was just a kind of a satellite office
29 that the DA's office had to use in Winona?

JOHNSON - CROSS

1 A Yes, sir.

2 Q And I believe you were asked about --
3 about standing beside a car that a gun was stolen
4 from was a crime but stealing a gun out of a car
5 would be, wouldn't it?

6 A Yes, it would.

7 Q And did your investigation lead you to the
8 fact that that gun was the murder weapon?

9 A Yes.

10 Q You were also -- the way it kind of
11 sounded to me, is it impossible to get from Connie's
12 house to Angelica?

13 A No, sir.

14 Q How would you travel if you were walking
15 through there?

16 A If you're going to walk on the streets,
17 you would walk -- you know, you're right there at
18 the intersection of Cemetery Lane, and you would
19 walk north to Powell. You'd walk east of 51. You
20 could walk south to Angelica and turn left.

21 Q Did you have an occasion to do that?

22 A I did.

23 Q Approximately how long does it take to
24 walk it?

25 A About 12 minutes.

26 Q Did you also have an occasion to walk from
27 where Curtis Flowers was living to Tardy's?

28 A I did.

29 Q Approximately how long does that walk

JOHNSON - CROSS

1 take?

2 A A little over 15 minutes.

3 Q Now, do you remember interviewing Kittery
4 Jones?

5 A Yes.

6 Q Who was present when you interviewed him?

7 A I think Jack and Robert was with me.

8 Q Was I present when you interviewed him?

9 A Oh, no, sir.

10 BY MR. EVANS: Nothing further, Your
11 Honor. Wait one minute, Your Honor. That's
12 all we have, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. CARTER:

15 Q Now, Mr. Johnson, that way that you
16 described to get from McNutt to Angelica, that's not
17 the only way to get there, is it?

18 A No, sir. It's a quicker way going through
19 by Wal-Mart.

20 Q Now, did you testify just a few minutes
21 ago that Clemmie Fleming said she saw Curtis running
22 like someone was --

23 A After him.

24 Q -- after him and it scared her to death?

25 A Yes.

26 Q Is that in your report?

27 A It's in my notes.

28 Q And did you follow up and make a formal
29 statement of that?

JOHNSON - CROSS

1 A I think it was in her statement to me, but
2 I wouldn't --

3 Q Are you sure?

4 A It's in one of them, I think.

5 Q Now, with respect to Marcus' feet, you
6 said you personally measured Marcus' feet?

7 A I didn't personally measure it. I just
8 asked him and his father what size shoes he wore.

9 Q That's not what you testified to earlier;
10 you said you measured his feet.

11 A Well, I'm sorry.

12 Q What did you say? Well, maybe I misheard
13 you. What did you say earlier?

14 A I checked the size of his feet, yes, sir.

15 Q How did you check?

16 A Well, I checked with him and his father
17 for one.

18 Q Okay. Would you -- was he in your
19 presence? Did you see him at some point?

20 A Yes.

21 Q And you had an opportunity where you could
22 have gotten a ruler and personally checked his feet,
23 couldn't you have?

24 A I could have done that, yes.

25 Q Did you do it?

26 A No, I did not.

27 Q In fact, you didn't get a ruler and put a
28 ruler to the shoes that he had on, did you?

29 A No.

JOHNSON - CROSS

1 **Q** Now, with respect to Kittery -- Kittery
2 Jones, did you sit down at some point nearby the
3 time you're talking to him and do a compiled report
4 setting forth exactly who was present and what was
5 said by each person that you can go back and get and
6 look to?

7 **A** Not a -- not a report like you're saying,
8 no. But I did make notes when I spoke to Kittery
9 Jones and Cordell Jones.

10 **Q** What's in your notes?

11 **A** Well, basically I talked to them and they
12 told me that they saw Curtis the day of the murders
13 at his -- Connie's apartment about 12 o'clock.

14 **Q** Okay.

15 **A** And I think one -- I know at least one of
16 them or both of them may have said that they knew he
17 wore Fila tennis shoes.

18 **Q** Now, I'm asking you about Kittery. What
19 you mean -- one of them. One of who?

20 **A** Kittery or Doreal Jones, one of them.

21 **Q** I'm asking you about Kittery.

22 **A** I'm sorry.

23 **Q** Shoot. Do you have a formal statement
24 signed by either Kittery or Doreal where they said
25 Mr. Flowers wore Fila shoes?

26 **A** No.

27 **Q** Now, my records show that you got a
28 statement from Patricia Hallmon on August 7th, 1996.
29 Can you dispute that?

JOHNSON - CROSS

1 **A** No.

2 **Q** My records show that you got a statement
3 from --

4 **BY MR. EVANS:** Your Honor, I don't believe
5 we went into any of this. It would be improper
6 redirect.

7 **BY THE COURT:** I don't remember. I don't
8 remember her being mentioned on
9 cross-examination, so I would agree it would be
10 improper redirect.

11 **BY MR. CARTER:** One moment, Your Honor.
12 One moment, Your Honor.

13 **BY MR. CARTER:**

14 **Q** Mr. Johnson, you mentioned a Bo Jack
15 Kennedy and where he lived or said he saw
16 Mr. Flowers?

17 **A** I did.

18 **Q** Okay. Did you also mention when you first
19 talked to him?

20 **A** Not a few minutes ago, no. I don't think.

21 **Q** Can you dispute that it occurred September
22 the 7th, 1996?

23 **A** What?

24 **Q** That you got a statement from him?

25 **A** No, I wouldn't dispute that.

26 **Q** And you also talked about a Edward
27 McChristian?

28 **A** Edward Lee McChristian.

29 **Q** That's probably his middle name. I don't

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

JOHNSON - CROSS

1 really know his middle name. Can you dispute you
2 didn't talk to him until August the 15th, 1996?

3 **A** I wouldn't dispute that.

4 **Q** And you also mentioned a Ms. Boniva Henry.
5 Can you dispute that you didn't talk to her until
6 September the 3rd, 1996?

7 **A** I wouldn't dispute that.

8 **BY MR. CARTER:** No further questions, Your
9 Honor.

10 **BY THE COURT:** Mr. Johnson, you may step
11 down. I assume he's excused; is that correct?

12 **BY MR. CARTER:** Yes, sir.

13 **BY THE COURT:** You're free to go,
14 Mr. Johnson. Ladies and gentlemen, we'll take
15 a ten-minute recess at this time.

16 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
17 CONTINUED IN OPEN COURT WITH THE JURY
18 PRESENT, TO-WIT:)

19 **BY THE COURT:** Court will come back to
20 order. Who would be the next witness for the
21 defense?

22 **BY MR. CARTER:** Liz Van Horn, Your Honor.

23 **BY THE COURT:** If you'll come down here,
24 please. Do you solemnly swear or affirm that
25 the testimony that you give in this case will
26 be the truth, the whole truth and nothing but
27 the truth, so help you God?

28 **BY THE WITNESS:** Yes, sir, I do.

29 **BY THE COURT:** Come around, please, and

VAN HORN - DIRECT

1 have a seat. State your name for the record,
2 please.

3 **BY THE WITNESS:** Liz Van Horn.

4 **BY THE COURT:** You may proceed.

5 **DIRECT EXAMINATION**

6 **BY MR. CARTER:**

7 **Q** Ms. Van Horn, were you once a police
8 officer with the Winona Police Department?

9 **A** Yes, sir, I was.

10 **Q** For how long?

11 **A** Twenty-three years.

12 **Q** And did you retire?

13 **A** Yes, sir, in August of last year.

14 **Q** Now, do you know Latasha Blisset?

15 **A** Yes, sir.

16 **Q** And did you have the occasion to do
17 something with her on some occasion by way of
18 transferring -- transporting her somewhere?

19 **A** I was contacted by one of the
20 investigators with the DA's office, and he had
21 gotten some information that she might know some
22 information about the case. And so he contacted me,
23 being a female, and going to deal with a female
24 juvenile. We contacted her mother, with permission
25 to take her to Greenwood to talk to the other
26 investigators.

27 **Q** And who took her to Greenwood?

28 **A** I did, me and Mr. Johnson.

29 **Q** Okay. And about what time was it when you

VAN HORN - DIRECT

1 picked her up? Did you pick her up in your patrol
2 car?

3 A I did.

4 Q As best you can remember, what time was
5 it?

6 A I would say 10 o'clock, but I can't swear
7 to that.

8 Q And where did you pick her up from?

9 A The superintendent's office at the Winona
10 high school.

11 Q Okay. And were you able to determine what
12 type of classes she was taking?

13 A I did not ask any details --

14 Q Okay.

15 A -- about her classes.

16 Q And you drove her to Greenwood,
17 Mississippi to the -- to the Mississippi Highway
18 Patrol office?

19 A Yes, sir.

20 Q And who was there? Who did she meet with
21 when she got there, if you know?

22 A I believe Wayne Miller. Now, I can't
23 swear to this either, but I believe he's one of the
24 ones that was there.

25 Q How long did you stay there?

26 A Fifteen, 20, 30 minutes.

27 Q Okay. Were you present -- how far is that
28 drive? About 30, 40 minutes?

29 A Yes, sir.

VAN HORN - DIRECT

1 Q And did you return her back to --

2 A I did. Carried her back to where I picked
3 her up.

4 Q To the school? What time did you get
5 back?

6 A I can't tell; I don't know.

7 Q Now, did you make a report of --

8 A I did not.

9 Q Do you know if Mr. Johnson made a report?

10 A I do not.

11 Q Did anybody ask you for a report?

12 A No.

13 BY MR. CARTER: I think that might be it.

14 Hold one second. Thank you, Ms. Van Horn.

15 I tender.

16 **CROSS-EXAMINATION**

17 BY MR. EVANS:

18 Q Good evening, Ms. Van Horn.

19 A How are you?

20 Q Latasha Blisset was never carried for an
21 interview without her mother being contacted for
22 approval first, was she?

23 A No, sir.

24 Q And did you or Mr. Johnson or anybody ever
25 offer her any reward, or more specifically ever
26 offer to buy her a mobile home?

27 A No, sir.

28 Q Nothing like that ever happened?

29 A No, sir.

VAN HORN - REDIRECT

1 **BY MR. EVANS:** Nothing further, Your
2 Honor.

3 **REDIRECT EXAMINATION**

4 **BY MR. CARTER:**

5 **Q** Ms. Van Horn, do you know who
6 Ms. Blisset's mother is?

7 **A** Yes, sir, I do.

8 **Q** What's her name?

9 **A** Doris.

10 **Q** What's her last name?

11 **A** Blisset, I guess.

12 **Q** Okay. And your testimony that you -- did
13 you call her or somebody else call her?

14 **A** I'm the one that called her.

15 **Q** Okay. And where was she when you called?
16 Where did you call her?

17 **A** I don't remember. The house, I guess. I
18 suppose. I'm not sure.

19 **Q** Okay. Now, when Latasha got to Greenwood,
20 were you in her presence at all times while she was
21 there?

22 **A** Yes, sir.

23 **Q** And she was never interviewed by anyone
24 outside your presence; is that your testimony?

25 **A** That's my testimony.

26 **Q** Okay. And do you know if there was a tape
27 recording going on at the time?

28 **A** I do not know.

29 **Q** Okay. And do you know if Latasha was

VAN HORN - REDIRECT

1 asked to write a report --

2 **A** I do not.

3 **Q** -- and sign it?

4 **A** I did not hear anything like that.

5 **Q** Did you see anybody else write a report
6 up?

7 **A** I can't remember.

8 **Q** Now, how long were you -- you say you were
9 a police officer for 23 years at -- how long were
10 you employed by the police department before you
11 went to the academy in Jackson?

12 **BY MR. EVANS:** Your Honor, this is
13 improper redirect.

14 **BY THE COURT:** I'll sustain. That wasn't
15 asked on cross.

16 **BY MR. CARTER:** Okay. I agree, Your
17 Honor. Thank you, Ms. Van Horn.

18 **BY THE COURT:** Ms. Van Horn, you may step
19 down, and you're released and free to go.

20 **BY THE WITNESS:** Thank you, sir.

21 **BY THE COURT:** Who would be the next
22 witness?

23 **BY MS. STEINER:** Wayne Miller, Your Honor.

24 **BY THE COURT:** Wayne Miller.

25 (WITNESS ENTERS THE COURTROOM AND FACES
26 THE CLERK TO BE SWORN)

27 **BY THE COURT:** Mr. Miller, I'm the
28 swearer. I think some judges have the clerk do
29 it, but I always like to so I'll know it's

VAN HORN - REDIRECT

1 done.

2 If you'll raise your right hand and take
3 the oath. Do you solemnly swear or affirm the
4 testimony that you give in this case to be the
5 truth, the whole truth and nothing but the
6 truth, so help you God?

7 **BY THE WITNESS:** I do, sir.

8 **BY THE COURT:** If you'll come around,
9 please, and have a seat. State your name
10 please.

11 **BY THE WITNESS:** Horace Wayne Miller,
12 M-I-L-L-E-R.

13 **BY THE COURT:** You can proceed.

14 **BY MS. STEINER:** Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 **BY MS. STEINER:**

17 **Q** Mr. Miller, I think you said your first
18 name was Horace, but do people generally refer to
19 you as Wayne?

20 **A** Wayne Miller, yeah.

21 **Q** All right. So these ladies and gentlemen
22 of the jury have heard people talking about Wayne
23 Miller. That's you?

24 **A** That is me.

25 **Q** Thank you. On July 16th, 1996, where were
26 you employed?

27 **A** With the Mississippi Highway Patrol,
28 Criminal Investigation Bureau.

29 **Q** And what was your rank at that time?

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1 **A** I was a lieutenant.

2 **Q** And are you still with the Mississippi
3 Highway Patrol?

4 **A** No. I'm retired since 1999.

5 **Q** All right. And do you continue to be
6 employed or are you completely retired?

7 **A** I do some work. I do investigative work
8 for various people.

9 **Q** Like a private investigator?

10 **A** Right.

11 **Q** Thank you. And on July 16th, 1996, what
12 rank was Jack Matthews?

13 **A** He was a master sergeant.

14 **Q** And he was also in the Criminal
15 Investigation Division with you?

16 **A** He was.

17 **Q** All right. And are you saying that master
18 sergeant -- a lieutenant was one rank above a master
19 sergeant?

20 **A** That would be correct.

21 **Q** All right. Were you the director of the
22 division at that time? Were you the ranking
23 officer?

24 **A** I was the ranking officer over the
25 Greenwood District which consisted of about ten
26 counties.

27 **Q** All right. And that was -- and the
28 investigative division actually now is just known as
29 the MBI, Mississippi Bureau of Investigation?

MILLER - DIRECT

1 **A** It is MBI.

2 **Q** But it was even then a separate
3 subdivision of the highway patrol, of the department
4 of --

5 **A** Well, to be -- yes, but it's still under
6 the Mississippi -- it's still under the Department
7 of Public Safety.

8 **Q** Right. But the regular patrol officers
9 had one chain of command and you were not part of
10 their chain of command; is that correct?

11 **A** No, I was not.

12 **Q** All right. Now, on July 16th, 1996, did
13 you have occasion to be called to Winona,
14 Mississippi?

15 **A** I did.

16 **Q** All right. Can you describe the -- let me
17 say this -- and that was in connection with four
18 bodies having been -- three bodies and one
19 critically wounded man having been found at Tardy's
20 Furniture Store that morning?

21 **A** That is correct.

22 **Q** All right. And what was your
23 understanding about the role you as a highway patrol
24 investigator were being summoned to perform? I
25 mean, as a detective.

26 **A** Well, at the time I got the call I was
27 around Ruleville, Mississippi.

28 **Q** All right.

29 **A** And I got the call from headquarters

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1 office out of Jackson, and they told me what had
2 happened, and I came over here to assist the chief
3 of police because he was the one that requested the
4 investigators with the highway patrol.

5 Q At any point were you ever directed,
6 either by your own chain of command or the chief of
7 police or any other investigator, to assume -- to
8 become the lead investigator or anything like that
9 in this investigation?

10 A Well, I was not. I was considered the
11 highest ranking officer with the highway patrol.

12 Q All right.

13 A But the chief of police was the one that
14 had asked for our assistance.

15 Q But you never were asked to become the
16 director or coordinator of the investigation?

17 A No, I was not.

18 Q Do you know if Mr. Matthews ever received
19 that request?

20 A Mr. Matthews did primarily the most of the
21 report writing and all of the things that he was
22 responsible for. I was more or less his supervisor.

23 Q Okay. And did -- did this ever become a
24 highway patrol investigative division investigation
25 with others assisting or was it always the highway
26 patrol investigators assisting Chief Hargrove who
27 had called you?

28 A We were assisting the chief of police.

29 Q So you were never responsible for

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1 assigning people to the -- planning what the
2 investigation should be or --

3 A Well, I was aware of what was going on.

4 Q But you were not the person responsible
5 for assigning and monitoring and making sure that
6 all the ducks were in a row --

7 A Well, it depended on if somebody asked me
8 to do something --

9 Q Of course. You would do it --

10 A -- I would get Investigator Matthews to do
11 it or I would do it myself.

12 Q Now, you were aware, weren't you, that
13 there were several Mississippi Highway Patrol
14 officers -- regular uniformed officers -- who
15 came -- responded to the call; is that correct?

16 A At least one of the local men is a --
17 James Taylor Williams --

18 Q Right.

19 A -- was at Tardy's when I arrived.

20 Q Right. But you were not -- he was working
21 to you. If he filed a report and gave it, it would
22 go up his chain of command on this --

23 A Right. He was not working under my
24 jurisdiction.

25 Q All right. Do you recall -- did you ever
26 receive from his superiors any reports prepared by
27 him or any other Mississippi Highway Patrol?

28 A I did not myself. Mr. Matthews may have,
29 but I did not.

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1 **Q** All right. If Mr. Matthews does not
2 recall receiving any --

3 **BY MR. EVANS:** Your Honor, I object.
4 That's not proper. She can only ask him what
5 he knows.

6 **BY THE COURT:** I'll sustain. He can't say
7 what Mr. Matthews may or not have done.

8 **A** I did not receive a report from
9 Mr. Tay- -- Mr. Williams, rather.

10 **BY MS. STEINER:**

11 **Q** Did you ever receive any reports from any
12 of the other agencies other than what you and
13 Mr. Matthews were preparing?

14 **A** I observed all of the reports that came
15 back from the crime lab. Back when we got the
16 positive of the gunshot residue, they notified me
17 that we had a positive gunshot residue on Curtis
18 Flowers.

19 **Q** All right. I understand that. And were
20 you part of the -- well, you can't -- what time do
21 you think you arrived at the scene?

22 **A** Probably around 11:30.

23 **Q** All right.

24 **A** 11:00 to 11:30. I'm not sure of exactly
25 the time.

26 **Q** Was that before or after Ms. Schoene from
27 the Mississippi Crime Lab --

28 **A** She had not arrived yet.

29 **Q** Where did you go upon arrival?

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1 **A** I went directly to Tardy Furniture.

2 **Q** Were you admitted inside the yellow crime
3 scene tag?

4 **A** I was inside the building, yes.

5 **Q** Okay. And that was kind of where Chief
6 Hargrove had set up the --

7 **A** The perimeter.

8 **Q** And were you -- who -- so but was -- did
9 you kind of set up your headquarters there?

10 **BY MR. EVANS:** Your Honor, I hate to do
11 it, but I'm going to object to leading. This
12 continually leading.

13 **BY THE COURT:** It is, and I sustain the
14 objection.

15 **BY MS. STEINER:**

16 **Q** Did investigating -- well, did you stay at
17 Tardy Furniture at that time or did you --

18 **A** I stayed there until the crime scene
19 investigators got there.

20 **Q** All right. And during that period before
21 the crime scene investigators arrived, where
22 physically were you located?

23 **A** Well, one thing, I videoed the whole crime
24 scene and was around in the area where the crime was
25 committed.

26 **Q** You actually proceeded towards the rear of
27 the store?

28 **A** Yes, I was.

29 **Q** All right. And was Mr. Matthews with you

MILLER - DIRECT

1 when you made that circuit?

2 A He was in the building. He was talking
3 to -- he was talking to a witness at the time that I
4 arrived.

5 Q All right. So are you -- so were
6 witnesses who were being interviewed brought into
7 the building for purposes of those interviews?

8 A Not in the crime scene area. Mr. Jones
9 was the only witness in there, and he was off to the
10 very -- it was just inside the door to the left
11 side.

12 Q All right. But that was inside the larger
13 yellow crime scene tape; correct?

14 A Yes. But not in the very -- not where the
15 bodies were and all that.

16 Q Now, that day, did you participate in any
17 interviews of Mr. Doyle Simpson?

18 A I did not.

19 Q All right. Were you present at the time
20 that Mr. Doyle Simpson was interviewed by any other
21 officers?

22 A I was not present during the interview. I
23 was just aware of it.

24 Q All right. Where -- was this at the
25 Winona Police Department?

26 A That was done after --

27 BY MR. EVANS: Your Honor, I object. He
28 said he wasn't present. There's no way that he
29 can give information about it if he wasn't

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1 present.

2 **BY THE COURT:** He can't testify about
3 interviewing the witnesses.

4 **BY MS. STEINER:**

5 **Q** All right. You were not even in the same
6 building?

7 **A** No. But it wasn't at Tardy's. I was at
8 Tardy's.

9 **Q** You remained at Tardy's through the
10 afternoon?

11 **A** Well, not all afternoon, no.

12 **Q** Now, when did you leave Tardy's and for
13 what purpose did you leave Tardy's?

14 **A** I left Tardy's and went to the police
15 department and carried a gunshot residue kit to do a
16 gunshot residue on Curtis Flowers.

17 **Q** Okay. And approximately, what time did
18 you do that?

19 **A** I can't tell you exactly what time. It
20 was something around 1:30. One -- I'm not looking
21 at any notes or --

22 **Q** Did you personally do the --

23 **A** No, I did not. Sergeant Matthews did
24 that.

25 **Q** All right. Prior to Sergeant Matthews
26 performing that swab, was there any sort of
27 interaction with Mr. Flowers?

28 **A** No.

29 **Q** There was no --

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1 **A** What do you mean?

2 **Q** Was he interviewed?

3 **A** Not -- not -- I don't think he was
4 interviewed at first, but he was -- the gunshot
5 residue was done, I think.

6 **Q** All right. Was he administered a Miranda
7 warning?

8 **A** Yes.

9 **Q** And did you witness that Miranda warning?

10 **A** Yes.

11 **BY MS. STEINER:** Your Honor, your
12 indulgence.

13 (PAUSE)

14 **BY MRS. STEINER:** May I approach the
15 witness, Your Honor?

16 **BY THE COURT:** You may.

17 **BY MS. STEINER:**

18 **Q** Mr. Matthews, I'm -- Mr. Matthews --
19 forgive me. Mr. Miller, I'm handing you what's been
20 marked into evidence as S-109, which appears to be a
21 warning and waiver of rights signed by Curtis
22 Flowers and witnessed by yourself; is that correct?

23 **A** No, not this one. I witnessed the one
24 that was submitted when we took the statement from
25 him.

26 **Q** Oh, okay, you're right. I thought -- all
27 right. This is in evidence. What time does it
28 state that Mr. Flowers signed that?

29 **BY MR. EVANS:** Your Honor, that's not even

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1 the same day. I don't think there could be any
2 relevance to that if he wasn't there on that
3 day.

4 **BY THE COURT:** I guess it's in evidence,
5 so he can read the date of this.

6 **A** It's the 16th of July of 1996 at 1:28.

7 **BY MS. STEINER:**

8 **Q** All right. I'm going to hand you what's
9 been marked into evidence as S-94, the gunshot
10 residue kit that was taken on Curtis Flowers. Could
11 you read the information sheet out -- inside there
12 and tell me what time the gunshot residue kit was
13 taken?

14 **A** At 1400, which would be 2:00 p.m.

15 **Q** All right. So actually the gunshot
16 residue kit didn't get there until after he'd been
17 interviewed?

18 **A** Well, I don't know whether he was
19 interviewed. I did not have anything to do with
20 that first interview.

21 **Q** All right. Thank you. Were you asked to
22 provide a gunshot residue kit or perform a gunshot
23 residue test on any other individual than Curtis
24 Flowers?

25 **A** No, I was not.

26 **Q** Do you -- are you aware of whether or not
27 a gunshot residue kit was performed on Mr. Doyle
28 Simpson?

29 **A** I didn't direct anyone to do that.

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1 Q All right. Did you ever receive the crime
2 lab information?

3 A I did not receive any results back or any
4 evidence of that.

5 Q All right. What about with respect to
6 Mr. Emmett Simpson?

7 A Say that again. I didn't hear you.

8 Q With respect to Mr. Emmett Simpson, did
9 you request a gunshot residue test on him?

10 A I did not.

11 Q Did you ever receive information from the
12 crime lab with the results of the gunshot residue
13 test?

14 A Not that I'm aware of.

15 Q All right. I believe your testimony was
16 the crime lab would send you results?

17 A They would send it to -- to our office and
18 it would be -- you know, I would look over that.
19 I'm just not aware of anything else other than that
20 one.

21 Q And would those results stay at your
22 office or would they go to Chief Hargrove or where
23 would they go?

24 A They would -- Mr. Matthews -- Sergeant
25 Matthews kept them --

26 Q All right.

27 A -- kept up with those.

28 Q Now, did you have occasion to compose any
29 photo identification lineups for the purpose of

MILLER - DIRECT

1 being displayed to Mr. Porky Collins?

2 A I did.

3 Q And do you recall how many you composed?

4 A How many photo lineups?

5 Q Yes.

6 A I think there were two.

7 Q All right. And were you also present when
8 those photo lineups were displayed to Mr. Porky
9 Collins?

10 A I was.

11 Q I'm going to hand you what is in evidence
12 as Defendant's Exhibits 3 and 4 and ask you if you
13 can identify those.

14 A That is a photo lineup.

15 Q Which one are you looking at?

16 A I don't know. I don't know whether you
17 have them numbered or not.

18 Q In the upper right-hand corner.

19 A It would be 4.

20 Q All right. That's Exhibit 4. And what is
21 the date on which that was --

22 A The 8th, 24th of '96.

23 Q All right. And did you personally prepare
24 and select the photographs to be included in that
25 lineup?

26 A I did.

27 Q All right. Now, this is No. 4, Exhibit 4,
28 is there a suspect of interest in that one marked
29 Exhibit 4?

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1 **A** The only person that would -- photograph
2 of a person in this lineup would be that of Doyle
3 Simpson, which was -- his name was involved in this
4 investigation, yes.

5 **Q** And at which position is he?

6 **A** He is No. 6.

7 **Q** No. 6. And do you recall who asked you to
8 prepare this lineup number with Doyle Simpson in it?

9 **A** I don't think anyone asked me to do it. I
10 think we were just doing the investigation, and we
11 had him because we knew what Porky Collins had
12 already told some of the investigators, so I
13 assembled that to show him.

14 **Q** All right. Now, will you tell me with
15 respect to this Exhibit 4, the one with Doyle
16 Simpson in it, where did you get the photograph of
17 Mr. Simpson to include in the lineup?

18 **A** That was taken by -- I'm not sure who took
19 the photograph, but we had a photograph of
20 Mr. Simpson and I assembled it into this lineup.

21 **Q** About how long before this lineup was
22 shown to Mr. Collins, if you recall, did you
23 physically put it together?

24 **A** It was probably put together in the same
25 day.

26 **Q** All right. And do you know the source of
27 the photograph of Mr. Simpson or who gave you that
28 photograph or did you --

29 **BY MR. HILL:** Objection. That's leading.

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1 **BY MS. STEINER:**

2 Q -- did you personally take it yourself?

3 **BY THE COURT:** I think he's already said
4 he didn't know.

5 **BY MS. STEINER:** Okay. I'm sorry. I was
6 distracted.

7 **BY MS. STEINER:**

8 Q Now, the other five people in that photo
9 array, what was the source of their photographs, if
10 you know?

11 A Some of these came from various police
12 departments. I obtained those along and had a
13 collection of different photo shots or mug shots of
14 people that had been arrested by the police
15 departments.

16 Q All right. Was it a mug shot of Doyle
17 Simpson that you used?

18 A I don't think that was, but I don't know.
19 But it doesn't appear to be a mug shot.

20 Q All right. And what -- how did you
21 determine what the --

22 **BY MS. STEINER:** May I approach, Your
23 Honor?

24 **BY THE COURT:** You may.

25 **BY MS. STEINER:**

26 Q What are -- you've got someone who's a
27 person of interest. What are the other pictures
28 called -- fillers? Is that --

29 A Just filler pictures of -- of similar --

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1 similar -- the same race, similar complexion, things
2 of that nature.

3 Q Okay. What was -- when you were asked to
4 compile a photo array that would have similar to
5 Doyle Simpson, what was -- what were the
6 characteristics beside being a black man that you
7 tried to make your fillers?

8 A Well, we knew that Doyle had facial hair,
9 and we tried to put some in there that had the
10 facial hair.

11 Q And did he have braids?

12 A I'm sorry?

13 Q Did he have braids, according to your
14 description?

15 A No. Doyle did not have braids.

16 Q All right. And you transported that
17 photograph array to where?

18 A The --

19 Q In order of the display?

20 A The police department here in Winona.

21 Q Okay. Now, I'd like you to pick up the
22 other one which is, I believe -- exhibit in the
23 upper?

24 A I believe that's Exhibit 3.

25 Q All right. Now, who is the person of
26 interest in that one?

27 A Curtis Flowers.

28 BY THE COURT: Counsel.

29 (ALL COUNSEL APPROACH THE BENCH FOR A

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1 CONFERENCE HELD OUTSIDE THE HEARING OF THE
2 JURY, TO-WIT:)

3 **BY THE COURT:** I noted they were marked
4 one time at the hearing for the defense and
5 then another time they were marked into
6 evidence by the State.

7 **BY MS. STEINER:** That's right. They're
8 State's exhibits.

9 **BY THE COURT:** So I want to make this
10 clear on the record which number that they've
11 been offered for at this time and --

12 **BY MRS. STEINER:** Forgive me, Your Honor.
13 I thought we marked them.

14 **BY THE COURT:** So let's just get it
15 straight. The first one that he looked it.

16 (BENCH CONFERENCE CONCLUDED)

17 **BY THE COURT:** Ladies and gentlemen, we
18 were getting confused, because these had a
19 couple of identification numbers on them, so I
20 wanted to make clear for the record the correct
21 identification number. So Ms. Steiner, the
22 first one that Mr. Miller had been looking at
23 is actually -- would you read that exhibit
24 number?

25 **BY MS. STEINER:** Yes, Your Honor. He's
26 been calling it Exhibit 4. It is, in fact, in
27 this proceeding Exhibit S-143.

28 **BY THE COURT:** Okay.

29 **BY MS. STEINER:**

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1 **Q** With the red marker. I apologize for
2 misleading you.

3 **A** I was going by the top right-hand number,
4 the one you directed.

5 **BY THE COURT:** And then, the current one
6 that he's looking at is --

7 **MS. STEINER:** He's been talking about it
8 as Exhibit 3. But actually, if you look at the
9 upper left-hand, that is what number?

10 **A** That is 5-142.

11 **Q** S-142.

12 **A** S-142.

13 **Q** All right. And so we'll try to call them
14 by those names for now.

15 Now, in this 142, which is the
16 photograph of Curtis Flowers?

17 **A** That is No. 4.

18 **Q** All right. And is there anything about
19 the size of the image in that photograph that is in
20 any way different from the size of the images in
21 this photograph of the other five people?

22 **A** It's a little bit larger because it's not
23 the same type of photograph as the mug shots that
24 are taken by various police departments.

25 **Q** So you didn't have a mug shot of Curtis
26 Flowers?

27 **A** I did not have a mug shot of him.

28 **Q** And did you -- when did you obtain a
29 photograph -- have a photograph taken by other

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1 investigators of Mr. Flowers in connection with this
2 investigation?

3 **A** Ask me that question again, please.

4 **Q** All right. To you knowledge, was a
5 photograph taken of Mr. Flowers on July 16th by
6 yourself or any other investigator?

7 **A** I can't answer that. I don't know whether
8 this was taken that day or not.

9 **Q** All right. Did you yourself ever
10 personally take a photograph or request someone else
11 to take a photograph of Mr. Flowers?

12 **A** I don't recall one way or the other. I
13 don't remember.

14 **Q** Now, did you also meet with Mr. Flowers on
15 July 18th, two days later?

16 **A** I did.

17 **Q** Do you recall whether or not a photograph
18 was taken of him then?

19 **A** It could have been.

20 **Q** All right. And did Mr. Flowers have a
21 Mississippi driver's license?

22 **A** I think he did.

23 **Q** All right. And at that time, in 1996 -- I
24 don't know if you know this -- did they keep the
25 photos digitally or did they keep hard copy photos
26 down at the driver's license division in Jackson?

27 **BY MR. EVANS:** Your Honor, unless there's
28 some relevance to that, I would object.

29 **BY THE COURT:** I'll sustain as to

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1 relevance.

2 **BY MS. STEINER:** Your Honor, I believe --
3 well, allow me to -- I will link this up.

4 **BY MS. STEINER:**

5 **Q** Is this -- let me ask a question here. Do
6 you know -- this August 24th, 1996 is when these
7 photo lineups were displayed to Mr. Collins; is that
8 correct?

9 **A** That's correct.

10 **Q** Mr. -- the information you had from
11 Mr. Collins -- did it indicate Mr. Collins may have
12 witnessed someone of interest in this investigation?
13 What was the date Mr. Collins said he saw somebody
14 of interest?

15 **A** Mr. Collins indicted through some other
16 investigative work by other people that Curtis --
17 that he had seen someone. He did not name anyone.

18 **Q** Right.

19 **A** He had seen someone in front of Tardy's
20 Furniture Store just prior to the four murders.

21 **Q** All right. And this is approximately five
22 weeks after that; is that correct?

23 **A** That is correct.

24 **Q** All right. Was there a reason for
25 delaying five weeks in asking him --

26 **A** One delay is that Mr. Collins had -- had
27 some health issues himself, and he also had a
28 relative that was very sick. And when we would try
29 to contact him and make some appointment with him to

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1 look at the photographs, he was not available.

2 Q So obtaining a photograph of Mr. Flowers
3 was not a factor in the delay?

4 A Say that again.

5 Q Was obtaining a photograph of
6 Mr. Flowers --

7 A No, that was not part of it. That was not
8 the delay. It was just Mr. Collins.

9 Q Now, I assume -- or let me ask you. As a
10 Mississippi Highway Patrol investigator, do you
11 receive instruction and training on the -- on
12 obtaining eyewitness identifications through
13 lineups, show ups and photo arrays, that sort of
14 things?

15 A Yes, I do.

16 Q And what, if anything, is the rule of
17 thumb with respect to elapsed time between --

18 BY MR. EVANS: I don't agree to a rule of
19 thumb. He can testify to what he did, and
20 that's all.

21 BY THE COURT: I'll sustain.

22 BY MS. STEINER:

23 Q All right. As -- from an investigative
24 point of view, do you personally, in an
25 investigation, when, relative to a witness having
26 seen someone, do you prefer to have them make that
27 identification --

28 BY MR. EVANS: Again, what he prefers is
29 not relevant.

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1 **BY THE COURT:** I didn't even understand
2 the question.

3 **BY MS. STEINER:**

4 **Q** Well, if you could have gotten Mr. Collins
5 in a week later, would you have -- would that have
6 been a better time to have him look at these than
7 five weeks later?

8 **BY MR. EVANS:** Again, my objection is that
9 is not relevant. When he got him in, is when
10 he got him in.

11 **BY THE COURT:** Well, he can answer the
12 question. Overrule it.

13 **A** Like I said, we tried to get Mr. Collins
14 in. He had -- he was in Jackson, and he had other
15 reasons -- health problems and even his family
16 health problems, and he was not available at some of
17 the times that we would try to get together.

18 **BY MS. STEINER:**

19 **Q** But his memory might have been fresher had
20 you gotten him in earlier?

21 **BY MR. EVANS:** I object, Your Honor. He
22 cannot testify about what a witness' memory
23 would have been.

24 **BY THE COURT:** I'll sustain that
25 objection.

26 **BY MS. STEINER:**

27 **Q** And I believe your testimony is in the
28 intervening times, he'd had some health and family
29 crisis as well; is that correct?

MILLER - DIRECT

1 **A** I think it was more of his relatives that
2 had some health problems and he stayed -- he was
3 staying with them at the hospital in Jackson.

4 **Q** Some families had health problems?

5 **A** Yes, I think so.

6 **Q** Sufficiently distracting that he couldn't
7 be shown these pictures; is that correct?

8 **A** He said he would contact us as soon as he
9 was back in Winona, which he did.

10 **Q** All right. Now, did he say where he was
11 located -- where his family member was hospitalized?

12 **A** No, he didn't. I don't -- he may have; I
13 don't remember that.

14 **Q** Do you recall if it was in the state of
15 Mississippi?

16 **A** I'm sure it was. I don't know. I can't
17 answer that.

18 **Q** Are there -- Mississippi Highway Patrol
19 investigative divisions were there at that time in
20 all of the regions of the state of Mississippi?

21 **A** All regions.

22 **Q** Did you make any attempt to have a
23 colleague investigator in whatever region the
24 hospital Mr. Collins was visiting his relative at
25 prepare and show him an array?

26 **A** No, I did not.

27 **Q** Thank you. Now, if you will turn your
28 attention, I think you've already told us about what
29 you looked for in the fillers on the S-143.

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1 What were the aspects that you were
2 looking for in the fillers on S-142?

3 **A** Well, we knew that Curtis Flowers had
4 facial hair, and we tried to get them the same
5 complexion and mug shots of people with facial hair.

6 **Q** Do all of the other individuals on the
7 array with Mr. Flowers in it have facial hair?

8 **A** Not all of them.

9 **Q** How many have facial hair?

10 **A** Well, including Curtis Flowers, there are
11 four.

12 **Q** All right.

13 **A** There are two that does not have facial
14 hair.

15 **Q** And how would you characterize
16 Mr. Flowers's hairline in this?

17 **A** Well, it's receding in the front or
18 balding, whichever way you want to call it. Some of
19 these others don't have hair coming down very far to
20 the front.

21 **Q** Is there also a person with braids or
22 dreadlocks?

23 **A** There's one with braids and --

24 **Q** Mr. Flowers didn't have braids at that
25 time?

26 **A** He did not have braids.

27 **Q** Now, is number five in 143 the same
28 individual who's in the number five position in 142?
29 Can you tell?

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1 **A** Are you saying five?

2 **Q** Five.

3 **A** That's possible that it is.

4 **Q** All right.

5 **A** Not dressed the same, but it could be him.
6 I'm not sure.

7 **Q** Now, when you -- you carried both of these
8 over to where the -- was it the Winona Police
9 Department?

10 **A** Winona Police Department.

11 **Q** Did you consider this -- how many photo --
12 how many identification procedures did you think you
13 were going to be conducting that day -- one, two?
14 Did you consider this a single procedure?

15 **A** Well, it's just the one. It's just one
16 for Curtis Flowers to look at.

17 **Q** All right. Did Mr. Collins -- was
18 Mr. Collins shown the one with Mr. Simpson in it?

19 **A** He was.

20 **Q** All right. Now, do you recall who
21 requested that you prepare those?

22 **A** Say again. I didn't hear.

23 **Q** Do you recall the name of the investigator
24 who requested that you prepare those?

25 **A** I believe John Johnson told me that
26 Mr. Collins was -- would be coming to the police
27 department and so he requested that --

28 **Q** All right.

29 **A** -- that I bring it.

MILLER - DIRECT

1 Q Do you have -- did you prepare any sort of
2 report about that request?

3 A Not a -- I didn't write down that John
4 Johnson called me and told me to bring -- I didn't
5 write that down. But I did take notes of the --
6 what Mr. Collins did in the lineup.

7 Q Oh, I understand that.

8 A Yeah.

9 Q Did you make any notes or prepare any
10 documentation concerning either the source for the
11 filler pictures or the source of the pictures of
12 either Mr. Simpson or Mr. Flowers in these lineups?

13 A I did not make my documentation of where
14 the photographs came from because I -- I had them,
15 and they came from the police -- various police
16 departments.

17 Q All right. And did you -- I believe you
18 testified you have notes of what Mr. Simpson said.
19 Did you make any notes of what either you or
20 Mr. Johnson said -- excuse me -- what Mr. Collins
21 said? Did you make any notes of what either you or
22 Mr. Johnson said to Mr. Collins by way of
23 introducing him to the photo array lineups?

24 A I didn't -- I didn't make any comment to
25 Mr. Collins. All I did was show the photo lineup
26 and ask him was anyone in that photograph that he
27 recognized and that he saw in front of Tardy's.

28 Q All right. Before you brought these out,
29 what did you say to Mr. Collins?

MILLER - DIRECT

1 **A** I didn't talk to him before that.

2 **Q** All right. Were you present with
3 Mr. Johnson when he -- when Mr. Collins arrived?
4 Did Mr. Johnson --

5 **A** I think they were already at the police
6 department when I came in.

7 **Q** So you don't know what Mr. Collins had
8 been told by Mr. Johnson before you arrived?

9 **A** I was not there. I mean, I brought the
10 lineups in and --

11 **Q** Is there any kind of protocol or anything
12 that you as a highway patrol investigator followed
13 when doing a photo array lineup with respect to
14 advising the witness about what was about to happen?

15 **A** Yeah. I told him that we have a photo
16 lineup.

17 **Q** Okay.

18 **A** And you've indicated that you could
19 identify the person that he saw in front of Tardy's.
20 It was a very short conversation, and he immediately
21 looked at it and -- he looked at one, and then he
22 didn't identify anybody.

23 **Q** He didn't make a positive identification?

24 **A** No. No.

25 **Q** Which one was he shown first?

26 **A** I think the one that you called S-143.

27 **Q** And that's the one --

28 **A** I'd have to look at my notes, at the
29 letter that's on the exhibits.

MILLER - DIRECT

1 **Q** S-143. That's the one with Doyle Simpson
2 in it?

3 **A** Right.

4 **Q** And he did -- he eluded to Mr. Simpson's
5 picture?

6 **A** I'm not sure what numbers he said.

7 **Q** All right. But he made no positive
8 identification?

9 **A** No positive.

10 **Q** Now, how long after he had looked at
11 what -- strike that. After --

12 **BY MS. STEINER:** Your Honor, may I
13 approach the witness?

14 **BY THE COURT:** You may.

15 **BY MS. STEINER:**

16 **Q** You say -- I'm not sure whose notes these
17 are, but I'm handing you two notes that have the
18 initials JMJ and WM on the top of them and ask you
19 if on reading those two notes you can refresh your
20 recollection on the order in which the two
21 photograph folders were shown and the approximate
22 time between the two.

23 **A** Are you referring to the exhibit?

24 **Q** Let me have them marked for identification
25 so we can do that.

26 **A** I don't know how to identify them.

27 (DEFENDANT'S EXHIBIT NO. D-21 and D-22,
28 PHOTO LINEUP NOTES, WERE MARKED FOR
29 IDENTIFICATION.)

MILLER - DIRECT

1 BY MS. STEINER:

2 Q Thank you, Mr. Miller, for getting me in
3 order on this. I'm handing you what has been marked
4 as Exhibit D-21 for identification and D-22 for
5 identification, and I believe these are the
6 documents you identified as being -- as having your
7 initials. Are these both -- are these the notes
8 taken during the lineup procedure?

9 A They were taken at that time.

10 Q All right. Now, can you tell me after
11 review of them, if you can tell from those notes,
12 which lineup was shown first?

13 A The D- -- Exhibit D-21.

14 Q And who -- and who was -- was that
15 a lineup with Mr. Simpson in it or was that a lineup
16 with Mr. Flowers in it?

17 A That is lineup S-143.

18 Q And is Mr. Simpson?

19 A Mr. Simpson is in that photo lineup.

20 Q What do the notes in front of you indicate
21 Mr. Simpson -- Mr. Collins said with respect to the
22 photograph of Mr. Simpson?

23 A Mr. Collins pointed to one and three
24 resemble but the hairline was further back. And
25 number six, pointed to Simpson and said hairline was
26 like this, may have --

27 Q May have appeared --

28 A May have appeared -- I'm not sure. This
29 is not my notes. I can't read that right. And

MILLER - DIRECT

1 appeared a little darker, but it looks like him.
2 Face was also same shape, round like this but unable
3 to make a positive.

4 Q All right. So he did actually point out
5 Mr. Simpson here as somebody who was -- looks like
6 the person he'd seen; is that a fair
7 characterization?

8 A Right.

9 Q Thank you. And what time did that photo
10 presentation occur?

11 A That was at -- on August the 24th of '96.
12 This was a Saturday at the Winona Police Department,
13 and it occurred at 11:10 a.m.

14 Q All right. Do your notes -- and that's
15 what's set forth in D-21 for identification; is that
16 correct?

17 A That's correct.

18 Q Do your notes with Mr. Collins on the
19 lineup -- another lineup that occurred that day, do
20 they reflect what time that occurred?

21 A You're talking about in Exhibit D-22?

22 Q Yes, in D-22.

23 A Now, what are you asking me?

24 Q I guess the first time is can you, from
25 reviewing these notes, tell the jury if they refer
26 to one of -- to -- to either of these folders marked
27 S-143 or 142?

28 A Porky Collins pointed to Curtis Flowers,
29 which is number four in this photo lineup, and said,

MILLER - DIRECT

1 "I think that's him, and he was about my height and
2 I'm 5'10" and the complexion is right."

3 Q And then what does he say?

4 A And then he said, "I believe that's him,
5 it looks like him." And he identified him positive
6 as number four, which is Curtis Flowers.

7 Q All right. You wrote that down. Now, at
8 any time did anybody mention Curtis Flowers' name to
9 Mr. Collins before this lineup was displayed to him?

10 A Not that I know of.

11 Q Okay.

12 A I did not.

13 Q All right. It was, however, mentioned to
14 him immediately after he'd pointed Mr. Flowers out;
15 is that correct?

16 A I can't answer that. I don't know that I
17 told him.

18 Q All right.

19 A I don't know -- I'm not saying that I told
20 him it was Curtis Flowers, but I don't think I did.

21 Q All right. If you review these notes that
22 your initials are on, and they're -- what follows?
23 What words follow that?

24 A Well, I asked Porky if he knew Curtis
25 Flowers and he said, "No, but I know the person I
26 just identified is the person -- is the person that
27 I saw in front of Tardy's on the 7/16 of '96."

28 Q Okay. And John Johnson and you are the
29 two that were there?

MILLER - DIRECT

1 **A** We were the two there, yes.

2 **Q** And these are the notes Mr. Johnson made?

3 **A** And he made a positive identification of
4 Curtis Flowers.

5 **Q** But Mr. Flowers' name was mentioned to him
6 after he'd made that identification; is that
7 correct?

8 **A** It was only afterward, but that was a --
9 there's nothing there that says that number four was
10 Curtis Flowers. He just asked him did he know
11 Curtis Flowers.

12 **Q** Oh, I appreciate that. And the first time
13 the words, "I know the person I identified is the
14 person I saw," came after he was asked if he knew
15 Curtis Flowers. Is that a fair characterization of
16 what that note says?

17 **A** He says that, "I believe that's him. It
18 looks like him." And then he --

19 **Q** And then after he's asked if he knew
20 Curtis Flowers, what does he say?

21 **A** I know that's the person that I -- I just
22 identified as the person that I saw in front of
23 Tardy's.

24 **Q** Thank you.

25 **BY MS. STEINER:** One moment, Your Honor.
26 Judge, I'd like to offer D-21 and D-22 for
27 identification into evidence at this time.

28 **BY MR. EVANS:** I think they're just his
29 notes, Your Honor. I think he's already

MILLER - DIRECT

1 testified to them, but I don't think his notes
2 would be proper. If they were, we would have
3 introduced all his notes. And they're another
4 witness' notes at that.

5 **BY MS. STEINER:** His initials are on them,
6 Your Honor.

7 **BY THE COURT:** He's already testified from
8 his notes and usually the purpose of notes is
9 to help refresh somebody's memory, and he's
10 testified from his notes. I agree with
11 Mr. Evans. We can't be reading everybody's
12 notes that took some down if they testified
13 live about it. So I don't see any point in
14 admitting his notes into evidence.

15 **BY MS. STEINER:** All right. So my request
16 that they be admitted is --

17 **BY THE COURT:** Denied.

18 **BY MS. STEINER:** -- denied. Thank you.

19 **BY MS. STEINER:**

20 **Q** After those processes that were -- that
21 you testified to and refreshed your recollection
22 with notes about, were completed and you returned
23 to -- I assume you returned back to your -- well, it
24 was Saturday. You probably returned back to
25 whatever you would ordinarily do on a Saturday. But
26 when you returned to your office, do you know -- did
27 you take these photo identifications with you or did
28 you leave them with someone else?

29 **A** I kept them in my possession.

MILLER - DIRECT

1 **Q** All right. And is that until they became
2 necessary for the court proceedings? Is that
3 what --

4 **A** They were probably turned over to the
5 district attorney at some point. I can't tell you
6 when.

7 **Q** Did you prepare any kind of summary report
8 of the events of Mr. Collins' photo lineup
9 identification process?

10 **A** Just the notes that you have there.

11 **Q** Okay. Thank you. I'm handing you a
12 manila folder that's in evidence as State's Exhibit
13 S-116 and ask you if that is a photo identification
14 array you prepared?

15 **A** I can't tell you that I prepared it. I
16 don't see any of my initials on it. I'm familiar
17 with it, but I did not -- I was not the one that
18 showed this to --

19 **Q** You didn't display it?

20 **A** No, I did not display that.

21 **Q** All right. I was just asking was this
22 also something you prepared?

23 **A** I -- I can't recall. I don't know that.

24 **Q** All right. Is -- S-143 and S-142 look
25 like they are in legal size folders with particular
26 cut openings and preprinted numbers. Is that a
27 folder form that the highway patrol --

28 **A** That is a highway patrol form for photo
29 identification purposes.

MILLER - DIRECT

1 **Q** Does the highway -- is there any -- does
2 the highway patrol ever just use legal size file
3 folders for photo identification purposes, to your
4 knowledge?

5 **A** I don't know that we would, if it didn't
6 have access to this.

7 **Q** But during the course of the investigation
8 here --

9 **A** I can't answer your question.

10 **Q** Okay.

11 **BY MRS. STEINER:** Your Honor, I'd like
12 S-142 and 143 passed to the jury.

13 **BY THE COURT:** You may pass them.

14 **BY MS. STEINER:**

15 **Q** Mr. Miller, did you have occasion to
16 collect shoes from Mr. Curtis Flowers at any time?

17 **A** Yes. I was present when they were
18 collected.

19 **Q** And there were actually two sets of -- two
20 pairs of shoes collected from Mr. Flowers; is that
21 correct?

22 **A** I'm familiar with the ones collected at
23 the time he was at the police department.

24 **Q** All right. And would that be or on about
25 July 18th, 1996?

26 **A** Well, it could have been on the 16th. I
27 don't recall the date.

28 **BY MS. STEINER:** May I approach, Your
29 Honor?

MILLER - DIRECT

1 **BY THE COURT:** You may.

2 (DEFENDANT'S EXHIBIT NOS. 23 AND 24
3 WERE MARKED FOR IDENTIFICATION)

4 **BY MS. STEINER:**

5 **Q** I'm handing you what's been marked as D-23
6 for identification and ask you if you would review
7 that and tell us what that is.

8 **A** Well, it's the permission to search, which
9 was given to Curtis Flowers to sign, to give
10 Investigator Matthews and myself the permission to
11 take his shoes.

12 **Q** All right. And from where were those
13 shoes taken, according to that? If you'll read
14 where it was filled in. Where? Where was the
15 property located, the shoes that you took?

16 **A** From Curtis Flowers.

17 **Q** From his feet?

18 **A** Right.

19 **Q** And what kind of shoes were taken? What
20 color?

21 **A** They were Nike Flight tennis shoes.

22 **Q** And what is the date on it?

23 **A** That is the 18th of July.

24 **Q** All right. And so that is the pair of
25 shoes you collected from him?

26 **A** I was present with Investigator Matthews.

27 **Q** Okay. All right. I'm handing you the
28 collective Exhibits S-125, 125-A and 125-B. Would
29 you call these black shoes?

MILLER - DIRECT

1 **A** I would not. They are blue.

2 **Q** Blue and white, would you say?

3 **A** Right, blue and white.

4 **Q** There is no black other than possibly a
5 little mud still sticking to them on this shoe?

6 **A** Right.

7 **BY MS. STEINER:** One moment, Your Honor.

8 **BY THE COURT:** Sure.

9 **BY MS. STEINER:** Your Honor, we would
10 tender.

11 **CROSS-EXAMINATION**

12 **BY MR. EVANS:**

13 **Q** Good evening, Mr. Miller.

14 **A** How are you?

15 **Q** I want to go through just a few of the
16 things that we've been through, but I'm going to
17 limit it. There were two pair of shoes taken off of
18 the Defendant at different times, weren't there?

19 **A** That is correct.

20 **Q** Both of them were ten-and-a-halves, weren't
21 they?

22 **A** They were ten-and-a-halves.

23 **Q** Now, you knew early on that Filas were
24 involved in the case, didn't you?

25 **A** I did through Mr. Andrews from the crime
26 lab.

27 **Q** And that's Joe Andrews --

28 **A** Joe Andrews.

29 **Q** -- who has testified here? And after you

MILLER - CROSS

1 found out early on from him that Filas were
2 involved, what steps did you take at that point to
3 try to find out what kind of Filas were used?

4 **A** I checked at several different shoe stores
5 and mainly the -- I ended up at Conley's Shoe Store
6 in Greenwood.

7 **BY MS. STEINER:** Your Honor, may we
8 approach?

9 **A** And --

10 **BY MR. EVANS:** Wait just a minute.

11 **BY MS. STEINER:** Your Honor, may we
12 approach?

13 (ALL COUNSEL APPROACH THE BENCH FOR A
14 CONFERENCE HELD OUT OF THE HEARING OF THE
15 JURY, TO-WIT:)

16 **BY MS. STEINER:** In light of the Supreme
17 Court's ruling with respect to opinions offered
18 in Flowers II concerning some shoes obtained by
19 Mr. Miller being not properly admitted, both
20 the State and we, in examining Mr. Andrews,
21 dealt only with his -- his 2003 comparison
22 which dealt with insoles actually obtained from
23 Mr. Flowers in which the objectionable
24 information was not admitted.

25 And I -- if -- if Mr. Evans has some
26 reason other than to attempt to bolster the
27 opinion obtained in 2003 by trying to bring in
28 the being admissible identification performed
29 on the basis of Mr. -- what Mr. Miller

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1 obtained, then we would object both under the
2 case law of the case -- well, under Flowers II.
3 And additionally, since that was a hearsay
4 objection, we would excite Belinda Diaz, which
5 varies itself, also a Sixth Amendment
6 violation. And we would ask that it would
7 either be upon improper bolstering with
8 inadmissible and/or would, even if relevant and
9 otherwise admissible, would be both confusing
10 to the jury and possibly misleading to them
11 under Rule 403.

12 And we would ask that no testimony be
13 taken from Mr. Miller concerning his obtaining
14 any shoes for comparison purpose. And in if
15 that's where Mr. Evans is going, we would
16 object to -- make a continuing objection to any
17 questions along those lines.

18 **BY MR. EVANS:** To start with, it would
19 help if she had any idea to know what he was
20 talking before I -- my question to him is did
21 he go to a store and look to try to determine
22 what kind of shoes were used. They have
23 attacked every officer in the case about not
24 doing an investigation. I am not going to get
25 Joe Andrews to compare the shoes he got. That
26 was the only thing the Supreme Court said
27 shouldn't so I won't. He should have used just
28 the Filas that came from the outsoles that was
29 sent.

MILLER - CROSS

1 My questions of this witness are going to
2 be to the extent that he went to Greenwood and
3 looked for shoes and tried to determine what
4 kind of shoes that left that impression and
5 that's it. And if that's not proper, I don't
6 know what could be.

7 **BY MS. STEINER:** I have no objection to
8 that. I wasn't inside his head, and I wanted
9 to --

10 **BY THE COURT:** All right. If something
11 comes up, I'd prefer you to object rather than
12 having some continuing objection, because at
13 the time being, that's not what he's intending
14 to go into.

15 **BY MS. STEINER:** No. That's what -- just
16 the case if he was intending to do that.

17 (BENCH CONFERENCE CONCLUDED)

18 **BY MR. EVANS:**

19 **Q** Mr. Miller, I'm not even sure what I asked
20 you last, but I think it was something to do with
21 did you go to some shoe stores and attempt to
22 determine what kind of shoes had left that
23 impression?

24 **A** I did. And I ended up at Conley's Shoe
25 Store in Greenwood.

26 **Q** And after what information you had
27 received from Joe Andrews and your investigation,
28 did you at that time know that y'all were looking
29 for Fila Grant Hill tennis shoes?

MILLER - CROSS

1 **A** I was.

2 **Q** Now, you were asked about gunshot residue
3 kits being used on anybody else. But is there any
4 suggestion that a gunshot residue kit should have
5 been used on anyone else that day?

6 **A** No, there was not.

7 **Q** Now, have you got the -- the photo lineups
8 that Porky Collins was shown, Exhibits 142 and 143,
9 he only picked out one person out of these lineups,
10 didn't he?

11 **A** He did.

12 **Q** And I think what you said was, "I know the
13 person that I identified as the person that I saw in
14 front of Tardy Furniture." Is that what he said?

15 **A** That is what he said.

16 **BY MR. EVANS:** Your Honor, may I have the
17 witness step down?

18 **BY THE COURT:** You may.

19 (WITNESS LEAVES THE STAND AND TAKES A
20 PLACE IN FRONT OF THE JURY)

21 **BY MR. EVANS:**

22 **Q** On Exhibit S-142, which photograph did he
23 point to and identify?

24 **A** Number four, which is Curtis Flowers.

25 **Q** Thank you. And as far as the first
26 photograph, he didn't -- photo lineup 143, he didn't
27 pick out anybody?

28 **A** He did not identify anybody.

29 **Q** He compared some complexions and some

MILLER - CROSS

1 hairlines?

2 A That's all he did.

3 Q He pointed to number six, who is Doyle,
4 and said, "It's about that hairline"?

5 A That's correct.

6 Q And that is consistent with his; is that
7 correct?

8 A That is correct.

9 BY MR. EVANS: Nothing further, Your
10 Honor.

11 BY THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MS. STEINER:

14 Q I'm handing you back S-143, the lineup
15 with Doyle in it and D-21 for identification. And
16 in addition to saying that the hairline was like
17 that, he did say, quote, "It looked -- but it looks
18 like him;" is that correct?

19 A "But it looks like him," according to the
20 notes of what he said, "but unable to do a positive
21 identification."

22 Q Correct. But it was more than just the
23 hairline; is that correct?

24 A It said that he did -- but it looks like
25 him.

26 Q Yes, thank you.

27 BY MS. STEINER: One moment, Your Honor.
28 That's all I have, Your Honor.

29 BY THE COURT: Mr. Miller, you may step

MILLER - REDIRECT

1 down. I'm assuming he's excused?

2 BY MRS. STEINER: He may be finally
3 excused.

4 BY THE WITNESS: Thank you.

5 BY THE COURT: Who would you have next?

6 BY MS. STEINER: Your Honor, may we confer
7 for a minute?

8 (PAUSE)

9 BY MRS. STEINER: Your Honor, may we have
10 a recess? I see it's 5:00. I don't know what
11 time the Court was planning to adjourn for the
12 night. We do have to have a conference for a
13 few minutes before we make any further
14 announcements.

15 BY THE COURT: Okay. If you'll step in
16 the jury room for a minute, ladies and
17 gentlemen.

18 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
19 CONTINUED IN OPEN COURT OUTSIDE THE
20 HEARING AND PRESENCE OF THE JURY, TO-WIT:)

21 BY THE COURT: Who would be your next
22 witness?

23 BY MS. STEINER: I wish to do -- do you
24 wish to do this outside the presence of the
25 jury? As I said, I'm happy to do -- I have an
26 announcement I can make out of the presence --

27 BY THE COURT: Go ahead.

28 BY MS. STEINER: Your Honor, we have at
29 this time -- we know we have Chief Johnson who

MOTION - JURY OUT

1 is the -- we have a motion in limine with
2 respect to him that the Court is going to have
3 to hear outside the presence of the jury, and
4 we have one other non-expert witness, who is
5 actually -- maybe two. I'm sorry. One of
6 whom -- neither of whom are physically here
7 right now. Is that correct? One of whom is
8 actually a bring back order person --

9 **BY THE COURT:** Where is physically the
10 other one?

11 **BY MR. CARTER:** Both of them are in the
12 jail.

13 **BY MS. STEINER:** They're both in jail.

14 **BY THE COURT:** Give him the names, and
15 we'll have -- the sheriff can go get them, and
16 I'll take up the motion in limine while he's
17 going down to the jail and bringing these
18 witnesses up.

19 **BY MR. CARTER:** Do I give it to Your
20 Honor?

21 **BY THE COURT:** You can have the sheriff
22 send a deputy after those from Vaiden.

23 **BY MS. STEINER:** It's just one.

24 **BY THE COURT:** Okay. And I guess -- at
25 some point I always do this, and I guess this
26 would be as good a time as any. I want to go
27 over Mr. Flowers' constitutional right to
28 testify, and I do that in every case I've ever
29 presided over. And since I've got an

COURT ADVISES DEFENDANT OF RIGHT TO TESTIFY - JURY
OUT

1 indication maybe there was only one other
2 witness besides Chief Johnson, I'd like to go
3 ahead.

4 So, Mr. Flowers, if you'll stand, there's
5 a couple of things I want to tell you.

6 (WITNESS STANDS BEFORE THE COURT.)

7 **BY THE COURT:** Mr. Flowers, under the
8 constitution of the State of Mississippi and
9 the constitution of the United States, you've
10 got a constitutional right to testify in your
11 own behalf. Do you understand that?

12 **BY THE DEFENDANT:** Yes, sir.

13 **BY THE COURT:** And under both of those
14 constitutions, you also have a constitutional
15 right to not testify if you choose not to
16 testify. Do you understand that?

17 **BY THE WITNESS:** Yes, sir.

18 **BY THE COURT:** Do you understand if you
19 want to testify and your lawyers told you that
20 you shouldn't, that they thought your case
21 would be stronger if you didn't testify, you
22 could override their misgivings and testify
23 even if they didn't want you to do. Do you
24 understand that?

25 **BY THE DEFENDANT:** Yes, sir.

26 **BY THE COURT:** And, further, do you
27 understand if they wanted you to testify and
28 you didn't, if they thought it would help your
29 case and would be better for you to testify but

COURT ADVISES DEFENDANT OF RIGHT TO TESTIFY - JURY
OUT

1 you did not want to testify, you could not be
2 forced by your lawyers or anyone to testify.
3 Do you understand that?

4 **BY THE DEFENDANT:** Yes, sir.

5 **BY THE COURT:** So ultimately, the decision
6 as to testify or not testify is your decision
7 and yours alone?

8 **BY THE DEFENDANT:** All right.

9 **BY THE COURT:** And so do you understand
10 that?

11 **BY THE DEFENDANT:** I understand.

12 **BY THE COURT:** So if there comes a point
13 where you want to exercise the privilege to
14 testify and your lawyers don't want you to
15 testify, notify the Court and you will be
16 allowed to testify even if they didn't want you
17 to.

18 **BY THE DEFENDANT:** All right.

19 **BY THE COURT:** And I'm sure that you've
20 got very capable lawyers, and I'm sure y'all
21 have discussed those matters already, but I
22 just felt it necessary for the purpose of the
23 record to again advise you of these things. Do
24 you have any questions for the Court about
25 these things that I've just told you?

26 **BY THE DEFENDANT:** No, sir.

27 **BY THE COURT:** Okay. That will be fine.
28 Okay. All right. We had motion filed to
29 exclude evidence and testimony under Rule 702

COURT ADVISES DEFENDANT OF RIGHT TO TESTIFY - JURY
OUT

1 and 608. And I don't know if you want to --

2 BY MS. STEINER: Do you want me to -- I'd
3 rather go ahead and qualify him.

4 BY THE COURT: I think it might be
5 important to call your witness up here --

6 BY MS. STEINER: That's what I --

7 BY THE COURT: -- before we hear the
8 motion.

9 BY MS. STEINER: Yes, Your Honor. We
10 would have Chief Robert Johnson.

11 BY THE COURT: Mr. Johnson, if you'll
12 raise your right hand and take the oath. Do
13 you solemnly swear or affirm the testimony you
14 give in this case will be the truth, the whole
15 truth and nothing but the truth, so help you
16 God?

17 BY THE WITNESS: I do.

18 BY THE COURT: If you'll come around.

19 BY THE WITNESS: Yes, sir.

20 BY THE COURT: For the purpose of this
21 motion and for the benefit of the record, state
22 your name, please.

23 BY THE WITNESS: Robert Johnson.

24 (DEFENDANT'S EXHIBIT 25, CV OF ROBERT
25 JOHNSON, WAS MARKED FOR IDENTIFICATION FOR
26 MOTION PURPOSES ONLY)

27 BY THE COURT: You may proceed.

28 DIRECT EXAMINATION

29 BY MS. STEINER:

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1 Q Chief Johnson, would you tell us what your
2 present business address and profession is.

3 A I currently own and operate RL Johnson &
4 Associates Consulting Business in Jackson,
5 Mississippi, where I do expert witness on issues
6 related to criminal liability, safety, law
7 enforcement practices, corrections and federal
8 security issues. I'm also co-partner and co-owner
9 of Mississippi Probation Services, also located in
10 Jackson, Mississippi. We provide supervision to
11 probationers coming out of justice court, municipal
12 court and some pretrial detainees out of circuit
13 court in Jackson.

14 Q And that's is Hinds County, Mississippi?

15 A That's in Hinds County, Mississippi.

16 Q Chief Johnson -- I'm calling you chief.
17 Have you served as the chief of any municipal police
18 departments?

19 A I've served as police chief in three
20 different jurisdictions.

21 Q All right. And any in Mississippi?

22 A Yes, one in Mississippi.

23 Q What jurisdiction was that?

24 A That was Jackson.

25 Q All right. Chief, I'm going to hand you
26 what's been marked D-25 for identification, and ask
27 if that is your curriculum vitae that sets forth
28 your education and experience and other
29 accomplishments in -- related to the current subject

MOTION IN LIMINE - JURY OUT

1 matter of your consulting practice?

2 A Yeah, it is.

3 Q Thank you.

4 BY MS. STEINER: I'd like to offer this
5 into evidence for the purpose of the motion.
6 And assuming he testifies, I'll move it into
7 evidence for purposes of the trial.

8 BY THE COURT: I think it's marked for ID
9 for the purpose of the motion. So in the event
10 of appeal, it would be included in the record
11 so, you know, that will be fine.

12 BY MS. STEINER: All right.

13 BY MS. STEINER:

14 Q Chief, why don't you give a brief history
15 of your professional law enforcement career and, in
16 particular, include what it is in the course of that
17 career that pertains specifically to either
18 conducting homicide, major felony investigations or
19 supervising such investigations or developing the
20 procedures and protocols to be used for such
21 investigations and/or teaching in the academic realm
22 and other officers about methods for performing
23 those investigations.

24 A Well, preparatory to doing that, a little
25 bit about my background may be helpful.

26 Q Thank you.

27 A I attended Tennessee State University and
28 eventually received a bachelor's degree from Spring
29 Arbor College. I've also received a master's degree

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1 in public administration from Western Michigan
2 University. I've attended and graduated from the
3 FBI National Academy, the FBI's law enforcement
4 executive development course, Michigan State
5 University's command and executive course, as well
6 as numerous other courses in training over my nearly
7 40 years of experience in the criminal justice
8 field. I was police chief in Jackson, Michigan, for
9 eight years prior to assuming the police chief's job
10 in Jackson, Mississippi --

11 Q Let me stop you here. Did you begin your
12 law enforcement career at Jack- -- in Jackson,
13 Michigan?

14 A Yes, I did.

15 Q And where did you start and what --

16 A I became certified as a police officer in
17 1972 in Jackson, Michigan. I attended the Southern
18 Michigan Police Academy and received certification
19 in 1972, and I remained at that department until
20 1994.

21 During my career in Jackson,
22 Michigan, I rose through the ranks from patrol
23 officer to become the police chief. Over the course
24 of the 23 years that I served in that department, I
25 performed every role and responsibility and held
26 just about every position in a police department,
27 including a detective, sergeant, lieutenant,
28 captain, deputy chief and police chief.

29 And throughout the 23 years that I

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1 spent in that department, I attended hundreds of
2 schools and seminars and conferences related to
3 police work in general and more specific courses
4 related to investigations and things of that nature.

5 Also, during my career there, I
6 served as an adjunct with Jackson Community College,
7 Lansing Community College at Michigan State
8 University, teaching subjects such as introduction
9 to criminal justice, culture diversity and community
10 policing.

11 Q Okay. And that was just your first job?

12 A That was just my first job. I was offered
13 and accepted the police chief job in Jackson,
14 Mississippi in 1994 where I led the largest police
15 agency here in the State of Mississippi. I became
16 certified as a sworn police officer here in the
17 State of Mississippi in 1995 and hold certification
18 as a licensed police officer.

19 During that time, I also was involved
20 in a number of professional organizations, including
21 the Mississippi Association of Chiefs of Police, the
22 Mississippi FBI National Academy Graduate, the
23 LED -- the Mississippi chapter of the FBI branch. I
24 attended the Drug Enforcement Administration
25 executive courses in that time period as well. I
26 also did adjunct teaching at Jackson State
27 University and at Hinds Community College in the
28 areas of criminal justice investigation, corrections
29 and community policing.

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1 Q All right. In your capacity as police
2 chief of the city of Jackson, Mississippi, did --
3 what, if any, involvement did you have with respect
4 to homicide and major felony investigations?

5 A Well, in both Jackson, Mississippi, and in
6 Jackson, Michigan, I was involved not only in terms
7 of supervising investigations of those kind of
8 crimes but also directly involved in the
9 investigations.

10 As a detective, I had experience in
11 working homicide investigations. And, as a matter
12 of fact, received one of the department's highest
13 awards for a homicide investigation that I conducted
14 during a period of time that I served as a
15 detective. As a sergeant and a lieutenant, I
16 directly supervised the investigation of homicides
17 and approved or disapproved the course and conduct
18 of those investigations.

19 That occurred similarly here in
20 Jackson, Mississippi, where I was directly involved
21 in reviewing every homicide that occurred in the
22 city of Jackson over the course that were generated
23 and the activities that surrounded the investigation
24 of those homicides.

25 Q Did you yourself ever develop the specific
26 protocol for either of these departments for their
27 use in homicide investigations?

28 A Any protocol or procedure developed in any
29 of the police agencies that I've been the head of,

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1 I've had direct involvement in the development of
2 those procedures, whether related to the conduct of
3 a criminal investigation or the conduct of the
4 officers themselves conducting investigations, yes.

5 Q All right. Now, I'm a resident of Jackson
6 now. I didn't live there in 1994. During your --
7 how long were you police chief in Jackson?

8 A I left the position in December of 1997.

9 Q All right. And that was to take another
10 position?

11 A That is correct.

12 Q All right. During that period of 1994 to
13 1997, approximately how many homicides were --
14 occurred in the city of Jackson that you or officers
15 acting under your direct -- well, officers of
16 Jackson Police Department had to investigate during
17 that period, if you can estimate?

18 A Well, the -- my first year in Jackson
19 there were something like 98 homicides; that was
20 just one year. It didn't vary much from that over
21 the next -- the next several years. So if want to
22 add those up, you'll get an idea of just the number
23 that I was involved in one -- one police agency, not
24 counting the Jackson, Michigan or Lansing, Michigan,
25 where I was also police chief and as well in the
26 review of homicide investigations.

27 Q And did this in any of these other
28 positions involve homicides, multiple homicides,
29 homicides where multiple victims were apparently

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1 shot in the same homicidal act?

2 A Or killed.

3 Q Or killed --

4 A Yes.

5 Q -- is that correct? And you've been
6 present for much of the testimony here and you
7 understand from the testimony what the nature of
8 this crime was; is that correct?

9 A That's correct.

10 Q All right. And have you ever, either
11 yourself been involved in investigating or
12 supervised the investigation of triple or quadruple
13 homicides --

14 A Yes.

15 Q -- over the course of your career?

16 A Yes.

17 Q All right. Well, I stopped you -- you
18 were at the Jackson Police Department, and you left
19 in 1997. Where did you go from there?

20 A I took the police chief's position in
21 Lansing, Michigan.

22 Q And how big is Lansing, Michigan?

23 A The population?

24 Q Yeah.

25 A About 190,000 people.

26 Q All right. And it has a state university
27 as does Jackson, Mississippi?

28 A Yeah. Both cities are capital cities.
29 Lansing is the capital of Michigan where Michigan

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1 State University is located, yes.

2 Q All right. And is it safe to say your
3 duties with respect to homicide investigations in
4 Lansing were similar to those you had in Jackson,
5 Michigan and Jackson, Mississippi as chief?

6 A With the exception of the number of
7 homicides, yes. There were quite a few more in
8 Jackson, Mississippi than there were in Lansing,
9 Michigan.

10 Q All right. And where did you go -- and
11 how long did you serve as chief in Lansing,
12 Michigan?

13 A I remained there for two years.

14 Q And what -- what -- where did you go from
15 there?

16 A I was asked by the governor of the State
17 of Mississippi to return here and run the Department
18 of Corrections for him.

19 Q All right.

20 A For the State of Mississippi.

21 Q And which governor was that?

22 A Governor Musgrove.

23 Q All right. And did you accept that?

24 A I did, yes.

25 Q And how long did you serve as commissioner
26 of the Department of Corrections?

27 A Longer than I care to remember. No, but I
28 remained in the position for two years.

29 Q And, now, in that position, you are the

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1 administrator to the entire Department of
2 Corrections; is that correct?

3 **A** That's correct.

4 **Q** Does the Mississippi Department of
5 Corrections have a criminal investigation division
6 within its four walls?

7 **A** It's called integrity investigative
8 division, but they investigate crimes, yes.

9 **Q** Which occur on the premises of the
10 Department of Corrections --

11 **A** Penal institutions. Yes.

12 **Q** -- facilities? And what were the years
13 you were here as commissioner of corrections?

14 **A** 2002 -- 2001 to 2003.

15 **Q** And were you teaching while you were
16 commissioner either for already -- for officers
17 trained or academically during that period?

18 **A** I think there was a period at work where
19 there was a hiatus in doing adjunct teaching, and I
20 believe that that was the time period.

21 **Q** After -- what did you do after leaving the
22 Mississippi Department of Corrections?

23 **A** Well, shortly after -- well, shortly
24 before, of course, 9/11 occurred. And at that point
25 in time, the federal government created this new
26 agency called the Transportation Security
27 Administration, TSA. I had a friend, a colleague
28 from Michigan, who was a deputy undersecretary of
29 that department who asked me to come to work for TSA

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1 in a new position that they were creating in
2 response to 9/11.

3 Q And where was that position and what was
4 that position?

5 A It was as the federal security director of
6 TSA at Detroit Metro Airport where I was responsible
7 for the TSA operations at that airport.

8 Q All right. And that is -- and you
9 commenced those duties when?

10 A Shortly after 9/11.

11 Q All right. Sometime in 2002?

12 A Yes.

13 Q All right. How long -- and in that
14 capacity, were you responsible for supervising any
15 kind of criminal investigations that went on?

16 A As federal security director, our role was
17 limited to what's referred to as the AOA, the
18 airlines operation area, which included anything
19 beyond the secure gate area that you encounter when
20 you go to the airport. We were responsible for
21 anything that occurred thereafter on the airport
22 property. There were inspectors -- federal
23 inspectors that were involved in enforcing DOT
24 regulations with regard to security in AOA
25 operations.

26 Q And then after -- did you leave the TSA
27 post?

28 A Yeah. I reached retirement age and wanted
29 to return here to Mississippi and start my own

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1 business, which I eventually did, yes.

2 Q All right. Are you connected with both
3 Mississippi and Michigan in terms of family and
4 friends and that sort of thing?

5 A Yeah, both. But I think I'm more invested
6 in Mississippi than in Michigan.

7 Q All right. Now, Chief, in the course of
8 being a practicing police officer supervisor and
9 chief of police, aren't there standards generally
10 accepted in the policing and police administration
11 profession for the proper conduct of criminal
12 homicide investigations?

13 A There are for any type of investigation,
14 whether it's homicide or burglary or auto theft or
15 an aggravated assault or a larceny of a vehicle,
16 certainly.

17 Q All right. And are you familiar with the
18 ones that should be generally applied in homicide
19 investigations?

20 A Well, I think -- to be honest with you, I
21 think even the -- the newest police officer, a
22 rookie is aware of certain protocols and procedures
23 to -- that should occur in any investigation,
24 including a homicide.

25 Q And because you are also familiar with
26 them in your -- on the basis of your education,
27 experience and training that you've described thus
28 far?

29 A Well, of course, yes.

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1 **Q** All right. Now, in the course of -- now,
2 you also alluded to the fact you taught adjunct
3 criminal justice. What sort -- what kind of subject
4 matters did you personally teach and what sort of
5 resources did you use to create your courses for
6 teaching?

7 **A** Well, I taught introduction to criminal
8 justice, which covered a wide gamut of different
9 subjects to be encountered in criminal justice. I
10 taught community policing, which focused primarily
11 on crime prevention, reduction of crime and the
12 investigation of crime as well.

13 **Q** All right, sir.

14 **A** I did culture diversity courses which
15 taught the sociology and interaction aspects of
16 police work.

17 **Q** And there is a body of literature and
18 research, et cetera, in the field of criminal
19 justice in criminology which is taught as an
20 academic discipline in the courses which you also
21 taught?

22 **A** Yes. There are a number of publications
23 that are fairly standard texts that are referred to
24 or material that's referred to in any -- in typical
25 investigative courses and those kind of things. A
26 number of those come out of the justice department.
27 One specifically is crime investigation. It's a
28 procedural manual that is published by the U.S.
29 Justice Department. Another that is commonly used

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1 is Vernon Gerberth's Practical Homicide
2 Investigation as well. Those are two that I -- I
3 refer to constantly in talking about and in teaching
4 in these areas.

5 **BY MS. STEINER:** Your Honor, I think I
6 brought the notebook behind somewhere.

7 **BY MS. STEINER:**

8 **Q** Now, does the Justice -- Department of
9 Justice have an office that from time to time
10 convenes technical working groups on various aspects
11 of policing law enforcement and such like?

12 **A** Yes.

13 **Q** And what is that division called?

14 **A** Well, may I refer to my notes here?

15 **Q** You may. I have -- you had handed me
16 something, and if you need -- if that's part of your
17 notes you need to refer to, I can give it to back to
18 you for the time being.

19 **A** Yeah, I think that's it.

20 **BY MS. STEINER:** May I approach, Your
21 Honor?

22 **BY THE COURT:** You may.

23 **BY MS. STEINER:**

24 **Q** If you'd like to step down and retrieve
25 another file you may.

26 **BY THE COURT:** If you need to, yes, sir.

27 **A** Yes.

28 (WITNESS LEAVES STAND TO RETRIEVE FILE
29 AND RETURNS TO STAND)

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1 BY MS. STEINER:

2 Q I was asking you if there's a division of
3 the United States Justice Department which devotes
4 itself to studying and creating standards for police
5 practice in various areas.

6 A Well, I'm not sure about creating
7 standards but certainly developing standards that
8 are, you know, recommended for adoption by the
9 different agencies involved but the office of
10 justice programs out of the National Institute of
11 Justice. And this is a typical publication that you
12 might find from them, crime scene investigation,
13 eyewitness evidence, those sort of things.

14 Q So there are -- would you characterize
15 these as national standards that are arrived at
16 consensus of the people who participate with the --
17 whatever the agency is called?

18 A You know, it's certainly most -- and many
19 of the procedures and protocols outlined here are
20 generally -- are commonly accepted practices
21 throughout much of the country. Even though they
22 may not be categorized, they're still pretty much
23 practiced across the country.

24 Q And are these developed on the basis of
25 practical experience of officers doing this sort of
26 investigation work in their careers?

27 A Oh, of course, yes.

28 Q Do they also take into account the kind of
29 academic work that you rely on and teach within the

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1 academic world of criminal justice?

2 A Yes.

3 Q And are they tested through experience
4 over time; is that --

5 A Well, certainly they are. In developing
6 many of these protocols and/or standards, they have
7 working group members who are -- actually come from
8 the field who are actually involved in many of these
9 activities at the operational level, certainly.

10 Q And has --

11 BY MS. STEINER: May I approach, Your
12 Honor?

13 BY THE COURT: You may.

14 BY MS. STEINER:

15 Q And have -- have these sort of working
16 groups and then does that generally result in a
17 publication to -- well, to at least make available
18 to any law enforcement community the information the
19 justice department has put together as best
20 practices, shall we say?

21 A Yes.

22 Q And, now, I believe -- was -- did the
23 attorney general with the United States, Janet Reno,
24 who served -- who was serving Attorney General, I
25 believe, in 1996, was her justice department -- did
26 it -- was it undergoing those processes? Did those
27 standards exist in 1996, to your knowledge?

28 A I believe they did. And this is an
29 ongoing process. It didn't occur with Attorney

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1 General Reno. It's occurring now as we speak in
2 terms of involvement of the Office of Justice
3 Programs, International Institute of Justice. Their
4 search is ongoing.

5 Q All right. And do you know if in the -- I
6 think the -- this was -- she was the attorney
7 general in the Clinton administration which took
8 office in January of '93. Do you know whether or
9 not such programs were also ongoing under previous
10 Presidents Bush and Reagan as well?

11 A I'm sure, yes.

12 Q And you were a police chief at that time
13 and so also kept familiar with those things?

14 A Yes.

15 Q Thank you. Now, Chief, do you have an
16 opinion -- can you tell this Court whether or not
17 there are basic standards in the law enforcement
18 community based on the kinds of information that
19 you've talked about here regarding organization,
20 supervision, documentation and internal review to be
21 followed in any homicide investigation in order to
22 achieve an accurate and effective investigation of a
23 homicide?

24 A Well, there are certain standards. And,
25 you know, one of the old saws in police work
26 especially is if there is no report, it didn't
27 happen.

28 Q All right.

29 A And that's kind of what's relied on even

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1 at the ground level of police work.

2 Q Now, certainly -- and you are familiar
3 with, among others, that standard; is that correct?

4 A Yes.

5 Q And is that a standard that only applies
6 in a large metropolitan police department such as
7 Jackson, Mississippi or Lansing, Michigan, or is
8 there any exception to those sorts of standards for
9 organization, supervision, documentation, I think
10 you said, particularly an internal review. Is there
11 any exception for small departments?

12 A An officer in a small department is
13 required to have the same certification and the same
14 licensure as a police officer from a larger
15 department. It doesn't matter the size of the
16 department. The qualifications are necessary for a
17 police officer and the standards to be used as that
18 police officer. Of course, what they teach in the
19 academy is some of the basic protocols of report
20 writing and those kind of things.

21 Q Now, Chief, before I get into -- I'm not
22 going to ask you what your opinions are just yet
23 because there's going to have to be voir dire on
24 your qualifications. But have you -- before I get
25 there, on the basis of this education, training and
26 experience that you've -- it's in your resume, and
27 you've explained to His Honor here -- have you been
28 recognized -- qualified and recognized as an expert
29 in, among other things, police procedures in any

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1 courts in the state of Mississippi, state or
2 federal?

3 A I've been recognized in federal district
4 court here in Mississippi as a police procedures, a
5 law enforcement security and safety expert.

6 Q In any state courts?

7 A In Hinds County Circuit Court I have been
8 recognized in those areas as well.

9 Q Now -- and on the basis -- and again, I'm
10 not asking you what they are just yet -- but on the
11 basis of your education, training, experience and
12 what you were provided by way of discovery, et
13 cetera in this matter and what you have heard here
14 in the courtroom from the witnesses, particularly
15 the police witnesses talking about their
16 investigations here, have you formed opinions
17 regarding whether or not the investigation, as
18 described by the witnesses here, was conducted in
19 accordance with the basic protocols and procedures
20 which you've identified as having been developed and
21 which are generally applicable to police entities?
22 Have you formulated an opinion regarding that?

23 A Well, based on my presence here in the
24 courtroom, my observations, reviewing a number of
25 documents and materials that have been submitted to
26 me previously, I have formed several opinions
27 relative to this particular case, yes.

28 Q All right.

29 BY MS. STEINER: Your Honor, I think if we

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1 were actually taking his testimony, I would --
2 he would be tendered for voir dire for his
3 qualifications at this point. Do you want me
4 to go into his substantive testimony right now
5 or does the State want to voir dire with the
6 respect to their motion in limine?

7 **BY THE COURT:** Why don't you just get
8 through with all the things that you're going
9 to question him about, and then I'll just let
10 the State follow up.

11 **BY MS. STEINER:** Thank you, Your Honor.

12 **BY MS. STEINER:**

13 **Q** All right. Chief, I guess we can get into
14 your opinions.

15 **BY THE COURT:** I mean, we're outside the
16 presence of the jury at this time, so....

17 **BY MS. STEINER:** Oh, okay. Thank you.

18 **BY MS. STEINER:**

19 **Q** Chief, I guess, maybe if you could say, I
20 believe you told me that you have three basic areas
21 in which you have opinions on this matter; is that
22 correct?

23 **A** That's correct.

24 **Q** And in those areas in which the
25 investigation did not conform to the standards
26 you've been discussing; is that correct?

27 **A** That's correct.

28 **Q** Would you state -- why don't you state
29 what the areas are, and we'll go into them one at a

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1 time.

2 **A** Well, the management and organization of
3 the investigation itself. In my opinion, the
4 investigation never clearly identified a lead or
5 responsible investigator for this. I've defined
6 that from both my review of the documents that were
7 submitted to me and my observations here in the
8 courtroom. None of the investigators called or
9 testified here would own the investigations.
10 They -- it appeared to be a shared responsibility
11 with nobody directly responsible with each saying
12 this other they thought was responsible for that
13 investigation, and that's no way to conduct an
14 investigation. There has to be somebody who is the
15 recipient of all the information coming from a
16 variety of sources and is able to correlate that
17 information and further direct the direction that
18 the investigation needs to develop.

19 The -- the organization part of that
20 is there should have been a case file that is in
21 depth that included both original notes and reports
22 going forward. Again, most of the testimony I heard
23 was reliant on submission forms as the form of
24 documentation that didn't provide any sort of
25 background about how that submission got to where it
26 was supposed to go and who submitted it there.

27 None of the circumstances behind that
28 ever appeared in any written document. And most of
29 the -- most of the verbal documentation of that was

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1 obscure in terms of remembrances and times and
2 locations and those sort of things. So the
3 organization and management of that investigation
4 was troubling to me in terms of my knowledge about
5 protocol and procedure for them to conduct an
6 investigation.

7 **Q** Now, did -- was -- did you have a
8 second -- and we may return to this in more specific
9 in a few minutes -- but did you have a second area
10 where you felt that what -- that the investigation
11 failed to meet minimal standards for the conduct of
12 any sort of criminal investigation?

13 **A** Well, there are some issues relative to
14 the integrity of the crime scene and/or crime
15 scenes, if you consider a couple of other places,
16 that did not appear to me to be what would be -- to
17 adhere to certain standards. There was no log kept
18 of that scene. The only one that I'm familiar with
19 was one provided in documentation that was conducted
20 or kept by the crime scene investigator who arrived
21 at the scene, you know, hours later.

22 **Q** I'm going to hand you what's D-9 in
23 evidence and ask you if that's what you are
24 referring to.

25 **A** Yes.

26 **Q** Okay. And you are familiar with the fact
27 that the crime scene -- you've read the crime scene
28 investigator's notes; is that correct?

29 **A** Yes, I have.

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1 Q And do you have any problems with how she
2 documented what she or her associate did?

3 A I thought it was an excellent report and
4 conformed, in my opinion, to any standards that are
5 out there.

6 Q All right. And you're familiar that her
7 explanation is that this was prepared only after she
8 and her associate arrived at the crime scene
9 approximately 1:15?

10 A Yes.

11 Q What is -- why is this a problem with
12 respect to having accurate and useful police
13 investigation in a major homicide? What could
14 happen as a result of failing to do this?

15 A Well, a number of things obviously can
16 happen. The scene can become contaminated.
17 Evidence can be overlooked or deposited there
18 perhaps after the crime has occurred that's
19 irrelevant to the scene. There may be a number of
20 issues related to the presence of people at the
21 crime scene, so you want to have a record of when
22 they were there, how long they stayed and when they
23 left.

24 Q All right. Now, at the point you said
25 Ms. Schoene and her associate arrived, was there any
26 way they could reconstruct that and still go about
27 their crime scene investigation duties?

28 A It really wouldn't have been their
29 responsibility to do that before they arrived.

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1 Q That would be an investigator's
2 responsibility?

3 A Or a police officer's responsibility.

4 Q Okay. Now, you -- we did hear testimony,
5 I believe, from Investigator Johnson and possibly
6 Sergeant Matthews concerning the location of where
7 the officers set up kind of their -- their place
8 where they -- where the investigators set up their
9 investigating space, where they met and established
10 their -- whatever it was when they arrived inside
11 the crime scene tape. Was that an issue for you,
12 inside the building, actually.

13 A It certainly is an issue and could become
14 even more of a problematic issue. I'm not real sure
15 how far away from where the bodies and the bulk of
16 the evidence was discovered that was. I wasn't
17 really here and listening to that testimony. But
18 the fact that it was located within the crime scene
19 itself is problematic. Depending on how close in
20 proximity to the -- to the blood and bodies and
21 critical evidence it was, it would become even more
22 problematic.

23 Q All right. But just merely being inside
24 the crime scene perimeter is a problem in and of
25 itself?

26 A Yeah. And having people in and out who,
27 you know, have no association or need to be there,
28 it certainly is.

29 Q All right. Now, did you -- before we get

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1 into the specifics of what was done and wasn't done
2 and why that might have affected either the
3 integrity or the accuracy of the investigation, you
4 had mentioned documentation. Was that a separate
5 area of concern that you discovered in the course of
6 reading these documents and hearing the testimony
7 today?

8 **A** Well, I think that's a recurring theme
9 throughout this is the lack of reports, not just
10 submission forms but the lack of reports giving
11 background to what occurred in this investigation.
12 That confuses everything.

13 The third area I was concerned about
14 was the -- the early focus on one potential suspect
15 to the exclusion of all others. It's okay to very
16 quickly focus on one suspect; that happens all the
17 time, you know. But to the exclusion of all else
18 and all others is where it becomes problematic, and
19 you sometimes lose vital evidence that may be had
20 because you haven't included and kept them in as a
21 potential suspect or person of interest.

22 **Q** All right. Now, in this case the -- well,
23 was there anything about the nature of the crime
24 itself -- and I don't believe you were here for the
25 testimony of the pathologist, but you did review his
26 findings with respect to the injuries suffered and
27 causes of death to these four people. Were there
28 any concerns, given the nature of this crime scene
29 and what you know about the means and manner in

MOTION IN LIMINE - JURY OUT

1 which each of these people died, that would add to
2 the pot, you know, make the narrowing down to just a
3 single suspect as your sole perpetrator a problem in
4 this case?

5 **A** Yeah. It's -- it's -- the question
6 obviously would be whether one person was capable of
7 committing that crime. Given the nature of the
8 wounds that each received or the location of the
9 gunshot wounds and the distance apart that the
10 victims were when they were found, it would suggest
11 that it would be difficult for one person to do
12 that; therefore, it would be -- be very important to
13 not exclude additional suspects even if you zero it
14 on the correct person --

15 **Q** All right.

16 **A** -- it excludes any others simply because
17 you've got a suspect and he very well may be the
18 right suspect. And you can't do that or you
19 shouldn't do that. Protocol would tell you that.

20 **Q** All right. Now, was -- did you find
21 anything troubling about, in particular, what
22 appears to be a decision to treat the report by
23 Mr. Doyle Simpson of the -- the claim of -- the
24 report of Mr. Doyle Simpson that a weapon, a .380,
25 consistent with what was visibly evident at the
26 crime scene, to be the caliber of at least one of
27 the weapons used, to exclude that report in person
28 from consideration, you know, even within the four
29 hours that you might have collected valid gunshot

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1 residue evidence and that sort of thing from him?
2 Was there anything problematic in this investigation
3 about doing that?

4 A Well, simply, it would raise suspicion. I
5 would imagine that it did raise suspicion among the
6 investigators in this case. Reporting the gun being
7 stolen this close to this event, I think that's the
8 reason they sought him out very quickly. I have to
9 assume that it raised some suspicions on their part.

10 Q All right. Now -- now, there's some
11 people -- if I call you from my home in Buckley
12 Drive in Fondren in Jackson and say our handgun was
13 stolen, just -- we came back in from a weekend
14 away -- am I the same kind of -- I mean, am I
15 automatically going to be regarded with suspicion of
16 the circumstances or is this a substantial -- my
17 house was broken into and my handgun was stolen, is
18 that the kind of a burglary that we're talking about
19 in this incident?

20 A No. No, when I said that, the
21 investigators were aware that they had had a
22 homicide committed. When also receiving a report of
23 a gun being stolen, I'm sure there were some
24 suspicions being raised relative to the person
25 reporting the gun being stolen. I'm assuming; I
26 can't get inside their head.

27 Q No. Now, I believe you were here for
28 testimony from Mr. Doyle Simpson himself; is that
29 correct?

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1 **A** That's correct.

2 **Q** And his description during that testimony
3 regarding the nature of his actual duties as a
4 janitor and clean up person on the floor, did you
5 have any concerns when you heard the testimony of
6 the officers whether or not they had followed proper
7 protocols in eliminating him as a suspect on the
8 basis of, as we shall say, alibi or being elsewhere
9 at the time of the events in question?

10 **A** It is my opinion that what occurred in
11 that instance goes back to the one recurring theme
12 in the whole thing -- the lack of communication and
13 reporting of these things and one central repository
14 for this information and somebody evaluating its
15 value to the investigation.

16 One officer interviewed and took
17 statements from Mr. Doyle. Another investigator did
18 something else. Never was there a time when that
19 information was put together to say, Well, Doyle
20 left that building three times to check on his car.
21 Once, I think, to let the windows down, the second
22 time to get his breakfast -- or rather the other way
23 around. Once to get his breakfast, two, let his
24 windows down, and the third time to go out to go
25 pick up lunches or something. Twice, he was at that
26 car and didn't discover the break in. You know,
27 what -- and the other part of that is him admitting
28 that he was out of the building and gone during
29 those times and nobody reported him ever having left

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1 the building, but he himself said that he left three
2 times.

3 Q And the -- I believe he testified that his
4 duties involved him to move around a fairly -- a
5 large factory floor; is that correct?

6 A Yes.

7 Q And would -- again, under those instances,
8 what would a responsible investigation do, assuming
9 that it's -- it's the day of the crime, and you
10 can't talk to 200 people in a factory -- or not that
11 there were that many in the factory that day --
12 would it have been prudent to -- until you really
13 could figure out what these -- resolved these
14 inconsistencies, would it have been prudent to
15 continue having him at least treated as a person of
16 interest and suspect in the same fashion they did
17 Curtis Flowers, such as asking about his
18 whereabouts, taking a gunshot residue test, that
19 sort of thing?

20 A I would think so.

21 Q All right. Now, I think you heard the
22 testimony that after the two officers arrive, a
23 person, who turned out to be the brother of Doyle
24 Simpson, was seen running in the parking lot and
25 actually had to be pursued by the officers. Would
26 that attribute to the investigation on -- you know,
27 two hours -- less than an hour into the
28 investigation, would that indicate that under the
29 standard protocol something further should have been

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1 done with respect to Emmett Simpson once he had been
2 identified and --

3 **A** I think for -- for purposes of you doing
4 that, you could probably stand there and make
5 examples or give me examples, you know, over and
6 over about -- about those kind of things, what if,
7 and I'm not here to -- to hindsight or those kind of
8 things, to Monday morning quarterback, so to speak.
9 My purpose here is to offer an opinion regarding
10 what I think some inadequacies were in that
11 investigation. I know what the examples are, and I
12 can tell you what should have been done, but I think
13 what I'm here to offer is the opinion that the --
14 the lack of adherence to certain protocols led to
15 problems in this case.

16 **Q** All right.

17 **A** Both with the integrity of the evidence,
18 the completion of the -- a complete investigation
19 which isn't complete at this point in time.

20 **Q** That is your opinion?

21 **A** That's my opinion. And that that part of
22 the investigation that was complete has flaws in it.
23 Now, some of those -- some of these flaws can be
24 corrected. Some have gone way past the time where
25 that can occur. So, you know, you can keep asking
26 the performance of individual kind of things, and I
27 can tell you, yeah, but that appears to be
28 hindsight. I think anybody could hindsight and tell
29 you that.

MILLER - DIRECT

1 you call these black shoes?

2 A I would not. They are blue.

3 Q Blue and white, would you say?

4 A Right, blue and white.

5 Q There is no black other than possibly a
6 little mud still sticking to them on this shoe?

7 A Right.

8 BY MS. STEINER: One moment, Your Honor.

9 BY THE COURT: Sure.

10 BY MS. STEINER: Your Honor, we would
11 tender.

12 CROSS-EXAMINATION

13 BY MR. EVANS:

14 Q Good evening, Mr. Miller.

15 A How are you?

16 Q I want to go through just a few of the
17 things that we've been through, but I'm going to
18 limit it. There were two pair of shoes taken off of
19 the Defendant at different times, weren't there?

20 A That is correct.

21 Q Both of them were ten-and-a-halves, weren't
22 they?

23 A They were ten-and-a-halves.

24 Q Now, you knew early on that Filas were
25 involved in the case, didn't you?

26 A I did through Mr. Andrews from the crime
27 lab.

28 Q And that's Joe Andrews --

29 A Joe Andrews.

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LANELLE G. MARTIN, CIRCUIT CLERK

MILLER - CROSS

1 **Q** -- who has testified here? And after you
2 found out early on from him that Filas were
3 involved, what steps did you take at that point to
4 try to find out what kind of Filas were used?

5 **A** I checked at several different shoe stores
6 and mainly the -- I ended up at Conley's Shoe Store
7 in Greenwood.

8 **BY MS. STEINER:** Your Honor, may we
9 approach?

10 **A** And --

11 **BY MR. EVANS:** Wait just a minute.

12 **BY MS. STEINER:** Your Honor, may we
13 approach?

14 (ALL COUNSEL APPROACH THE BENCH FOR A
15 CONFERENCE HELD OUT OF THE HEARING OF THE
16 JURY, TO-WIT:)

17 **BY MS. STEINER:** In light of the Supreme
18 Court's ruling with respect to opinions offered
19 in Flowers II concerning some shoes obtained by
20 Mr. Miller being not properly admitted, both
21 the State and we, in examining Mr. Andrews,
22 dealt only with his -- his 2003 comparison
23 which dealt with insoles actually obtained from
24 Mr. Flowers in which the objectionable
25 information was not admitted.

26 And I -- if -- if Mr. Evans has some
27 reason other than to attempt to bolster the
28 opinion obtained in 2003 by trying to bring in
29 the being admissible identification performed

MILLER - CROSS

1 on the basis of Mr. -- what Mr. Miller
2 obtained, then we would object both under the
3 case law of the case -- well, under Flowers II.
4 And additionally, since that was a hearsay
5 objection, we would excite Belinda Diaz, which
6 varies itself, also a Sixth Amendment
7 violation. And we would ask that it would
8 either be upon improper bolstering with
9 inadmissible and/or would, even if relevant and
10 otherwise admissible, would be both confusing
11 to the jury and possibly misleading to them
12 under Rule 403.

13 And we would ask that no testimony be
14 taken from Mr. Miller concerning his obtaining
15 any shoes for comparison purpose. And in if
16 that's where Mr. Evans is going, we would
17 object to -- make a continuing objection to any
18 questions along those lines.

19 **BY MR. EVANS:** To start with, it would
20 help if she had any idea to know what he was
21 talking before I -- my question to him is did
22 he go to a store and look to try to determine
23 what kind of shoes were used. They have
24 attacked every officer in the case about not
25 doing an investigation. I am not going to get
26 Joe Andrews to compare the shoes he got. That
27 was the only thing the Supreme Court said
28 shouldn't so I won't. He should have used just
29 the Filas that came from the outsoles that was

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1 sent.

2 My questions of this witness are going to
3 be to the extent that he went to Greenwood and
4 looked for shoes and tried to determine what
5 kind of shoes that left that impression and
6 that's it. And if that's not proper, I don't
7 know what could be.

8 **BY MS. STEINER:** I have no objection to
9 that. I wasn't inside his head, and I wanted
10 to --

11 **BY THE COURT:** All right. If something
12 comes up, I'd prefer you to object rather than
13 having some continuing objection, because at
14 the time being, that's not what he's intending
15 to go into.

16 **BY MS. STEINER:** No. That's what -- just
17 the case if he was intending to do that.

18 (BENCH CONFERENCE CONCLUDED)

19 **BY MR. EVANS:**

20 **Q** Mr. Miller, I'm not even sure what I asked
21 you last, but I think it was something to do with
22 did you go to some shoe stores and attempt to
23 determine what kind of shoes had left that
24 impression?

25 **A** I did. And I ended up at Conley's Shoe
26 Store in Greenwood.

27 **Q** And after what information you had
28 received from Joe Andrews and your investigation,
29 did you at that time know that y'all were looking

MILLER - CROSS

1 for Fila Grant Hill tennis shoes?

2 A I was.

3 Q Now, you were asked about gunshot residue
4 kits being used on anybody else. But is there any
5 suggestion that a gunshot residue kit should have
6 been used on anyone else that day?

7 A No, there was not.

8 Q Now, have you got the -- the photo lineups
9 that Porky Collins was shown, Exhibits 142 and 143,
10 he only picked out one person out of these lineups,
11 didn't he?

12 A He did.

13 Q And I think what you said was, "I know the
14 person that I identified as the person that I saw in
15 front of Tardy Furniture." Is that what he said?

16 A That is what he said.

17 BY MR. EVANS: Your Honor, may I have the
18 witness step down?

19 BY THE COURT: You may.

20 (WITNESS LEAVES THE STAND AND TAKES A
21 PLACE IN FRONT OF THE JURY)

22 BY MR. EVANS:

23 Q On Exhibit S-142, which photograph did he
24 point to and identify?

25 A Number four, which is Curtis Flowers.

26 Q Thank you. And as far as the first
27 photograph, he didn't -- photo lineup 143, he didn't
28 pick out anybody?

29 A He did not identify anybody.

MILLER - CROSS

1 Q He compared some complexions and some
2 hairlines?

3 A That's all he did.

4 Q He pointed to number six, who is Doyle,
5 and said, "It's about that hairline"?

6 A That's correct.

7 Q And that is consistent with his; is that
8 correct?

9 A That is correct.

10 BY MR. EVANS: Nothing further, Your
11 Honor.

12 BY THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MS. STEINER:

15 Q I'm handing you back S-143, the lineup
16 with Doyle in it and D-21 for identification. And
17 in addition to saying that the hairline was like
18 that, he did say, quote, "It looked -- but it looks
19 like him;" is that correct?

20 A "But it looks like him," according to the
21 notes of what he said, "but unable to do a positive
22 identification."

23 Q Correct. But it was more than just the
24 hairline; is that correct?

25 A It said that he did -- but it looks like
26 him.

27 Q Yes, thank you.

28 BY MS. STEINER: One moment, Your Honor.
29 That's all I have, Your Honor.

MILLER - REDIRECT

1 **BY THE COURT:** Mr. Miller, you may step
2 down. I'm assuming he's excused?

3 **BY MRS. STEINER:** He may be finally
4 excused.

5 **BY THE WITNESS:** Thank you.

6 **BY THE COURT:** Who would you have next?

7 **BY MS. STEINER:** Your Honor, may we confer
8 for a minute?

9 (PAUSE)

10 **BY MRS. STEINER:** Your Honor, may we have
11 a recess? I see it's 5:00. I don't know what
12 time the Court was planning to adjourn for the
13 night. We do have to have a conference for a
14 few minutes before we make any further
15 announcements.

16 **BY THE COURT:** Okay. If you'll step in
17 the jury room for a minute, ladies and
18 gentlemen.

19 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
20 CONTINUED IN OPEN COURT OUTSIDE THE
21 HEARING AND PRESENCE OF THE JURY, TO-WIT:)

22 **BY THE COURT:** Who would be your next
23 witness?

24 **BY MS. STEINER:** I wish to do -- do you
25 wish to do this outside the presence of the
26 jury? As I said, I'm happy to do -- I have an
27 announcement I can make out of the presence --

28 **BY THE COURT:** Go ahead.

29 **BY MS. STEINER:** Your Honor, we have at

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1 this time -- we know we have Chief Johnson who
2 is the -- we have a motion in limine with
3 respect to him that the Court is going to have
4 to hear outside the presence of the jury, and
5 we have one other non-expert witness, who is
6 actually -- maybe two. I'm sorry. One of
7 whom -- neither of whom are physically here
8 right now. Is that correct? One of whom is
9 actually a bring back order person --

10 **BY THE COURT:** Where is physically the
11 other one?

12 **BY MR. CARTER:** Both of them are in the
13 jail.

14 **BY MS. STEINER:** They're both in jail.

15 **BY THE COURT:** Give him the names, and
16 we'll have -- the sheriff can go get them, and
17 I'll take up the motion in limine while he's
18 going down to the jail and bringing these
19 witnesses up.

20 **BY MR. CARTER:** Do I give it to Your
21 Honor?

22 **BY THE COURT:** You can have the sheriff
23 send a deputy after those from Vaiden.

24 **BY MS. STEINER:** It's just one.

25 **BY THE COURT:** Okay. And I guess -- at
26 some point I always do this, and I guess this
27 would be as good a time as any. I want to go
28 over Mr. Flowers' constitutional right to
29 testify, and I do that in every case I've ever

COURT ADVISES DEFENDANT OF RIGHT TO TESTIFY - JURY
OUT

1 presided over. And since I've got an
2 indication maybe there was only one other
3 witness besides Chief Johnson, I'd like to go
4 ahead.

5 So, Mr. Flowers, if you'll stand, there's
6 a couple of things I want to tell you.

7 (WITNESS STANDS BEFORE THE COURT.)

8 **BY THE COURT:** Mr. Flowers, under the
9 constitution of the State of Mississippi and
10 the constitution of the United States, you've
11 got a constitutional right to testify in your
12 own behalf. Do you understand that?

13 **BY THE DEFENDANT:** Yes, sir.

14 **BY THE COURT:** And under both of those
15 constitutions, you also have a constitutional
16 right to not testify if you choose not to
17 testify. Do you understand that?

18 **BY THE WITNESS:** Yes, sir.

19 **BY THE COURT:** Do you understand if you
20 want to testify and your lawyers told you that
21 you shouldn't, that they thought your case
22 would be stronger if you didn't testify, you
23 could override their misgivings and testify
24 even if they didn't want you to do. Do you
25 understand that?

26 **BY THE DEFENDANT:** Yes, sir.

27 **BY THE COURT:** And, further, do you
28 understand if they wanted you to testify and
29 you didn't, if they thought it would help your

COURT ADVISES DEFENDANT OF RIGHT TO TESTIFY - JURY
OUT

1 case and would be better for you to testify but
2 you did not want to testify, you could not be
3 forced by your lawyers or anyone to testify.
4 Do you understand that?

5 **BY THE DEFENDANT:** Yes, sir.

6 **BY THE COURT:** So ultimately, the decision
7 as to testify or not testify is your decision
8 and yours alone?

9 **BY THE DEFENDANT:** All right.

10 **BY THE COURT:** And so do you understand
11 that?

12 **BY THE DEFENDANT:** I understand.

13 **BY THE COURT:** So if there comes a point
14 where you want to exercise the privilege to
15 testify and your lawyers don't want you to
16 testify, notify the Court and you will be
17 allowed to testify even if they didn't want you
18 to.

19 **BY THE DEFENDANT:** All right.

20 **BY THE COURT:** And I'm sure that you've
21 got very capable lawyers, and I'm sure y'all
22 have discussed those matters already, but I
23 just felt it necessary for the purpose of the
24 record to again advise you of these things. Do
25 you have any questions for the Court about
26 these things that I've just told you?

27 **BY THE DEFENDANT:** No, sir.

28 **BY THE COURT:** Okay. That will be fine.
29 Okay. All right. We had motion filed to

COURT ADVISES DEFENDANT OF RIGHT TO TESTIFY - JURY
OUT

1 exclude evidence and testimony under Rule 702
2 and 608. And I don't know if you want to --

3 **BY MS. STEINER:** Do you want me to -- I'd
4 rather go ahead and qualify him.

5 **BY THE COURT:** I think it might be
6 important to call your witness up here --

7 **BY MS. STEINER:** That's what I --

8 **BY THE COURT:** -- before we hear the
9 motion.

10 **BY MS. STEINER:** Yes, Your Honor. We
11 would have Chief Robert Johnson.

12 **BY THE COURT:** Mr. Johnson, if you'll
13 raise your right hand and take the oath. Do
14 you solemnly swear or affirm the testimony you
15 give in this case will be the truth, the whole
16 truth and nothing but the truth, so help you
17 God?

18 **BY THE WITNESS:** I do.

19 **BY THE COURT:** If you'll come around.

20 **BY THE WITNESS:** Yes, sir.

21 **BY THE COURT:** For the purpose of this
22 motion and for the benefit of the record, state
23 your name, please.

24 **BY THE WITNESS:** Robert Johnson.

25 (DEFENDANT'S EXHIBIT 25, CV OF ROBERT
26 JOHNSON, WAS MARKED FOR IDENTIFICATION FOR
27 MOTION PURPOSES ONLY)

28 **BY THE COURT:** You may proceed.

29 **DIRECT EXAMINATION**

MOTION IN LIMINE - JURY OUT

1 **BY MS. STEINER:**

2 **Q** Chief Johnson, would you tell us what your
3 present business address and profession is.

4 **A** I currently own and operate RL Johnson &
5 Associates Consulting Business in Jackson,
6 Mississippi, where I do expert witness on issues
7 related to criminal liability, safety, law
8 enforcement practices, corrections and federal
9 security issues. I'm also co-partner and co-owner
10 of Mississippi Probation Services, also located in
11 Jackson, Mississippi. We provide supervision to
12 probationers coming out of justice court, municipal
13 court and some pretrial detainees out of circuit
14 court in Jackson.

15 **Q** And that's is Hinds County, Mississippi?

16 **A** That's in Hinds County, Mississippi.

17 **Q** Chief Johnson -- I'm calling you chief.
18 Have you served as the chief of any municipal police
19 departments?

20 **A** I've served as police chief in three
21 different jurisdictions.

22 **Q** All right. And any in Mississippi?

23 **A** Yes, one in Mississippi.

24 **Q** What jurisdiction was that?

25 **A** That was Jackson.

26 **Q** All right. Chief, I'm going to hand you
27 what's been marked D-25 for identification, and ask
28 if that is your curriculum vitae that sets forth
29 your education and experience and other

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1 accomplishments in -- related to the current subject
2 matter of your consulting practice?

3 A Yeah, it is.

4 Q Thank you.

5 BY MS. STEINER: I'd like to offer this
6 into evidence for the purpose of the motion.
7 And assuming he testifies, I'll move it into
8 evidence for purposes of the trial.

9 BY THE COURT: I think it's marked for ID
10 for the purpose of the motion. So in the event
11 of appeal, it would be included in the record
12 so, you know, that will be fine.

13 BY MS. STEINER: All right.

14 BY MS. STEINER:

15 Q Chief, why don't you give a brief history
16 of your professional law enforcement career and, in
17 particular, include what it is in the course of that
18 career that pertains specifically to either
19 conducting homicide, major felony investigations or
20 supervising such investigations or developing the
21 procedures and protocols to be used for such
22 investigations and/or teaching in the academic realm
23 and other officers about methods for performing
24 those investigations.

25 A Well, preparatory to doing that, a little
26 bit about my background may be helpful.

27 Q Thank you.

28 A I attended Tennessee State University and
29 eventually received a bachelor's degree from Spring

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1 Arbor College. I've also received a master's degree
2 in public administration from Western Michigan
3 University. I've attended and graduated from the
4 FBI National Academy, the FBI's law enforcement
5 executive development course, Michigan State
6 University's command and executive course, as well
7 as numerous other courses in training over my nearly
8 40 years of experience in the criminal justice
9 field. I was police chief in Jackson, Michigan, for
10 eight years prior to assuming the police chief's job
11 in Jackson, Mississippi --

12 Q Let me stop you here. Did you begin your
13 law enforcement career at Jack- -- in Jackson,
14 Michigan?

15 A Yes, I did.

16 Q And where did you start and what --

17 A I became certified as a police officer in
18 1972 in Jackson, Michigan. I attended the Southern
19 Michigan Police Academy and received certification
20 in 1972, and I remained at that department until
21 1994.

22 During my career in Jackson,
23 Michigan, I rose through the ranks from patrol
24 officer to become the police chief. Over the course
25 of the 23 years that I served in that department, I
26 performed every role and responsibility and held
27 just about every position in a police department,
28 including a detective, sergeant, lieutenant,
29 captain, deputy chief and police chief.

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1 And throughout the 23 years that I
2 spent in that department, I attended hundreds of
3 schools and seminars and conferences related to
4 police work in general and more specific courses
5 related to investigations and things of that nature.

6 Also, during my career there, I
7 served as an adjunct with Jackson Community College,
8 Lansing Community College at Michigan State
9 University, teaching subjects such as introduction
10 to criminal justice, culture diversity and community
11 policing.

12 **Q** Okay. And that was just your first job?

13 **A** That was just my first job. I was offered
14 and accepted the police chief job in Jackson,
15 Mississippi in 1994 where I led the largest police
16 agency here in the State of Mississippi. I became
17 certified as a sworn police officer here in the
18 State of Mississippi in 1995 and hold certification
19 as a licensed police officer.

20 During that time, I also was involved
21 in a number of professional organizations, including
22 the Mississippi Association of Chiefs of Police, the
23 Mississippi FBI National Academy Graduate, the
24 LED -- the Mississippi chapter of the FBI branch. I
25 attended the Drug Enforcement Administration
26 executive courses in that time period as well. I
27 also did adjunct teaching at Jackson State
28 University and at Hinds Community College in the
29 areas of criminal justice investigation, corrections

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1 and community policing.

2 Q All right. In your capacity as police
3 chief of the city of Jackson, Mississippi, did --
4 what, if any, involvement did you have with respect
5 to homicide and major felony investigations?

6 A Well, in both Jackson, Mississippi, and in
7 Jackson, Michigan, I was involved not only in terms
8 of supervising investigations of those kind of
9 crimes but also directly involved in the
10 investigations.

11 As a detective, I had experience in
12 working homicide investigations. And, as a matter
13 of fact, received one of the department's highest
14 awards for a homicide investigation that I conducted
15 during a period of time that I served as a
16 detective. As a sergeant and a lieutenant, I
17 directly supervised the investigation of homicides
18 and approved or disapproved the course and conduct
19 of those investigations.

20 That occurred similarly here in
21 Jackson, Mississippi, where I was directly involved
22 in reviewing every homicide that occurred in the
23 city of Jackson over the course that were generated
24 and the activities that surrounded the investigation
25 of those homicides.

26 Q Did you yourself ever develop the specific
27 protocol for either of these departments for their
28 use in homicide investigations?

29 A Any protocol or procedure developed in any

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1 of the police agencies that I've been the head of,
2 I've had direct involvement in the development of
3 those procedures, whether related to the conduct of
4 a criminal investigation or the conduct of the
5 officers themselves conducting investigations, yes.

6 Q All right. Now, I'm a resident of Jackson
7 now. I didn't live there in 1994. During your --
8 how long were you police chief in Jackson?

9 A I left the position in December of 1997.

10 Q All right. And that was to take another
11 position?

12 A That is correct.

13 Q All right. During that period of 1994 to
14 1997, approximately how many homicides were --
15 occurred in the city of Jackson that you or officers
16 acting under your direct -- well, officers of
17 Jackson Police Department had to investigate during
18 that period, if you can estimate?

19 A Well, the -- my first year in Jackson
20 there were something like 98 homicides; that was
21 just one year. It didn't vary much from that over
22 the next -- the next several years. So if want to
23 add those up, you'll get an idea of just the number
24 that I was involved in one -- one police agency, not
25 counting the Jackson, Michigan or Lansing, Michigan,
26 where I was also police chief and as well in the
27 review of homicide investigations.

28 Q And did this in any of these other
29 positions involve homicides, multiple homicides,

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1 homicides where multiple victims were apparently
2 shot in the same homicidal act?

3 A Or killed.

4 Q Or killed --

5 A Yes.

6 Q -- is that correct? And you've been
7 present for much of the testimony here and you
8 understand from the testimony what the nature of
9 this crime was; is that correct?

10 A That's correct.

11 Q All right. And have you ever, either
12 yourself been involved in investigating or
13 supervised the investigation of triple or quadruple
14 homicides --

15 A Yes.

16 Q -- over the course of your career?

17 A Yes.

18 Q All right. Well, I stopped you -- you
19 were at the Jackson Police Department, and you left
20 in 1997. Where did you go from there?

21 A I took the police chief's position in
22 Lansing, Michigan.

23 Q And how big is Lansing, Michigan?

24 A The population?

25 Q Yeah.

26 A About 190,000 people.

27 Q All right. And it has a state university
28 as does Jackson, Mississippi?

29 A Yeah. Both cities are capital cities.

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1 Lansing is the capital of Michigan where Michigan
2 State University is located, yes.

3 Q All right. And is it safe to say your
4 duties with respect to homicide investigations in
5 Lansing were similar to those you had in Jackson,
6 Michigan and Jackson, Mississippi as chief?

7 A With the exception of the number of
8 homicides, yes. There were quite a few more in
9 Jackson, Mississippi than there were in Lansing,
10 Michigan.

11 Q All right. And where did you go -- and
12 how long did you serve as chief in Lansing,
13 Michigan?

14 A I remained there for two years.

15 Q And what -- what -- where did you go from
16 there?

17 A I was asked by the governor of the State
18 of Mississippi to return here and run the Department
19 of Corrections for him.

20 Q All right.

21 A For the State of Mississippi.

22 Q And which governor was that?

23 A Governor Musgrove.

24 Q All right. And did you accept that?

25 A I did, yes.

26 Q And how long did you serve as commissioner
27 of the Department of Corrections?

28 A Longer than I care to remember. No, but I
29 remained in the position for two years.

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1 Q And, now, in that position, you are the
2 administrator to the entire Department of
3 Corrections; is that correct?

4 A That's correct.

5 Q Does the Mississippi Department of
6 Corrections have a criminal investigation division
7 within its four walls?

8 A It's called integrity investigative
9 division, but they investigate crimes, yes.

10 Q Which occur on the premises of the
11 Department of Corrections --

12 A Penal institutions. Yes.

13 Q -- facilities? And what were the years
14 you were here as commissioner of corrections?

15 A 2002 -- 2001 to 2003.

16 Q And were you teaching while you were
17 commissioner either for already -- for officers
18 trained or academically during that period?

19 A I think there was a period at work where
20 there was a hiatus in doing adjunct teaching, and I
21 believe that that was the time period.

22 Q After -- what did you do after leaving the
23 Mississippi Department of Corrections?

24 A Well, shortly after -- well, shortly
25 before, of course, 9/11 occurred. And at that point
26 in time, the federal government created this new
27 agency called the Transportation Security
28 Administration, TSA. I had a friend, a colleague
29 from Michigan, who was a deputy undersecretary of

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1 that department who asked me to come to work for TSA
2 in a new position that they were creating in
3 response to 9/11.

4 Q And where was that position and what was
5 that position?

6 A It was as the federal security director of
7 TSA at Detroit Metro Airport where I was responsible
8 for the TSA operations at that airport.

9 Q All right. And that is -- and you
10 commenced those duties when?

11 A Shortly after 9/11.

12 Q All right. Sometime in 2002?

13 A Yes.

14 Q All right. How long -- and in that
15 capacity, were you responsible for supervising any
16 kind of criminal investigations that went on?

17 A As federal security director, our role was
18 limited to what's referred to as the AOA, the
19 airlines operation area, which included anything
20 beyond the secure gate area that you encounter when
21 you go to the airport. We were responsible for
22 anything that occurred thereafter on the airport
23 property. There were inspectors -- federal
24 inspectors that were involved in enforcing DOT
25 regulations with regard to security in AOA
26 operations.

27 Q And then after -- did you leave the TSA
28 post?

29 A Yeah. I reached retirement age and wanted

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1 to return here to Mississippi and start my own
2 business, which I eventually did, yes.

3 Q All right. Are you connected with both
4 Mississippi and Michigan in terms of family and
5 friends and that sort of thing?

6 A Yeah, both. But I think I'm more invested
7 in Mississippi than in Michigan.

8 Q All right. Now, Chief, in the course of
9 being a practicing police officer supervisor and
10 chief of police, aren't there standards generally
11 accepted in the policing and police administration
12 profession for the proper conduct of criminal
13 homicide investigations?

14 A There are for any type of investigation,
15 whether it's homicide or burglary or auto theft or
16 an aggravated assault or a larceny of a vehicle,
17 certainly.

18 Q All right. And are you familiar with the
19 ones that should be generally applied in homicide
20 investigations?

21 A Well, I think -- to be honest with you, I
22 think even the -- the newest police officer, a
23 rookie is aware of certain protocols and procedures
24 to -- that should occur in any investigation,
25 including a homicide.

26 Q And because you are also familiar with
27 them in your -- on the basis of your education,
28 experience and training that you've described thus
29 far?

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1 **A** Well, of course, yes.

2 **Q** All right. Now, in the course of -- now,
3 you also alluded to the fact you taught adjunct
4 criminal justice. What sort -- what kind of subject
5 matters did you personally teach and what sort of
6 resources did you use to create your courses for
7 teaching?

8 **A** Well, I taught introduction to criminal
9 justice, which covered a white gamut of different
10 subjects to be encountered in criminal justice. I
11 taught community policing, which focused primarily
12 on crime prevention, reduction of crime and the
13 investigation of crime as well.

14 **Q** All right, sir.

15 **A** I did culture diversity courses which
16 taught the sociology and interaction aspects of
17 police work.

18 **Q** And there is a body of literature and
19 research, et cetera, in the field of criminal
20 justice in criminology which is taught as an
21 academic discipline in the courses which you also
22 taught?

23 **A** Yes. There are a number of publications
24 that are fairly standard texts that are referred to
25 or material that's referred to in any -- in typical
26 investigative courses and those kind of things. A
27 number of those come out of the justice department.
28 One specifically is crime investigation. It's a
29 procedural manual that is published by the U.S.

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1 Justice Department. Another that is commonly used
2 is Vernon Gerberth's Practical Homicide
3 Investigation as well. Those are two that I -- I
4 refer to constantly in talking about and in teaching
5 in these areas.

6 **BY MS. STEINER:** Your Honor, I think I
7 brought the notebook behind somewhere.

8 **BY MS. STEINER:**

9 **Q** Now, does the Justice -- Department of
10 Justice have an office that from time to time
11 convenes technical working groups on various aspects
12 of policing law enforcement and such like?

13 **A** Yes.

14 **Q** And what is that division called?

15 **A** Well, may I refer to my notes here?

16 **Q** You may. I have -- you had handed me
17 something, and if you need -- if that's part of your
18 notes you need to refer to, I can give it to back to
19 you for the time being.

20 **A** Yeah, I think that's it.

21 **BY MS. STEINER:** May I approach, Your
22 Honor?

23 **BY THE COURT:** You may.

24 **BY MS. STEINER:**

25 **Q** If you'd like to step down and retrieve
26 another file you may.

27 **BY THE COURT:** If you need to, yes, sir.

28 **A** Yes.

29 (WITNESS LEAVES STAND TO RETRIEVE FILE

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1 AND RETURNS TO STAND)

2 **BY MS. STEINER:**

3 Q I was asking you if there's a division of
4 the United States Justice Department which devotes
5 itself to studying and creating standards for police
6 practice in various areas.

7 A Well, I'm not sure about creating
8 standards but certainly developing standards that
9 are, you know, recommended for adoption by the
10 different agencies involved but the office of
11 justice programs out of the National Institute of
12 Justice. And this is a typical publication that you
13 might find from them, crime scene investigation,
14 eyewitness evidence, those sort of things.

15 Q So there are -- would you characterize
16 these as national standards that are arrived at
17 consensus of the people who participate with the --
18 whatever the agency is called?

19 A You know, it's certainly most -- and many
20 of the procedures and protocols outlined here are
21 generally -- are commonly accepted practices
22 throughout much of the country. Even though they
23 may not be categorized, they're still pretty much
24 practiced across the country.

25 Q And are these developed on the basis of
26 practical experience of officers doing this sort of
27 investigation work in their careers?

28 A Oh, of course, yes.

29 Q Do they also take into account the kind of

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1 academic work that you rely on and teach within the
2 academic world of criminal justice?

3 A Yes.

4 Q And are they tested through experience
5 over time; is that --

6 A Well, certainly they are. In developing
7 many of these protocols and/or standards, they have
8 working group members who are -- actually come from
9 the field who are actually involved in many of these
10 activities at the operational level, certainly.

11 Q And has --

12 BY MS. STEINER: May I approach, Your
13 Honor?

14 BY THE COURT: You may.

15 BY MS. STEINER:

16 Q And have -- have these sort of working
17 groups and then does that generally result in a
18 publication to -- well, to at least make available
19 to any law enforcement community the information the
20 justice department has put together as best
21 practices, shall we say?

22 A Yes.

23 Q And, now, I believe -- was -- did the
24 attorney general with the United States, Janet Reno,
25 who served -- who was serving Attorney General, I
26 believe, in 1996, was her justice department -- did
27 it -- was it undergoing those processes? Did those
28 standards exist in 1996, to your knowledge?

29 A I believe they did. And this is an

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1 ongoing process. It didn't occur with Attorney
2 General Reno. It's occurring now as we speak in
3 terms of involvement of the Office of Justice
4 Programs, International Institute of Justice. Their
5 search is ongoing.

6 Q All right. And do you know if in the -- I
7 think the -- this was -- she was the attorney
8 general in the Clinton administration which took
9 office in January of '93. Do you know whether or
10 not such programs were also ongoing under previous
11 Presidents Bush and Reagan as well?

12 A I'm sure, yes.

13 Q And you were a police chief at that time
14 and so also kept familiar with those things?

15 A Yes.

16 Q Thank you. Now, Chief, do you have an
17 opinion -- can you tell this Court whether or not
18 there are basic standards in the law enforcement
19 community based on the kinds of information that
20 you've talked about here regarding organization,
21 supervision, documentation and internal review to be
22 followed in any homicide investigation in order to
23 achieve an accurate and effective investigation of a
24 homicide?

25 A Well, there are certain standards. And,
26 you know, one of the old saws in police work
27 especially is if there is no report, it didn't
28 happen.

29 Q All right.

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1 **A** And that's kind of what's relied on even
2 at the ground level of police work.

3 **Q** Now, certainly -- and you are familiar
4 with, among others, that standard; is that correct?

5 **A** Yes.

6 **Q** And is that a standard that only applies
7 in a large metropolitan police department such as
8 Jackson, Mississippi or Lansing, Michigan, or is
9 there any exception to those sorts of standards for
10 organization, supervision, documentation, I think
11 you said, particularly an internal review. Is there
12 any exception for small departments?

13 **A** An officer in a small department is
14 required to have the same certification and the same
15 licensure as a police officer from a larger
16 department. It doesn't matter the size of the
17 department. The qualifications are necessary for a
18 police officer and the standards to be used as that
19 police officer. Of course, what they teach in the
20 academy is some of the basic protocols of report
21 writing and those kind of things.

22 **Q** Now, Chief, before I get into -- I'm not
23 going to ask you what your opinions are just yet
24 because there's going to have to be voir dire on
25 your qualifications. But have you -- before I get
26 there, on the basis of this education, training and
27 experience that you've -- it's in your resume, and
28 you've explained to His Honor here -- have you been
29 recognized -- qualified and recognized as an expert

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1 in, among other things, police procedures in any
2 courts in the state of Mississippi, state or
3 federal?

4 A I've been recognized in federal district
5 court here in Mississippi as a police procedures, a
6 law enforcement security and safety expert.

7 Q In any state courts?

8 A In Hinds County Circuit Court I have been
9 recognized in those areas as well.

10 Q Now -- and on the basis -- and again, I'm
11 not asking you what they are just yet -- but on the
12 basis of your education, training, experience and
13 what you were provided by way of discovery, et
14 cetera in this matter and what you have heard here
15 in the courtroom from the witnesses, particularly
16 the police witnesses talking about their
17 investigations here, have you formed opinions
18 regarding whether or not the investigation, as
19 described by the witnesses here, was conducted in
20 accordance with the basic protocols and procedures
21 which you've identified as having been developed and
22 which are generally applicable to police entities?
23 Have you formulated an opinion regarding that?

24 A Well, based on my presence here in the
25 courtroom, my observations, reviewing a number of
26 documents and materials that have been submitted to
27 me previously, I have formed several opinions
28 relative to this particular case, yes.

29 Q All right.

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1 **BY MS. STEINER:** Your Honor, I think if we
2 were actually taking his testimony, I would --
3 he would be tendered for voir dire for his
4 qualifications at this point. Do you want me
5 to go into his substantive testimony right now
6 or does the State want to voir dire with the
7 respect to their motion in limine?

8 **BY THE COURT:** Why don't you just get
9 through with all the things that you're going
10 to question him about, and then I'll just let
11 the State follow up.

12 **BY MS. STEINER:** Thank you, Your Honor.

13 **BY MS. STEINER:**

14 **Q** All right. Chief, I guess we can get into
15 your opinions.

16 **BY THE COURT:** I mean, we're outside the
17 presence of the jury at this time, so....

18 **BY MS. STEINER:** Oh, okay. Thank you.

19 **BY MS. STEINER:**

20 **Q** Chief, I guess, maybe if you could say, I
21 believe you told me that you have three basic areas
22 in which you have opinions on this matter; is that
23 correct?

24 **A** That's correct.

25 **Q** And in those areas in which the
26 investigation did not conform to the standards
27 you've been discussing; is that correct?

28 **A** That's correct.

29 **Q** Would you state -- why don't you state

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1 what the areas are, and we'll go into them one at a
2 time.

3 **A** Well, the management and organization of
4 the investigation itself. In my opinion, the
5 investigation never clearly identified a lead or
6 responsible investigator for this. I've defined
7 that from both my review of the documents that were
8 submitted to me and my observations here in the
9 courtroom. None of the investigators called or
10 testified here would own the investigations.
11 They -- it appeared to be a shared responsibility
12 with nobody directly responsible with each saying
13 this other they thought was responsible for that
14 investigation, and that's no way to conduct an
15 investigation. There has to be somebody who is the
16 recipient of all the information coming from a
17 variety of sources and is able to correlate that
18 information and further direct the direction that
19 the investigation needs to develop.

20 The -- the organization part of that
21 is there should have been a case file that is in
22 depth that included both original notes and reports
23 going forward. Again, most of the testimony I heard
24 was reliant on submission forms as the form of
25 documentation that didn't provide any sort of
26 background about how that submission got to where it
27 was supposed to go and who submitted it there.

28 None of the circumstances behind that
29 ever appeared in any written document. And most of

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1 the -- most of the verbal documentation of that was
2 obscure in terms of remembrances and times and
3 locations and those sort of things. So the
4 organization and management of that investigation
5 was troubling to me in terms of my knowledge about
6 protocol and procedure for them to conduct an
7 investigation.

8 Q Now, did -- was -- did you have a
9 second -- and we may return to this in more specific
10 in a few minutes -- but did you have a second area
11 where you felt that what -- that the investigation
12 failed to meet minimal standards for the conduct of
13 any sort of criminal investigation?

14 A Well, there are some issues relative to
15 the integrity of the crime scene and/or crime
16 scenes, if you consider a couple of other places,
17 that did not appear to me to be what would be -- to
18 adhere to certain standards. There was no log kept
19 of that scene. The only one that I'm familiar with
20 was one provided in documentation that was conducted
21 or kept by the crime scene investigator who arrived
22 at the scene, you know, hours later.

23 Q I'm going to hand you what's D-9 in
24 evidence and ask you if that's what you are
25 referring to.

26 A Yes.

27 Q Okay. And you are familiar with the fact
28 that the crime scene -- you've read the crime scene
29 investigator's notes; is that correct?

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1 **A** Yes, I have.

2 **Q** And do you have any problems with how she
3 documented what she or her associate did?

4 **A** I thought it was an excellent report and
5 conformed, in my opinion, to any standards that are
6 out there.

7 **Q** All right. And you're familiar that her
8 explanation is that this was prepared only after she
9 and her associate arrived at the crime scene
10 approximately 1:15?

11 **A** Yes.

12 **Q** What is -- why is this a problem with
13 respect to having accurate and useful police
14 investigation in a major homicide? What could
15 happen as a result of failing to do this?

16 **A** Well, a number of things obviously can
17 happen. The scene can become contaminated.
18 Evidence can be overlooked or deposited there
19 perhaps after the crime has occurred that's
20 irrelevant to the scene. There may be a number of
21 issues related to the presence of people at the
22 crime scene, so you want to have a record of when
23 they were there, how long they stayed and when they
24 left.

25 **Q** All right. Now, at the point you said
26 Ms. Schoene and her associate arrived, was there any
27 way they could reconstruct that and still go about
28 their crime scene investigation duties?

29 **A** It really wouldn't have been their

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1 responsibility to do that before they arrived.

2 Q That would be an investigator's
3 responsibility?

4 A Or a police officer's responsibility.

5 Q Okay. Now, you -- we did hear testimony,
6 I believe, from Investigator Johnson and possibly
7 Sergeant Matthews concerning the location of where
8 the officers set up kind of their -- their place
9 where they -- where the investigators set up their
10 investigating space, where they met and established
11 their -- whatever it was when they arrived inside
12 the crime scene tape. Was that an issue for you,
13 inside the building, actually.

14 A It certainly is an issue and could become
15 even more of a problematic issue. I'm not real sure
16 how far away from where the bodies and the bulk of
17 the evidence was discovered that was. I wasn't
18 really here and listening to that testimony. But
19 the fact that it was located within the crime scene
20 itself is problematic. Depending on how close in
21 proximity to the -- to the blood and bodies and
22 critical evidence it was, it would become even more
23 problematic.

24 Q All right. But just merely being inside
25 the crime scene perimeter is a problem in and of
26 itself?

27 A Yeah. And having people in and out who,
28 you know, have no association or need to be there,
29 it certainly is.

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1 Q All right. Now, did you -- before we get
2 into the specifics of what was done and wasn't done
3 and why that might have affected either the
4 integrity or the accuracy of the investigation, you
5 had mentioned documentation. Was that a separate
6 area of concern that you discovered in the course of
7 reading these documents and hearing the testimony
8 today?

9 A Well, I think that's a recurring theme
10 throughout this is the lack of reports, not just
11 submission forms but the lack of reports giving
12 background to what occurred in this investigation.
13 That confuses everything.

14 The third area I was concerned about
15 was the -- the early focus on one potential suspect
16 to the exclusion of all others. It's okay to very
17 quickly focus on one suspect; that happens all the
18 time, you know. But to the exclusion of all else
19 and all others is where it becomes problematic, and
20 you sometimes lose vital evidence that may be had
21 because you haven't included and kept them in as a
22 potential suspect or person of interest.

23 Q All right. Now, in this case the -- well,
24 was there anything about the nature of the crime
25 itself -- and I don't believe you were here for the
26 testimony of the pathologist, but you did review his
27 findings with respect to the injuries suffered and
28 causes of death to these four people. Were there
29 any concerns, given the nature of this crime scene

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1 and what you know about the means and manner in
2 which each of these people died, that would add to
3 the pot, you know, make the narrowing down to just a
4 single suspect as your sole perpetrator a problem in
5 this case?

6 **A** Yeah. It's -- it's -- the question
7 obviously would be whether one person was capable of
8 committing that crime. Given the nature of the
9 wounds that each received or the location of the
10 gunshot wounds and the distance apart that the
11 victims were when they were found, it would suggest
12 that it would be difficult for one person to do
13 that; therefore, it would be -- be very important to
14 not exclude additional suspects even if you zero it
15 on the correct person --

16 **Q** All right.

17 **A** -- it excludes any others simply because
18 you've got a suspect and he very well may be the
19 right suspect. And you can't do that or you
20 shouldn't do that. Protocol would tell you that.

21 **Q** All right. Now, was -- did you find
22 anything troubling about, in particular, what
23 appears to be a decision to treat the report by
24 Mr. Doyle Simpson of the -- the claim of -- the
25 report of Mr. Doyle Simpson that a weapon, a .380,
26 consistent with what was visibly evident at the
27 crime scene, to be the caliber of at least one of
28 the weapons used, to exclude that report in person
29 from consideration, you know, even within the four

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1 hours that you might have collected valid gunshot
2 residue evidence and that sort of thing from him?
3 Was there anything problematic in this investigation
4 about doing that?

5 **A** Well, simply, it would raise suspicion. I
6 would imagine that it did raise suspicion among the
7 investigators in this case. Reporting the gun being
8 stolen this close to this event, I think that's the
9 reason they sought him out very quickly. I have to
10 assume that it raised some suspicions on their part.

11 **Q** All right. Now -- now, there's some
12 people -- if I call you from my home in Buckley
13 Drive in Fondren in Jackson and say our handgun was
14 stolen, just -- we came back in from a weekend
15 away -- am I the same kind of -- I mean, am I
16 automatically going to be regarded with suspicion of
17 the circumstances or is this a substantial -- my
18 house was broken into and my handgun was stolen, is
19 that the kind of a burglary that we're talking about
20 in this incident?

21 **A** No. No, when I said that, the
22 investigators were aware that they had had a
23 homicide committed. When also receiving a report of
24 a gun being stolen, I'm sure there were some
25 suspicions being raised relative to the person
26 reporting the gun being stolen. I'm assuming; I
27 can't get inside their head.

28 **Q** No. Now, I believe you were here for
29 testimony from Mr. Doyle Simpson himself; is that

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1 correct?

2 **A** That's correct.

3 **Q** And his description during that testimony
4 regarding the nature of his actual duties as a
5 janitor and clean up person on the floor, did you
6 have any concerns when you heard the testimony of
7 the officers whether or not they had followed proper
8 protocols in eliminating him as a suspect on the
9 basis of, as we shall say, alibi or being elsewhere
10 at the time of the events in question?

11 **A** It is my opinion that what occurred in
12 that instance goes back to the one recurring theme
13 in the whole thing -- the lack of communication and
14 reporting of these things and one central repository
15 for this information and somebody evaluating its
16 value to the investigation.

17 One officer interviewed and took
18 statements from Mr. Doyle. Another investigator did
19 something else. Never was there a time when that
20 information was put together to say, Well, Doyle
21 left that building three times to check on his car.
22 Once, I think, to let the windows down, the second
23 time to get his breakfast -- or rather the other way
24 around. Once to get his breakfast, two, let his
25 windows down, and the third time to go out to go
26 pick up lunches or something. Twice, he was at that
27 car and didn't discover the break in. You know,
28 what -- and the other part of that is him admitting
29 that he was out of the building and gone during

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1 those times and nobody reported him ever having left
2 the building, but he himself said that he left three
3 times.

4 Q And the -- I believe he testified that his
5 duties involved him to move around a fairly -- a
6 large factory floor; is that correct?

7 A Yes.

8 Q And would -- again, under those instances,
9 what would a responsible investigation do, assuming
10 that it's -- it's the day of the crime, and you
11 can't talk to 200 people in a factory -- or not that
12 there were that many in the factory that day --
13 would it have been prudent to -- until you really
14 could figure out what these -- resolved these
15 inconsistencies, would it have been prudent to
16 continue having him at least treated as a person of
17 interest and suspect in the same fashion they did
18 Curtis Flowers, such as asking about his
19 whereabouts, taking a gunshot residue test, that
20 sort of thing?

21 A I would think so.

22 Q All right. Now, I think you heard the
23 testimony that after the two officers arrive, a
24 person, who turned out to be the brother of Doyle
25 Simpson, was seen running in the parking lot and
26 actually had to be pursued by the officers. Would
27 that attribute to the investigation on -- you know,
28 two hours -- less than an hour into the
29 investigation, would that indicate that under the

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1 standard protocol something further should have been
2 done with respect to Emmett Simpson once he had been
3 identified and --

4 **A** I think for -- for purposes of you doing
5 that, you could probably stand there and make
6 examples or give me examples, you know, over and
7 over about -- about those kind of things, what if,
8 and I'm not here to -- to hindsight or those kind of
9 things, to Monday morning quarterback, so to speak.
10 My purpose here is to offer an opinion regarding
11 what I think some inadequacies were in that
12 investigation. I know what the examples are, and I
13 can tell you what should have been done, but I think
14 what I'm here to offer is the opinion that the --
15 the lack of adherence to certain protocols led to
16 problems in this case.

17 **Q** All right.

18 **A** Both with the integrity of the evidence,
19 the completion of the -- a complete investigation
20 which isn't complete at this point in time.

21 **Q** That is your opinion?

22 **A** That's my opinion. And that that part of
23 the investigation that was complete has flaws in it.
24 Now, some of those -- some of these flaws can be
25 corrected. Some have gone way past the time where
26 that can occur. So, you know, you can keep asking
27 the performance of individual kind of things, and I
28 can tell you, yeah, but that appears to be
29 hindsight. I think anybody could hindsight and tell

MOTION IN LIMINE - JURY OUT

1 **Q** Now, I'm going to -- I do have one other
2 very specific area of concern that I think we have
3 heretofore discussed. Do you still have the
4 identification procedures protocol developed under
5 Janet Reno in the 1990s? I'm going to hand you
6 Exhibits S-142 and 143 and which are the photo ID --
7 eyewitness ID lineup shown to the witness Mr. Porky
8 Collins. And you were present, I think, for the
9 testimony of both officers who participated in the
10 preparation -- or the officer who prepared those and
11 both officers who participated in the identification
12 that was made or not made from those; is that
13 correct?

14 **A** Yes.

15 **Q** All right. And I believe prior to that,
16 you did read the documentation of what
17 documentation, et cetera, the officers had of this.
18 And did you read the testimony of Mr. Collins? In
19 addition to what was read here in the room, did you
20 also read the testimony of Mr. Collins, Officer
21 Johnson, and Officer Miller -- at least Mr. Collins
22 and Officer Johnson concerning this that was taken
23 back in 1999?

24 **A** Yes.

25 **Q** Now, are there and were there, in 1996,
26 certain generally accepted standards and protocols
27 for the preparation and administration of photo
28 identification lineups recognized in the law
29 enforcement investigative community?

MOTION IN LIMINE - JURY OUT

1 **A** Yes.

2 **Q** Based on what you have heard here in this
3 courtroom and read in the discovery and
4 documentation and prior testimony, do you have an
5 opinion as to whether these photo array lineups as
6 heard -- you seen them, heard them described and the
7 procedures followed in showing them, do you have an
8 opinion as to whether or not they followed those
9 procedures?

10 **A** I would be -- I'm not -- I'm not sure that
11 I understand how they conducted the lineup. I can
12 tell you what the protocol calls for.

13 **Q** If you would do --

14 **A** There were no written reports for me to
15 refer to and make that determination. The only
16 thing that I can tell you is that -- that prior to
17 engaging in a photo array lineup, you should best --
18 you can prepare the witness beforehand before
19 displaying that.

20 **Q** And what -- what do the protocols suggest
21 you do?

22 **A** Well, first of all, obtain as much
23 information as you can from that witness, about the
24 physical characteristics of the suspect or the
25 person that you are attempting to identify.

26 **Q** Was that done in this instance? In any of
27 the documentation you have reviewed or anything you
28 heard today, did you think a sufficient interview of
29 the witness with respect to those things was ever

MOTION IN LIMINE - JURY OUT

1 conducted with Mr. Porky Collins?

2 **A** I've not seen any written report or
3 documentation to indicate to me that they took a
4 statement from him relative to the description
5 provided to him. There should have been a report
6 that said the witness provided this physical
7 description. And then using that physical
8 description as best you can, you put the photo array
9 together.

10 **Q** So they didn't get the basic data before
11 doing this?

12 **A** I do not know whether they did or not.

13 **Q** Oh, I'm sorry.

14 **A** There's been no testimony or written
15 documentation that I've seen that indicated that
16 they did that.

17 **Q** All right. Now, in creating -- well,
18 what's -- maybe just let me step back. The purpose
19 of that photo display array is what? What's the
20 value in an investigation for using one of those
21 things? What are you trying to do when you show
22 someone six pictures, one of whom is the suspect?

23 **A** You're trying to identify a suspect.

24 **Q** All right. You want to see if the witness
25 can identify the person?

26 **A** Yes.

27 **Q** All right. And what is the danger if it
28 is not done right?

29 **A** Well, either because of the array and the

MOTION IN LIMINE - JURY OUT

1 way that it's put together, you can be suggestive to
2 the -- to the witness or you can give certain verbal
3 and nonverbal clues to the witness --

4 **BY THE COURT:** Ms. Steiner, this is taking
5 so long, I'm going to send the jury on.

6 **BY MS. STEINER:** That will be fine, Your
7 Honor.

8 **BY THE COURT:** And we can continue this
9 hearing. But it's no -- I mean, it's taking
10 really a whole lot longer than I thought it
11 would, but I'm going to complete this hearing
12 until the day's out. But I'm going to bring
13 the jury in.

14 Chief, if you'll just step down just a
15 minute, because I don't want any of --

16 **BY THE WITNESS:** Sure.

17 **BY THE COURT:** I mean, you know, I don't
18 want the jury to get any suggestions about
19 anything about you sitting there.

20 **BY THE WITNESS:** Yes, sir.

21 **BY THE COURT:** That will be fine. You can
22 bring them back in.

23 (THE FOLLOWING PROCEEDINGS WERE HAD IN
24 OPEN COURT WITH THE JURY PRESENT, TO-WIT:)

25 **BY THE COURT:** Ladies and gentlemen, I'm
26 taking up some matters that's being heard
27 outside your presence at this time. And so
28 it's really taking a little bit longer than I
29 anticipated. I'm going to continue with that

JURY RELEASED FOR DAY

1 hearing, but I'm going to send you on where you
2 are staying for the night and have you brought
3 back in the morning.

4 So if you'll -- well, if they'll just --
5 if you'll step in the jury room just for
6 minute, and then when they have your
7 transportation lined up. And I'll ask you
8 during the overnight recess to please do not
9 discuss this case with anyone or among
10 yourselves or if you should by chance glance at
11 some newspaper, simply turn the other direction
12 from it.

13 And, as I say, if you'll -- or Mary Lee,
14 you can just walk out in the hall with the jury
15 and make sure there's not anybody -- look and
16 make sure nobody out there. And, of course, if
17 any of you have any belongings in the jury
18 room, well, you can retrieve your belongings.

19 (THE JURY WAS EXCUSED FOR THE DAY. THE
20 FOLLOWING PROCEEDINGS CONTINUED IN OPEN
21 COURT OUTSIDE THE HEARING AND PRESENCE OF
22 THE JURY, TO-WIT:

23 **BY THE COURT:** Chief Johnson, you can
24 return. Ms. Steiner, you may continue.

25 **BY MS. STEINER:** Thank you.

26 **BY MS. STEINER:**

27 **Q** Chief Johnson -- and I'm referring to --
28 we were talking about the photo identification. I
29 believe you have two exhibits there that the court

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1 reporter is going to insist I not let you put inside
2 your briefcase when you leave here, S-142 and 143.
3 Thank you.

4 Now, Chief, I believe you were saying
5 that you didn't find any documentation to tell you
6 how specific -- or you didn't find any documentation
7 or any testimony from any officer from which you
8 could determine that the standard pre- -- the
9 standard interview with the witness had actually
10 occurred prior to the assembly of these photo
11 identification arrays. And then you were telling us
12 that the problem is suggestibility, that you get a
13 false positive identification; is that fair to say?

14 **A** Well, there's suggestibility.

15 **Q** I understand.

16 **A** And it's critical to necessarily prep the
17 witness before you presume the photo array.

18 **Q** Have you seen any documentation of what --
19 are there standard ways in which standard
20 investigative protocols suggest that the witness be
21 prepared?

22 **A** Certainly. But by asking him to view
23 photos -- and you may say, "That's okay if you don't
24 see the suspect in here," making sure that he's not,
25 you know, obligated to make a pick from this array
26 if, in fact, he's not able to. Some investigators
27 say, "Well, can you pick the suspect out of here,"
28 suggesting, you know, to the witness that he's in
29 here. And it's okay to say -- or you should say to

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1 the witness, "It's okay if you can't make a
2 description. The suspect may not be in this photo
3 array."

4 Q All right. And did you see any
5 documentation that suggested that that preparation
6 had been made of Mr. Collins on the day he viewed
7 these arrays?

8 A There wasn't anything in there, but that's
9 not to suggest that the officer didn't know that and
10 I've heard no evidence to indicate that that was
11 done. But that's not suggesting that the officer
12 who did do this did not do that.

13 Q All right.

14 A I'm not suggesting that.

15 Q All right. But there was no testimony
16 from either of the officers who displayed this about
17 that, though, was there? Strike that.

18 Now, with respect to the composition
19 of the array, either of those arrays, one with Doyle
20 Simpson in it or the one with Curtis Flowers in it,
21 is there anything -- strike that.

22 Are there standards for selecting
23 filler pictures, the non-suspect pictures that would
24 go in a six -- a six-person photo array? Are there
25 customary standards in the profession for making
26 those selections of those filler pictures?

27 A Well, you would certainly want a close
28 connection in terms of standard size and those kind
29 of things.

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1 **Q** All right. Now, did either of these photo
2 arrays -- is there anything, just even in isolation,
3 about either S-140- -- well, particularly S-142, the
4 one with Curtis Flowers in it, that appears not to
5 conform to the basic selection standards in the
6 profession of filler photos given that you now
7 know -- you know which one is Curtis Flowers in that
8 array; is that correct?

9 **A** Yes.

10 **Q** And which number is that?

11 **A** Four.

12 **Q** All right. Now, is there anything just in
13 that array, knowing Curtis Flowers is the suspect,
14 that appears that the standards for selection of
15 non-suggestive photographs and fillers fail to
16 conform to -- that the actual selection of the
17 photograph of the suspect and the filler photographs
18 fail to conform to standard protocols and procedures
19 for eyewitness identification photo array
20 procedures?

21 **A** It's problematic relative to the type of
22 photos and the physical characteristics of the
23 fillers.

24 **Q** All right. Would you -- why don't you
25 just be specific about what -- what's problematic.

26 **A** The physical characteristics of the
27 fillers are close resemblance to each other, other
28 than number four, which is neither physical
29 characteristics nor is the size and type of the

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1 photo is.

2 Q All right. And is it your opinion, based
3 on your training, experience and a familiarity with
4 the standards applicable to photo identification,
5 eyewitness identification arrays, that as a
6 consequence of this, this is a potentially
7 suggestive photo array? Assuming, knowing --

8 A In my opinion it is.

9 Q What?

10 A In my opinion it is.

11 Q All right. Now, I don't know that I've
12 even ever asked you this before, but as long as
13 we're doing this I'll ask. If you look at 143, the
14 one with Doyle Simpson in it, are there any problems
15 with either the fillers or the nature of the photos
16 of Mr. Simpson and the other -- other people in it?
17 Do they have similar problems or don't they? I
18 really don't know what your answer is going to be,
19 sir.

20 A Well, comparing the two photo arrays,
21 the -- the characteristics here are -- are less
22 suggestive than the one here.

23 Q In -- so when you're saying the
24 characteristics of S-143 appear to be less
25 suggestive than the characteristics of S-142; is
26 that correct?

27 A Yes.

28 Q And S-142 is the photo array from which
29 the testimony is that Porky Collins' identification

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1 of Curtis Flowers; is that right?

2 **A** Yes.

3 **Q** All right. And he also testified he was
4 unable to make a certain identification with respect
5 to anybody in S-143, although he did make some
6 remarks about the similarity of Doyle Simpson to the
7 man he saw; is that correct? I'm sorry. Is -- the
8 testimony here that you heard in 143 the witness did
9 actually point to number six and say that looks --
10 he looks like the man but did not make a positive
11 identification; is that right?

12 **A** I believe I heard that, yes.

13 **Q** Okay. And just in case the jury does get
14 to hear this, I want to make sure we're clear about
15 what it is.

16 Let me just reiterate here, Chief,
17 rather than going through dozens of examples from
18 the testimony. Just on the basis of having read the
19 records you read, heard the testimony you heard
20 today, it is your opinion on the basis of your
21 education, training and experience and familiarity
22 with the standards of academic and practical for a
23 homicide investigation that this homicide was not --
24 that the team which investigated this homicide was
25 not organized in a fashion that conforms to those
26 standards; is that true?

27 **A** That would be a fair statement, yes.

28 **Q** All right. And would it be a fair
29 statement to say that the documentation created by

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1 that team, in your opinion, based on your education,
2 experience and familiarity with both the practical
3 and academic protocols that the documentation failed
4 to met minimal standards?

5 A Yes.

6 Q And it is your opinion that as a result of
7 those failures, again, on the basis of your
8 education, experience, training and familiarity with
9 the standards, both academic and practical, is it
10 your opinion that the investigation in this case,
11 even today, 15 years later, is incomplete and not
12 yet adequate to have fully eliminated all possible
13 suspects or gained all possible information in this
14 particular case?

15 A Yes.

16 Q And is it your opinion that the -- and you
17 have an opinion -- is it your opinion, again, on the
18 basis of your education, experience, training and
19 familiarity with the standards both academic and
20 practical with people in law enforcement that the
21 identification of Curtis Flowers as the sole suspect
22 in this was made prematurely given the facts and
23 circumstances at the time it was made?

24 A No, I can't say that.

25 Q Okay. That's -- I'm sorry.

26 A Prematurely, no, I can't say that.

27 Q Is it -- forgive me. Is -- as a
28 consequence of the things you have already opined,
29 do you have an opinion on whether or not the

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1 investigation that preceded after the focus was
2 narrowed to Mr. Flowers adequately investigated
3 alternatives to Mr. Flowers as the only, of course,
4 prime -- the only suspect in these murders. Do you
5 have an opinion on that?

6 **A** It was not adequate, no.

7 **Q** All right. Thank you. Just a minute.

8 **BY MS. STEINER:** Your Honor, that, I guess
9 is both our tender of him as an expert witness
10 in the field of criminal investigation
11 procedures and a proffer for testimony that he
12 would offer to the jury in general regarding
13 his opinions. And allow me to say that,
14 without waiving our position, that this is
15 entirely admissible and relevant in its
16 entirety with respect to all positions; that in
17 the event the Court rules that the jury will
18 not be allowed to hear the expert opinions
19 regarding the investigation in general, we
20 would, with respect to the testimony and
21 opinions regarding the photo arrays shown to
22 Porky Collins, the first thing I would do is
23 respectfully renew our motion under Rule 403 to
24 exclude from the jury's consideration any of
25 the testimony regarding this Porky Collins'
26 photo identification.

27 And then, again, without waiving either --
28 and frankly, Your Honor, it is so pervasive in
29 this that I would have to move for a mistrial

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1 on that basis because of the improper
2 information before the jury. And then without
3 waiving either that motion, the motion --
4 without waiving the right to admit all of the
5 testimony and without waiving our motion for
6 mistrial because of what is now self-evidently
7 improper evidence under Rule 403 regarding the
8 photo identification. Assuming those motions
9 are not granted by Your Honor, we would move in
10 the alternative and without waiving any other
11 motion to permit the jury to hear at least
12 Chief Johnson's testimony with respect to the
13 photo identification procedures so that they
14 may -- I think it's fully relevant to the
15 factual determination they must make as to
16 whether or not Mr. Collins' identification of
17 Mr. Flowers as a person he saw near the crime
18 scene is a valid identification of the product
19 of something other than an actual observation
20 and that this Mr. -- Chief Johnson is clearly
21 qualified to give this opinion on the basis of
22 his education, training, experience and that
23 this is evidence the jury should have in
24 arriving at the conclusion. And that
25 therefore, it's relevant and admissible and
26 properly the subject of expert testimony from
27 this particular witness given his
28 qualifications.

29 So I've made three motions, and I believe

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1 the State has a motion in limine as to one.
2 And I have no idea what its position is on the
3 third, and I assume it's going to oppose the
4 mistrial.

5 BY THE COURT: Are y'all going to oppose
6 the mistrial?

7 BY MR. WHITFIELD: Yes, Your Honor.

8 BY MR. EVANS: Yes, sir, we will.

9 BY MR. HILL: Yes, sir, we will.

10 BY MR. EVANS: I'm glad she spoke for us.

11 BY MR. WHITFIELD: I guess, Your Honor,
12 that was such a long motion at the end. I'm
13 going to start kind of backward and work
14 forwards. I would first state the Court's
15 already ruled that the lineups in question were
16 not impermissibly suggestive as stated by the
17 Courts. We've had a full hearing on that
18 matter. The Court's have held and the
19 testimony before with the various things that
20 would make a lineup -- one was wearing a
21 jacket, one was wearing a hat, we had different
22 hair lengths, different size photos. All this
23 stuff the Supreme Court has ruled does not make
24 a photo lineup impermissibly suggestive to
25 require its exclusion.

26 The Court's been fully briefed on that
27 matter, and we stand on that prior testimony,
28 and nothing new today has gone to counter that
29 testimony that the lineups were impermissibly

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1 suggestive so as to require their exclusion,
2 which would negate the purpose for the -- I
3 believe she called it a retroactive 403 motion
4 to -- however the motion is styled, we submit
5 that these photo lineups are not impermissibly
6 suggestive to require exclusion.

7 May I proceed with the witness, Your
8 Honor?

9 **BY THE COURT:** You may.

10 **CROSS-EXAMINATION**

11 **BY MR. WHITFIELD:**

12 **Q** Now, Chief Johnson, isn't it true that
13 there are no minimum standards in Mississippi even
14 today as to what is necessary for a minimum standard
15 for an investigation?

16 **A** True.

17 **Q** So there's no minimum standard that these
18 officers should have followed to conduct this
19 investigation in Mississippi even today?

20 **A** True.

21 **Q** And the guidelines that you talked about
22 that are put out by the justice department and
23 various other agencies are aspirational goals and
24 not minimum standards?

25 **A** I don't know what aspirational goals
26 means.

27 **Q** The things that we -- that in the law
28 enforcement community that you tend to strive for,
29 that they are the guidelines that you want to do but

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1 they're not the minimum?

2 **A** There are guidelines that are suggested by
3 the U.S. Justice Department.

4 **Q** So they're suggested guidelines and none
5 of these are required guidelines?

6 **A** No, they're not required.

7 **Q** And to your knowledge, nationwide, there
8 are no required minimum guidelines?

9 **A** No.

10 **Q** And would you also agree with me that
11 there are investigations done every day where
12 reports are not written?

13 **A** True.

14 **Q** And you cannot empirically testify whether
15 these investigations are more reliable than not,
16 that they led to the wrong result?

17 **A** I can testify that -- that a -- an
18 investigation that is well documented by reports is
19 much more likely to be a complete investigation as
20 opposed that those that lack those reports.

21 **Q** But you can't say that they lead to the
22 wrong result?

23 **A** I can say with some certainty that the
24 conclusion of that -- that investigation is likely
25 to be more complete than those that lack the
26 reports.

27 **Q** Now, you also said that you drafted the
28 guidelines for the various agencies you worked with;
29 is that correct?

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1 **A** Policies and procedures that we've talked
2 about.

3 **Q** And you did not draft the policies and
4 procedures of the Mississippi Highway Patrol?

5 **A** No.

6 **Q** The investigation bureau?

7 **A** No.

8 **Q** You didn't draft the policies and
9 procedures of the Winona Police Department?

10 **A** No.

11 **Q** And since there are no minimum standards,
12 all they have is what you believe, in your opinion,
13 is what they should have done?

14 **A** What I -- what my opinion is based upon is
15 generally accepted practices in police work.

16 **Q** But did they fall below a minimum
17 standard?

18 **A** They fall below what's generally accepted
19 as an acceptable investigation by police
20 departments, large and small.

21 **Q** Let me rephrase my question. You said
22 there was no minimum standard. You said there was
23 no standard that -- or you knew there were
24 investigations done all the time without reports; is
25 that correct?

26 **A** There are no minimum standards for
27 conducting a criminal investigation that says you
28 are required to do this, this and this. But it is
29 generally accepted in an investigation that certain

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1 steps and procedures are to be accomplished.

2 Q And those certain steps would be to
3 canvass the crime scene for clues?

4 A One of those would be, yes.

5 Q To go down the streets looking in manhole
6 covers to find and see if there was evidence?

7 A That's correct.

8 Q To talk to coworkers of possible suspects
9 to rule out their involvement?

10 A That's correct.

11 Q To do gunshot residue tests on potential
12 suspects?

13 A And do it correctly, yes.

14 Q To go and interview neighbors and people
15 in the community that may have seen things?

16 A Yes, of course.

17 Q So all those things that they've done are
18 part of these guidelines that you're talking about?

19 A Generally accepted practices, yes.

20 Q So they did follow generally accepted
21 practices by --

22 A Yes.

23 Q -- doing all of these things?

24 A Yes.

25 Q Now, one of the other areas that you
26 talked about -- I'm going to try to hit these in the
27 order that you talked about them -- is the first
28 area was management and organization; is that
29 correct?

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1 **A** That's correct.

2 **Q** And it's your theory or opinion in this
3 case that because there was no lead investigator
4 that this investigation was fatally flawed?

5 **A** I don't know where the term fatally flawed
6 came from.

7 **Q** So what is your opinion as to the status
8 of this investigation because there was no
9 identified person that was in charge?

10 **A** That certain information may have been
11 missed. That certain documents throughout the
12 course of this trial that were referred to were not
13 present. There was no report of activity that was
14 significant to the investigation here available
15 either for you or for the other side of this case.

16 **Q** And, now, I understand that you worked for
17 larger police departments, Jackson, Mississippi;
18 Lansing, Michigan; I believe Jackson, Michigan?

19 **A** Yes.

20 **Q** Department of Corrections, TSA,
21 departments with large manpower; is that correct?

22 **A** That's correct.

23 **Q** So is it not also a common practice in
24 smaller departments, in rural communities for people
25 to band together?

26 **A** Of course, yes.

27 **Q** And I believe as the chief of Jackson,
28 you're familiar with territorial conflicts where
29 sheriffs don't like police encroaching on their

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1 turf, police don't like sheriffs encroaching on
2 their turf, and you've dealt with these conflicts?

3 A Yes.

4 Q Now, isn't it the case in this incident
5 everybody pooled together; there was no conflict?

6 A I'm not aware of what the relationship was
7 in terms of that question. I don't know.

8 Q And you did review the -- the
9 documentation? There was some 2,000 pages of
10 documents, give or take. Did you review all of
11 these documents?

12 A Everything that was given to me.

13 Q Did you review the trial transcripts?

14 A Some of them, yes.

15 Q So you didn't review all of them?

16 A No.

17 Q You're not sure if you reviewed all
18 2000-plus pages of discovery?

19 A I reviewed every piece of paper and
20 discovery that was provided to me. I have a list if
21 you'd like it.

22 Q And see the video of the crime scene?

23 A Yes.

24 Q All the -- listen to all the tapes?

25 A Yes.

26 Q So they did document a lot of the things
27 they did, some 2000-plus pages, some 40 interviews,
28 a video tape, investigator notes, the physical
29 evidence here, the crime lab submissions. There was

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1 documentation.

2 A A lot of the reports were not documented.

3 Q But a lot that were?

4 A I don't know because there were no reports
5 to indicate that it occurred.

6 Q And can you say to a reasonable degree of
7 certainty that this investigation would have turned
8 out differently had these been there?

9 A That I can't tell you, no.

10 Q So you have no way to state reliably one
11 way or another whether this investigation would have
12 turned out differently?

13 A I cannot state that. I can tell you that
14 the investigation, in my opinion, wasn't completed.
15 Now, whether it's completed, it still remains the
16 same.

17 Q So there's no way to empirically test your
18 opinion?

19 A Well, you can surmise certain things.

20 Q And that would be speculation on your part
21 as to what could have been done differently?

22 A Well, certainly, I can advise you about
23 things that could be done. Now, whether the
24 conclusion would come out any differently, I don't
25 know that any of us could predict that. But I think
26 you do a disservice to both your case and the other
27 side's case by not completing the investigation
28 properly.

29 Q Now, I believe the comment was -- let me

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1 find it in my notes because I don't want to misquote
2 you: There's no report that didn't happen; is that
3 correct?

4 A That's correct.

5 Q So the majority of your opinion is going
6 to the credibilities of these officers who have
7 testified to the things they did because they didn't
8 write a report?

9 A That's a common axiom used in police work,
10 as you probably well know. It doesn't go to the
11 credibility of the officers that were testifying.

12 Q Now, you drafted an opinion in the case;
13 is that correct?

14 A That's correct.

15 Q And you said that the problem with this
16 documentation was the failure to substantiate the
17 recollection of the officers?

18 A That's correct.

19 Q So that's going to the cred- -- your
20 opinion is going to the credibility of the officers
21 for their failure to be able to substantiate their
22 recollections?

23 A And in some cases, no recollection, I
24 think, is probably more accurate.

25 Q Now, back to my other point -- I know I'm
26 jumping around, and I get sidetracked. I go one way
27 and then come back. You know of many -- there have
28 been many investigations in this state and
29 nationwide where agencies have come together in a

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1 shared or task force manner; is that correct?

2 A That's correct.

3 Q So that's not an uncommon thing for
4 agencies to come together and work in a task force
5 manner?

6 A Of course not. It's commendable.

7 Q With each person also responding to their
8 own individual agency head?

9 A And protocols and procedures, yes.

10 Q So that's not uncommon in the profession?

11 A No, it is not.

12 Q The other part of your management opinion,
13 if I understood it correctly -- and please correct
14 me if I misstate you -- is that the case isn't done
15 because they didn't do an index of the file?

16 A That's a mischaracterization of it.

17 Q And so --

18 A There was no central repository for all
19 the information coming from disparate sources. You
20 had the task force together involving three
21 different and distinct agencies, probably four if I
22 really think about it -- the D.A.'s office, Winona
23 police, the sheriff's department and the MBI. But
24 there was no one repository for this information
25 that was coming in for everybody who's involved in
26 this investigation to share and to be aware of
27 different aspects of the investigation.

28 Q Now, I know that you sat through some of
29 the testimony. I know you haven't been here for all

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1 of it. And would it change your opinion, based on
2 the testimony that they did have regular meetings at
3 the Winona Police Department -- I believe it's now
4 the EOC -- to discuss the case and that the
5 documents all wound up into one central place at the
6 district attorney's office?

7 A What documents were those?

8 Q The whole file.

9 A Reports of their activities?

10 Q The documents in existence, the central
11 repository you referred to.

12 A I know that. I already surmised that it
13 wound up at the district attorney's office. I --
14 yeah.

15 Q And that would count as a central
16 repository?

17 A Well, the courtroom could count as the
18 central repository if you brought the information in
19 and sat it down some place.

20 Q And the meetings they had where they met
21 and shared information?

22 A It's what?

23 Q The meetings where they met and shared
24 information, that would also be --

25 A Exactly, yes.

26 Q -- counter to your opinion that they
27 didn't do this?

28 A No. My opinion is that there was no place
29 for these resources to go for somebody, a leader or

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1 a manager of this investigation to review all of the
2 disparate information that's coming in, not just
3 simply to bring a file and set it on a table. I'm
4 not talking about a filing repository. I'm talking
5 about a place where the information could be perused
6 by somebody managing the information and directing
7 the investigation.

8 Q And I also want to go back to one of the
9 things you said. You are not an expert in forensic
10 pathology; is that correct?

11 A No, I am not.

12 Q So by the positions of the bodies, the
13 types of wounds they had, you can offer no opinion
14 as to whether one shooter could have done that or
15 not?

16 A I can offer an opinion, but it's not an
17 expert forensic opinion.

18 BY MS. STEINER: Your Honor, for the
19 record, under Edmonds, I think we have said
20 even a forensic pathologist cannot necessarily
21 offer that sort of an opinion. I object to him
22 even pursuing this line.

23 BY MR. WHITFIELD: I thought that's what
24 she offered, Your Honor.

25 BY MR. EVANS: That's what she offered.

26 BY THE COURT: Well, I know what Edmonds
27 said, but that's -- your questions of Chief
28 Johnson certainly are indicating that maybe you
29 didn't know what it said.

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1 **BY MR. WHITFIELD:** Me, Your Honor?

2 **BY THE COURT:** No, her. I am familiar
3 with it, but her question suggested she was
4 not. But thank you for clearing up that you
5 are familiar with that.

6 **BY MR. WHITFIELD:** One moment, Your Honor.

7 **BY MR. WHITFIELD:**

8 **Q** Now, also, if I understand your testimony
9 a few minutes ago, you said you offered no opinion
10 as to the photo lineups?

11 **A** I'm sorry?

12 **Q** You said you had no opinion as to how the
13 photo lineups were conducted.

14 **A** That's because I don't how they were
15 conducted.

16 **Q** So basically, you have no opinion in that
17 area?

18 **A** I provided her information of how a photo
19 lineup or array should be submitted. I don't know
20 how that occurred so I don't have any opinion about
21 it. Had there been a report indicating the way that
22 the photo array was presented, I may be able to form
23 an opinion. I don't have an opinion about it.

24 **BY MR. WHITFIELD:** I tender back, Your
25 Honor.

26 **REDIRECT EXAMINATION**

27 **BY MS. STEINER:**

28 **Q** Chief, certainly I wasn't talking about a
29 forensic opinion on means of death. I'm talking

ROBERT JOHNSON - PROFFERED REDIRECT

1 about an investigator sees a body with a knife
2 sticking out of the heart. It says one kind of --

3 **BY MR. WHITFIELD:** Your Honor, I'm going
4 to object to this because as we discussed in
5 Edmonds, he's not offering any forensic
6 pathological testimony as to death, and I
7 believe the Edmonds case was pretty on point on
8 that. You know, from wounds you don't go
9 backwards and talk about how many shooters or
10 anything else.

11 **BY MS. STEINER:** I agree, Your Honor. I'm
12 just saying -- let me clarify.

13 **BY MS. STEINER:**

14 **Q** My question was: Just as an experienced
15 investigator walking on a scene, seeing four bodies
16 with one shot -- or two closely placed shots in the
17 head, do you draw different conclusions about what
18 to look for than when you draw -- walk into a crime
19 scene with one person with a knife sticking out into
20 his heart?

21 **A** Well, yeah. An investigator's going to
22 draw conclusions from both -- both scenes, yes.

23 **Q** All right. And are they different?

24 **A** Or form an opinion about each case.

25 **Q** And a reasonable invest- -- and what the
26 investigator sees at the crime scene, am I correct,
27 is one of the factors she may add into planning what
28 the next investigation steps should be?

29 **A** It certainly would give you a notion or an

ROBERT JOHNSON - PROFFERED REDIRECT

1 idea of which direction to go with the
2 investigation, at least initially, yes.

3 Q If she were the manager she -- or director
4 of -- or the leader of that investigation, would
5 that affect what tasks and what kind of assignments
6 she would give the people working under her
7 supervision?

8 A Yeah. It would give the person some idea
9 of how to initiate the investigation and what
10 activities you'd be involved in. Yes. Sure.

11 Q And is it your opinion that a properly
12 organized investigation with a leader, the -- the
13 crime scene, as observed and documented by Ms.
14 Schoene did, in fact, suggest investigative leads
15 and activities that there is no record of occurred
16 in this case? That -- were there leads suggested
17 just from this crime scene that did not appear from
18 the documentation in the case at least to have been
19 pursued?

20 A I'm sure -- I'm having trouble
21 understanding the question.

22 Q I'm sorry. We're both tired. I'll just
23 move on.

24 A Maybe I can --

25 BY MS. STEINER: See if you can tell me
26 the question I need to ask.

27 BY MR. EVANS: Well, I don't that would be
28 very proper, either.

29 BY THE COURT: I don't, either.

ROBERT JOHNSON - PROFFERED REDIRECT

1 **BY MS. STEINER:**

2 **Q** All right. Okay. Your opinion is the
3 investigation in this matter is not, as we stand
4 here on June 17th, 2010, complete; is that correct?

5 **A** That's correct.

6 **Q** And are some of the things that have not
7 yet been done suggested by the findings of the crime
8 scene as it looked when Ms. Schoene documented it at
9 approximately 1:15 on July 16th, 1996?

10 **A** I can't relate the crime scene to the
11 completeness or incompleteness of the investigation.
12 It's based on a number of things that have occurred
13 during the investigation, not just one single crime
14 scene.

15 **Q** Thank you. Now, I -- the -- well, I don't
16 want to go back through a whole huge laundry list,
17 but the State did ask about some very specific
18 stuff. Canvassing the area for clues, did you detect
19 any report -- even investigator notes, much less any
20 reports or systematic summary documentation of any
21 canvassing activities of the businesses surrounding
22 Tardy's Furniture in what you reviewed in those
23 documents or what you heard in the courtroom here
24 today?

25 **A** No other than what I heard during
26 testimony.

27 **Q** But you didn't -- did you see a single
28 report by an officer that said, "I went to
29 Coast-to-Coast and spoke to xyz at three in the

ROBERT JOHNSON - PROFFERED REDIRECT

1 afternoon," anything like that?

2 **A** No.

3 **Q** With respect to investigation of
4 coworkers, other aspects of the business, did you
5 detect any testimony or documentation, testimony
6 here today from any of the off- -- or any in this
7 trial from any of the officers or in any of the
8 documents you reviewed prior to this trial to
9 indicate that any invest- -- is there any
10 documentation of investigation of the circumstances
11 of the business itself or the other workers at that
12 business was conducted?

13 **A** No.

14 **Q** Similarly -- and then finally, assuming,
15 Chief Johnson, everything that has come out of the
16 mouth of every police officer who has testified here
17 in this trial today and whose testimony you have
18 previously read is the truth, as that officer best
19 recalls it to the best of his or her recollection,
20 even assuming that it is all truthful, you don't
21 question the veracity of what they say, does that
22 change any of the opinions you have offered here
23 today?

24 **A** I understood the question until the end.
25 I do not question any person's testimony, veracity
26 of any of the investigators' testimony, no.

27 **Q** Thank you. Thank you.

28 **BY MS. STEINER:** Your Honor, that
29 concludes my proof.

MOTION IN LIMINE ARGUMENT - JURY OUT

1 **BY THE COURT:** Chief, you may step down
2 for now. I'll review my notes.

3 **BY MR. WHITFIELD:** Your Honor, do you want
4 to take cases and arguments on this point?

5 **BY THE COURT:** I've had some cases cited
6 by the State. But if you've got something
7 additional, I'll certainly consider it.

8 **BY MR. WHITFIELD:** Yes, Your Honor. First
9 and foremost, the cases that were previously
10 cited in the State's motion is Ross vs. State,
11 which is the most recent pronouncement -- I
12 believe it's about six and half months old
13 where this testimony was excluded. First, it
14 did not meet the Daubert standard to show that
15 it was reliable. Second, it was established
16 that it was well documented throughout the
17 trial and subject to vigorous
18 cross-examination.

19 As I would submit to the Court today, the
20 testimony of Chief Johnson is that there are no
21 minimum standards for an investigation. There
22 haven't been; there isn't. There are
23 guidelines that are aspirational, but there are
24 no minimum standards. Therefore, his opinions
25 are based on his own speculation as to what
26 could have been different. He couldn't even
27 testify that these theories to be empirically
28 tested one way or the other to whether the
29 investigation would have come out any

MOTION IN LIMINE ARGUMENT - JURY OUT

1 differently, thereby giving no help to the
2 trier of fact who is the jury, and the jury is
3 the one to determine credibility of witnesses
4 for documenting or not documenting evidence.

5 And I would point the Court to Thorson vs.
6 State. Ross appears to be the only case that I
7 can find on point dealing with the testimony of
8 somebody trying to be admitted as an expert in
9 the field of criminal investigations. That's
10 the only -- Ross one and Ross two.

11 Ross one was a Supreme Court case that
12 held it didn't meet Daubert. Ross two was a
13 Court of Appeals case heard later after it was
14 remanded for other reasons. They went through
15 the analysis and said once again it didn't meet
16 the Daubert reliability.

17 But Thorson was a case dealing with the
18 field of false confessions and said that this
19 type of the testimony that goes to the
20 credibility of a witness is not an appropriate
21 subject for that of an expert witness but
22 should be left to the province of the jury.

23 Now, the jury has been subjected to
24 testimony at length about documentation and
25 whether it was a good idea to have more
26 documentation or less documentation. The
27 officers I have heard testify have testified
28 over and over again that, yeah, it would have
29 been great to have had more documentation.

MOTION IN LIMINE ARGUMENT - JURY OUT

1 Which takes us to another matter of the
2 impermissible bolstering of testimony under
3 Rule 608. The specifics of conduct of these
4 officers, whether they wrote a report or not,
5 is not subject to attack by an expert. They've
6 testified to what they did. They've admitted
7 to whether it was a good idea or not. They
8 said they should -- they could have done
9 better, but that is not a subject for expert
10 examination; that is the sole province of the
11 jury.

12 Edmonds vs. State was another case dealing
13 with the false confessions, and Dr. Allison
14 Redlich was denied her ability to come in and
15 testify about false confessions because these
16 theories could not be empirically tested.

17 Once again, Chief Johnson's theories
18 cannot be empirically tested; therefore,
19 they're not reliable under the Daubert standard
20 where they must be relevant and reliable.

21 Based on the accumulation of evidence that
22 the defense has brought out, he has definitely
23 put on his defense of the documentation was
24 insufficient and the leaderless investigation,
25 as they called it. But once again, the
26 testimony is there are no minimum standards, so
27 any help or guidance from this expert witness
28 is invading seriously on the province of the
29 jury as the determination of credibility and

MOTION IN LIMINE ARGUMENT - JURY OUT

1 definitely cumulative and in violation of the
2 Rule 608 for impermissibly bolstering or
3 attacking the credibility of witnesses, and
4 should be excluded from testifying.

5 **BY THE COURT:** What is the cite on
6 Thorson?

7 **BY MR. HILL:** Thorson is 895 So. 2d. 85.
8 It's a Supreme Court 2004. And, of course, the
9 Edmonds opinion is 955 So. 2d. 787.

10 **BY THE COURT:** I have read Edmonds. And
11 I -- I mean, when you started citing authority
12 on it, it was bringing back what Edmonds said.
13 But I haven't -- I suspect that -- because I
14 have too many to read. At one point I read
15 Thorson, but I could not remember that one like
16 I did Edmonds.

17 **BY MR. HILL:** And, of course, the Ross
18 opinion that are six months old that we've
19 previously cited.

20 **BY THE COURT:** Right. Response?

21 **BY MS. STEINER:** Thank you, Your Honor.
22 Well, I think that under the court of appeals
23 decision in Ross, I actually was the appellate
24 attorney in Ross one and I had an extremely --
25 the record in Ross one, and I think the
26 Mississippi Supreme Court found that neither
27 the qualifications of the individual proposed
28 to testify nor any testimony whatsoever about
29 any of the existence of any standards or

MOTION IN LIMINE ARGUMENT - JURY OUT

1 anything like that, and -- that's what Ross one
2 found, that just simply this expert hadn't --
3 wasn't an expert and there was no testimony
4 establishing that what -- what the discipline
5 he was going to testify about was.

6 I think in this instance, the proffer from
7 Chief Johnson, they didn't ask one question
8 about any of his things about his personal
9 qualifications or experience and training or
10 his -- his statements about the existence of a
11 body of accepted standards and procedures both
12 academic and in the practical world. They
13 questioned whether or not Mississippi had
14 adopted minimum standards, and he answered no,
15 they hadn't. So I think it's very much
16 distinguished from Ross one.

17 Ross two, I was happily not involved in,
18 but I will note that it's exactly the same
19 expert, so whether or not his credentials were
20 explored, I don't know. This is certainly not
21 a case. In fact, Your Honor was very strict on
22 the objection of the defense not to permit
23 these officers to offer opinions on whether
24 they did things better or worse or conformed
25 with anything. There's also no testimony from
26 these officers about their opinions on how, you
27 know, if they did the investigation right or
28 not. They were allowed to answer questions. I
29 did this. I didn't do this. And subject to

MOTION IN LIMINE ARGUMENT - JURY OUT

1 608, problem in Ross two is not existent here.

2 Now, the pro- -- in fact, I'm going -- I'm
3 looking at Ross. I'm reminded that Ross two
4 actually did find that the expert's memberships
5 were voluntary and fee based, not peer reviewed
6 or tested. There was no challenge to the many
7 organizations in Mississippi law enforcement
8 and the credentialing value of those or his
9 academic qualifications as an adjunct professor
10 in criminal justice.

11 So I think Ross is distinguishable here,
12 and I would -- the State is absolutely correct.
13 The courts in Mississippi have not ever been
14 presented with, so far as I know, an expert
15 with the credentials and background and the
16 kind of explanation about both the discipline
17 and standards and the individual's credentials
18 tendered as a expert witness.

19 However, the State -- in the State of
20 Texas and at least one case in the State of
21 California, such experts were recognized and
22 accepted in their opinion testimony
23 including -- on matters concerning the actual
24 substantive qualifications of the investigation
25 and the usual and customary rules of hearsay
26 testimony by the expert witness were fully
27 approved.

28 Your Honor, I can have the -- I only have
29 Westlaw citations but the cases are from Texas,

MOTION IN LIMINE ARGUMENT - JURY OUT

1 the Morris vs. State. It's a Texas Court of
2 Appeals decision out of San Antonio. It's --
3 the citation is -- oh, Lord. Oh, yeah, it is
4 reported. It's 123 Southwest 3d. 425. The
5 California case is People vs. McMurry. It is
6 not an official citation. Its citation is 2009
7 Westlaw 181-6051 from the California appellate
8 court --

9 **BY THE COURT:** Wait, you were saying that
10 way faster that I could write.

11 **BY MS. STEINER:** I was going to say, I
12 have the Westlaw printouts of both of these. I
13 have one copy. I would be happy to tender them
14 the Court for its review and have -- if the
15 clerk could make copies of them right quick.

16 **BY THE COURT:** I think she could go make a
17 copy right quick.

18 **BY MS. STEINER:** So that maybe she could
19 make two. We can return one and --

20 **BY THE COURT:** I was trying to write the
21 cite so I could look at it.

22 **BY MS. STEINER:** Westlaw citation, when I
23 get past seven digits I can't even say them,
24 much less write them down.

25 **BY THE COURT:** Anything else?

26 **BY MS. STEINER:** Well, I would say, Your
27 Honor, that from my reading of both the Texas
28 and California cases, it appears that their --
29 they have adopted the Daubert standard as well

MOTION IN LIMINE ARGUMENT - JURY OUT

1 so this is not never accepted under Daubert.

2 Very frankly, the findings in Edmonds and
3 Thorson with respect to the Plaintiff's experts
4 on -- in Edmonds, it was false confession and
5 Thorson -- Edmonds and Thorson are both false
6 confessions. The findings by the Supreme Court
7 were that that expert had not shown his or her
8 qualifications. I think maybe it's the same
9 expert for both. Or her, you know, ability,
10 training and science, the various cases that
11 allow experts from the -- I think it's also the
12 CIS that Mr. McSperrin was from, particularly
13 with respect to child interview cases, and I
14 don't have these citations in front of me --

15 **BY THE COURT REPORTER:** Ms. Steiner, what
16 was the name -- McSperrin?

17 **BY MRS. STEINER:** McSperrin, yes. It's
18 the CIS. It's a Mississippi Department of
19 Public Safety subsidiary. They have the cases
20 which have accepted testimony from experienced
21 child interviewers that has been challenged as
22 improperly invading the province of the jury to
23 determine credibility of child witnesses who
24 have been during an interview --

25 **BY THE COURT:** I've always sustained
26 objections to that, too.

27 **BY MS. STEINER:** Well, Your Honor, if this
28 were a child case, I would be grateful for
29 that, but I -- the United -- the Mississippi

MOTION IN LIMINE ARGUMENT - JURY OUT

1 Supreme Court has, where apparently in courts
2 where objections have not been sustained, has
3 found that when you lay the proper foundation
4 for the expert and have a specific finding of
5 what they are doing and there is a disciplinary
6 following that -- that with the child
7 investigation services it is not invading the
8 province of the jury, and they have in -- and
9 -- and I just don't have those cases in my
10 mind, because I don't happen to do child sexual
11 abuse cases.

12 **BY THE COURT:** I -- I'm familiar with
13 that. My view has always been that the
14 probative value was substantially outweighed by
15 prejudicial harm. But I am familiar with those
16 cases.

17 **BY MS. STEINER:** Right. You're more --
18 the court of appeals disagrees with you on some
19 of those issues and other circuit judges
20 have --

21 **BY THE COURT:** I note that.

22 **BY MS. STEINER:** And so that when we're
23 looking at what the Mississippi Court of
24 appeals is saying here, and I think this is not
25 an improper invasion of the province of the
26 jury. I think this is within the realm of a
27 proper Daubert qualified expert testimony and
28 that it -- that the overall opinions would
29 permit the jury -- would permit the jury as the

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1 finder of the fact.

2 And then on my subsidiary motion with
3 respect to the photo lineups, the Chief did
4 offer an opinion that the Curtis Flowers lineup
5 was unduly suggestive, not the legal opinion of
6 whether it meets that but that it has -- it is,
7 in fact, suggestive and, in fact, more
8 suggestive than the one with Doyle Simpson in
9 it. This jury is going to be asked to make a
10 finding, one, I think they're going to be
11 struggling, whether or not depending, because
12 they're certainly finders of fact, whether or
13 not the photo identifications by Mr. Collins
14 are accurate in having this individual expert's
15 opinion regarding not legal suggestibility but
16 empirical suggestibility would assist them in
17 arriving at that conclusion.

18 So without waiving any of the other
19 objections, we would respectfully, at least to
20 the photo lineup, we would like to have the
21 proffer testimony -- offer the proffered
22 testimony to the jury.

23 And if I may approach, I can give you the
24 Texas and California cases, Your Honor.

25 And let me read for the court reporter the
26 Westlaw citation in this case if ever reviewed.
27 The case is People vs. McMurray, the State of
28 California 2009WL181-6051.

29 **BY THE COURT REPORTER:** Is it McMurray m-c

MOTION IN LIMINE ARGUMENT - JURY OUT

1 or m-a-c?

2 BY MRS. STEINER: M-c-M-u-r-r-a-y.

3 BY THE COURT: And if you didn't get the
4 other one, it was Morris vs. Texas 123 S.W.3d
5 425.

6 BY THE COURT REPORTER: S.W.3d 425?

7 BY THE COURT: 425. I think I'm going to
8 review my notes tonight and make a ruling in
9 the morning. Because I've taken a lot of notes
10 and it'll take me a long time to review them.
11 And while I'm reviewing them, everyone else is
12 probably ready to go to the house. So we'll
13 stand in recess until nine o'clock in the
14 morning.

15 (THE COURT RECESSED FOR THE DAY)

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Court's Ruling on Motions

1 (COURT WAS DULY OPENED ON JUNE 18, 2010.)

2 (MR. EVANS, MR. HOWIE, MR. HILL, MRS. STEINER, MR. CARTER
3 AND THE DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS
4 WERE AS FOLLOWS:)

5 THE COURT: I took up a motion yesterday. The
6 Court presently has before it a Motion to Exclude
7 Evidence and Testimony under Mississippi Rules of
8 Evidence 702 and 608 that was filed by the State of
9 Mississippi.

10 In the motion the State seeks to have this Court
11 exclude the testimony of Robert Johnson, who has been
12 tendered as an expert witness in the field of law
13 enforcement, police practices, consulting, investigation,
14 administration, communication, dispatching and training.

15 When considering whether expert testimony is
16 admissible, this Court must look to Mississippi Rules of
17 Civil Procedure. Rule 702 of the Mississippi Rules of
18 Procedure states that if scientific, technical or other
19 specialized knowledge will assist the trier of fact in
20 understanding the evidence or to determine a fact in
21 issue a witness qualified as an expert by knowledge,
22 skill, experience, training or education must testify
23 thereto in forming of an opinion or otherwise if 1) the
24 testimony is based upon sufficient facts or data 2) the
25 testimony is a product of reliable principles and methods
26 and 3) the witness has applied the principles and methods
27 reliably to the facts of the case.

28 In *Mississippi Transportation Commission versus*
29 *McLemore*, 863 So.2d 31, the Mississippi Supreme Court

1 held that the testimony of expert witnesses should be
2 admitted only if a witness is qualified by virtue of his
3 or her knowledge, skill, experience or education and the
4 witness's scientific, technical or other specialized
5 knowledge must assist the trier of fact in understanding
6 or deciding the fact in issue.

7 In determining whether expert testimony is
8 admissible, the courts must also make a determination as
9 to whether the testimony is reliable. The factors
10 include whether the theory or technique can be and has
11 been tested, whether it has been the subject of peer
12 review and publication, whether with respect to a
13 particular technique there is a high known or potential
14 rate of error, whether there are standards controlling
15 the techniques operation and whether the theory or
16 technique enjoys general acceptance within a relevant
17 scientific community. And that was in *McLemore* at Page
18 37, citing *Daubert versus Merrell Dow*.

19 In *Palmer versus Volkswagon America, Inc.*, 904 So.2d
20 1077, Supreme Court held -- Mississippi Supreme Court
21 held that if a witness is testifying about a subject that
22 requires scientific, technical or other specialized
23 knowledge that is beyond the common knowledge of a random
24 adult, the testimony must be treated as expert testimony.

25 Chief Johnson is being offered as a witness to show
26 that the investigation in the murders that are subject to
27 this case was flawed. More specifically, he claims the
28 investigation was flawed because there was never a lead
29 investigator and central repository of information and

1 evidence that was gathered, that the integrity of the
2 crime scene was not properly preserved causing the
3 possibility of evidence contamination and overlooking of
4 evidence, the evidence was not properly documented and
5 the investigation focused too early on one suspect.

6 Chief Johnson stated that there were commonly
7 accepted investigative standards throughout most of the
8 country; however, he never articulated what they are. He
9 even went so far as to say that if something is not
10 documented, it did not happen. He stated there were no
11 minimum standards for police investigations in
12 Mississippi and therefore was unable to say that the
13 investigation of the Tardy murders fell below minimum
14 standards for police procedures and protocols in
15 Mississippi.

16 In *Ross versus State*, 954 So.2d 968, the Mississippi
17 Supreme Court held that the testimony of an expert in the
18 field of police investigatory techniques must meet the
19 standards required under *Daubert* and *McLemore*. Court
20 will note that this Court has heard testimony from
21 experts in the field of ballistics, pathology,
22 fingerprints, shoe print identification, gunshot residue
23 and identification, and trace evidence.

24 In each of those fields a properly trained expert
25 could analyze the evidence gathered and reach the same or
26 similar conclusion as any other expert. For instance,
27 both David Balash and Joe Andrews testified that gunshot
28 residue consists of lead, barium and antimony in a
29 spherical shape. The Court will also note the

1 similarities in the testimony in David Balash and Steve
2 Byrd in the field of ballistics. Although there were
3 minor disagreements in the expert opinions, the
4 methodology they used in -- to reach their opinions was
5 the same.

6 In the field of criminal investigations there are no
7 established investigatory techniques that if followed
8 will lead to the same results. If so, then every police
9 department would have a manual, if you will, a criminal
10 investigation for dummies book, that, if followed, would
11 lead to the arrest and conviction of all criminal
12 perpetrators. However, that is not the case because no
13 two crimes are the same. And thus no two criminal
14 investigations are the same.

15 Because there is no valid way of testing the field
16 of police investigatory techniques, this Court finds the
17 proposed expert testimony in the field fails to meet the
18 reliability standards required under Rule 702.

19 Now, every police officer that has testified has
20 admitted that he could and maybe should have done things
21 differently. Bill Thornburg testified that he probably
22 should have taken a photograph of the fence post at the
23 home of Doyle Simpson's mother. Jack Matthews testified
24 that perhaps photos of the fence post should have been
25 taken, and he probably should have written down the
26 description that Catherine Snow offered of the individual
27 she had seen at Doyle Simpson's car. James Taylor
28 Williams admitted he thought he had written a complete
29 report on his activities for the day of murder and if he

1 didn't, he should have.

2 John Johnson admitted that there were reports he
3 probably should have made during the course of the
4 investigation that were not made. Wayne Miller admitted
5 that he had no record of where the photos came from in
6 the photo line-up shown to Porky Collins. And by no
7 means is this an exhaustive list of the things that
8 different police officers testified that they could or
9 should have done and maybe were wrong in not doing.

10 This Court only uses these illustrations to point
11 out that all police officers that were investigating the
12 crime were questioned vigorously. They were questioned
13 in minute detail about the investigations and
14 deficiencies in the investigation. Thus this Court finds
15 that even if the proper testimony met the reliability
16 standards of Rule 702 it would be cumulative in nature
17 and would not assist the jury.

18 The defendant also seeks to have Chief Johnson offer
19 an expert opinion concerning the photo line-up shown to
20 Porky Collins. However, Chief Johnson testified that he
21 did not have sufficient information about the line-up to
22 offer an expert opinion. Additionally, because Porky
23 Collins was cross-examined for over four hours and
24 because both John Johnson and Wayne Miller were called as
25 defense witnesses and questioned at great length on the
26 subject, this Court finds that expert testimony of the
27 photo line-up -- about the photo line-up would be
28 cumulative in nature and would be of no assistance to the
29 jury.

1 For these reasons, the Court finds the Motion to
2 Exclude Evidence and Testimony Under Mississippi Rules of
3 Evidence 702 and/or 608 to be well taken and the
4 testimony of Chief Johnson is excluded.

5 Also, there was a motion for mistrial made
6 yesterday, and that is denied as well.

7 With this motion behind us, who does the defense
8 have as their next witness?

9 MRS. STEINER: Your Honor, before we do that,
10 we had also renewed the Motion to Exclude the Evidence.
11 That was the mistrial motion.

12 THE COURT: Well, that is denied.

13 MRS. STEINER: Thank you.

14 THE COURT: The Court had an extensive pretrial
15 motion on that. And for the reasons stated during that
16 motion, that is denied.

17 If you will, bring the jury back in now.

18 (THE JURY ENTERED THE COURTROOM.)

19 THE COURT: Good morning, ladies and gentlemen.

20 And Court will come back to order.

21 Who would the defense's next witness be?

22 MRS. STEINER: Your Honor, the defense would
23 move and re-move the admission into evidence of every
24 item -- the defense would move and re-move the admission
25 into evidence of every item marked by it and sought to be
26 admitted into evidence. And then would rest.

27 THE COURT: I'm not really clear how you can
28 move and re-move something.

29 MRS. STEINER: Well, we had sought -- and I am

1 just trying to cover the record to make sure all the
2 exhibits we sought to have admitted into evidence were
3 either admitted or denied.

4 THE COURT: Okay. Well, if you have got
5 anything that was not admitted that you wish to have
6 admitted that the Court has not ruled on --

7 MRS. STEINER: My notes show the Court had
8 ruled on everything we had sought. I just wanted to
9 preserve the record there.

10 THE COURT: Okay. Then you are saying the
11 defense does rest at this time.

12 MRS. STEINER: Yes, Your Honor.

13 THE COURT: Does the State have any, any
14 rebuttal evidence?

15 MR. EVANS: Very briefly, Your Honor. We would
16 call Frank Ballard.

17 (THE WITNESS ENTERED THE COURTROOM.)

18 THE COURT: If you will, come forward, face the
19 bench, raise your right hand and take the oath.

20 (THE WITNESS APPROACHED THE BENCH.)

21 Do you solemnly swear or affirm that the testimony
22 you give in this case will be the truth, the whole truth
23 and nothing but the truth, so help you God?

24 THE WITNESS: Yes, sir, I do.

25 THE COURT: Come around please and have a seat.

26 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

27 THE COURT: State your name for the record,
28 please.

29 THE WITNESS: Frank Scott Ballard.

Bench Conference

1 MR. EVANS: Just a minute, Your Honor.

2 Your Honor, may I have this item re-marked for
3 identification?

4 THE COURT: You may.

5 (A JUDGMENT WAS MARKED STATE'S EXHIBIT NUMBER 145 FOR
6 IDENTIFICATION.)

7 MRS. STEINER: May we approach, Your Honor?

8 (MR. EVANS, MR. HOWIE, MRS. STEINER AND MR. CARTER
9 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
10 OUTSIDE THE HEARING OF THE JURY.)

11 MRS. STEINER: Your Honor, based on - what's
12 the number on that - S-145 for identification, it appears
13 to be the proof of a judgment entered against --

14 MR. EVANS: Robert Fleming.

15 MRS. STEINER: -- Robert Fleming. I don't
16 believe this is proper rebuttal. The defendant's
17 evidence was that Miss Mary Ella Fleming had no knowledge
18 of whether or not her brother had been sued and had the
19 judgment against him. This is not responsive to her
20 knowledge. This is simply establishing that, in fact,
21 the stuff -- what she didn't know was that her brother
22 did have a judgment against him.

23 The testimony, I believe, from Miss Clemmie Fleming
24 and concerning Miss Clemmie Fleming all stated that there
25 was a lawsuit brought on the cosigned note. There was
26 collection brought on the cosigned note, I believe. This
27 is not responsive to anything established or rebuttal to
28 anything established in the defendant's case. And that
29 it is therefore irrelevant and would be misleading,

1 confusing and cumulative to the jury and should therefore
2 be excluded under both Rule 402 and 403 and is not proper
3 rebuttal to the defendant's case.

4 MR. EVANS: Briefly in response, Your Honor.
5 They attacked this witness on the fact that -- trying to
6 accuse her of lying to get her furniture debt paid for.
7 Some of her family members testified that that is why she
8 did it. And it is simply to show that the debt -- she
9 was never told that the debt would not have to be paid
10 for.

11 As a matter of fact, they did, in fact, sue the
12 cosigner that had a job. The reason she wasn't sued is
13 she didn't have a job. The cosigner did, and there was a
14 judgment entered in it.

15 THE COURT: The Court finds it is proper
16 rebuttal because the defense certainly left in the jury's
17 mind the idea that she got her furniture for free for
18 coming up here and testifying. And so I think it's
19 appropriate rebuttal to show, to rebut that proof that
20 was offered. So I will deny the motion.

21 MRS. STEINER: Thank you, Your Honor.

22 (THE BENCH CONFERENCE WAS CONCLUDED.)

23 MR. EVANS: May I proceed, Your Honor?

24 THE COURT: You may.

25 FRANK SCOTT BALLARD, Called on behalf of the Defendant,
26 having been duly sworn, was examined and testified as follows:

27 DIRECT EXAMINATION BY MR. EVANS:

28 Q. I'm not sure if you did it or not, but state your
29 name for the record, please.

1 A. Frank Scott Ballard.

2 Q. And Mr. Ballard, what was your connection with Tardy
3 Furniture?

4 A. When we reopened the furniture company, Roxanne and
5 I took over and ran it.

6 Q. All right. And Roxanne's your wife.

7 A. That's correct.

8 Q. All right. Do you know a person by the name of
9 Clemmie Fleming?

10 A. Yes, sir, I do.

11 Q. Did she have a debt with Tardy Furniture?

12 A. Yes, sir, she did.

13 Q. In any way was that eliminated in exchange for her
14 testimony?

15 A. Absolutely not.

16 Q. And, in fact, what was done with that debt?

17 A. That debt was turned over to justice court and legal
18 proceedings were made against her. She was not gainfully
19 employed. So standard procedure at that time was she was -- I
20 believe it was her brother, Robert. And the lawsuit or the
21 justice court judge went after the cosigner of the contract.

22 Q. All right. So even after she testified, there was a
23 suit filed on this debt and judgment rendered.

24 A. Yes, sir.

25 Q. I want to hand you Exhibit 145 and ask if you can
26 identify this.

27 A. Yes, sir, I can.

28 Q. What is that?

29 A. This is when we went to the justice court clerk and

1 filed papers.

2 Q. Is that on that same debt that Clemmie Fleming and
3 her brother, Robert, had at that time?

4 A. Yes, sir, it is.

5 MR. EVANS: Your Honor, I offer this into
6 evidence.

7 THE COURT: I'll allow it to be admitted.

8 MRS. STEINER: Subject, Your Honor, to the
9 matters at bench.

10 THE COURT: Your objection there is noted.

11 (THE JUDGMENT PREVIOUSLY MARKED STATE'S EXHIBIT NUMBER
12 145 FOR IDENTIFICATION WAS ADMITTED INTO EVIDENCE.)

13 MR. EVANS: May I have this passed to the jury,
14 Your Honor?

15 THE COURT: You may.

16 MR. EVANS: I'll tender the witness.

17 CROSS-EXAMINATION BY MRS. STEINER:

18 Q. Good morning, Mr. Ballard.

19 A. Good morning.

20 Q. Now, the furniture note was signed by Miss Clemmie
21 Fleming and her brother Robert; is that correct?

22 A. Yes, ma'am.

23 Q. To your recollection. Miss Mary Ella Fleming, one
24 of their sisters, was not a cosigner on that note; is that
25 correct?

26 A. I don't believe so. No, ma'am.

27 Q. And the judgment you obtained did not -- was not
28 against her.

29 A. Her? Her?

1 Q. Miss Mary Ella Fleming.

2 A. No, ma'am.

3 Q. This is simply evidence of the judgment against the
4 cosigner who was employed; is that correct?

5 A. The -- it was actually for the people on the
6 contract.

7 Q. Right. And Mr. Robert Fleming was one of those
8 people.

9 A. That's correct. Yes, ma'am.

10 Q. And that -- I believe it's for a little over \$450;
11 is that correct?

12 A. The -- I believe that. And court costs is also
13 involved.

14 Q. And, and did you know -- did you obtain a wage
15 garnishment on Mr. Fleming pursuant to this judgment?

16 A. Ma'am, I really and truly don't remember.

17 Q. But the reason you got judgment on him was in the
18 hopes that if he did not voluntarily satisfy the judgment you
19 could garnish his wages; is that right?

20 A. That's -- yes, ma'am.

21 Q. Do you know whether or not he did, in fact, satisfy
22 this judgment either by paying it or through wage garnishment?

23 A. Ma'am, there were numerous people that suit was
24 filed against. And I'd have to -- I'd have to pull the
25 records and see.

26 Q. All right. Are you saying filed against for this
27 particular debt or for just in general since you and Roxanne
28 began running the business you filed suit against numerous
29 people for debts?

1 A. Anyone that didn't pay their bills, yes, ma'am.

2 Q. All right. And again, they are all for amounts like
3 this, 450 plus court costs, that sort of amount.

4 A. Oh, yes, ma'am.

5 Q. Or more.

6 A. Whatever, whatever their debt was.

7 Q. And certainly in these numerous suits for people who
8 didn't pay, if they were employed, then if you got a judgment,
9 and it was not immediately satisfied, you would pursue
10 garnishment against their wages; is that right?

11 A. I believe that was the procedures, yes, ma'am.

12 Q. All right. And perhaps for the ladies and gentlemen
13 who hopefully haven't had this happen, what is garnishment of
14 the wages when -- as you understand it, when you got a
15 judgment against somebody who hadn't paid for their furniture.

16 A. Well, it is my understanding that if you have a debt
17 and you go to court, you pay the court fees. And the judgment
18 is for recovery of your debt. And those people gainfully
19 employed and do not voluntarily want to settle the judgment
20 then the court orders garnishment of their wages through their
21 employer.

22 Q. And that means the employer withholds a certain
23 amount from each paycheck until the full amount is collected
24 and then sends it on to y'all.

25 A. It's handled through the court.

26 Q. Right. They send it to you all.

27 A. Yeah, I don't know that aspect of it.

28 Q. And --

29 A. The justice court handled that side of it.

1 A. Anyone that didn't pay their bills, yes, ma'am.

2 Q. All right. And again, they are all for amounts like
3 this, 450 plus court costs, that sort of amount.

4 A. Oh, yes, ma'am.

5 Q. Or more.

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8 didn't pay, if they were employed, then if you got a judgment,
9 and it was not immediately satisfied, you would pursue
10 garnishment against their wages; is that right?

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13 who hopefully haven't had this happen, what is garnishment of
14 the wages when -- as you understand it, when you got a
15 judgment against somebody who hadn't paid for their furniture.

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17 and you go to court, you pay the court fees. And the judgment
18 is for recovery of your debt. And those people gainfully
19 employed and do not voluntarily want to settle the judgment
20 then the court orders garnishment of their wages through their
21 employer.

22 Q. And that means the employer withholds a certain
23 amount from each paycheck until the full amount is collected
24 and then sends it on to y'all.

25 A. It's handled through the court.

26 Q. Right. They send it to you all.

27 A. Yeah, I don't know that aspect of it.

28 Q. And --

29 A. The justice court handled that side of it.

1 Q. So anybody who has a judgment and garnishment, his
2 or her paycheck reduces for a period of time until that debt
3 is paid in to the court, as far as you know.

4 A. It's never happened to me personally. So I don't
5 know exactly. It is handled through the court here.

6 Q. But you certainly have in the business, at least
7 since you have been running it, during period of recovery and
8 collected money from justice court on garnishments; is that
9 correct?

10 A. Yes, ma'am, that's correct.

11 MRS. STEINER: One moment, Your Honor. Thank
12 you, Your Honor. I have nothing further on this witness.

13 THE COURT: Any redirect?

14 MR. EVANS: No, Your Honor.

15 THE COURT: Mr. Ballard, you may step down and
16 you are finally excused.

17 THE WITNESS: Thank you.

18 THE COURT: State have any other witnesses?

19 MR. EVANS: One more, Your Honor.

20 We would call Wanda Meeks.

21 (THE WITNESS ENTERED THE COURTROOM.)

22 THE COURT: If you will, come around, please,
23 face the bench, raise your right hand, and take the oath.

24 (THE WITNESS APPROACHED THE BENCH.)

25 Do you solemnly swear or affirm that the testimony
26 you give in this case will be the truth, the whole truth
27 and nothing but the truth, so help you God?

28 THE WITNESS: Yes, sir.

29 THE COURT: Come around, please, and have a

1 seat.

2 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

3 THE COURT: State your name please for the
4 record.

5 THE WITNESS: Wanda Robertson.

6 WANDA ROBERTSON, Called on behalf of the State, having
7 been duly sworn, was examined and testified as follows:

8 DIRECT EXAMINATION BY MR. EVANS:

9 Q. Miss Robertson, did you used to go by the name of
10 Wanda Meeks?

11 A. Yes. I was married nine months ago.

12 Q. Okay. I want to direct your attention back to the
13 murders at Tardy Furniture. Did you have an occasion to know
14 a person by the name of Clemmie Fleming?

15 A. Yes, sir.

16 Q. How did you know her?

17 A. She worked where I worked at Multi-Craft.

18 Q. Okay. How long had y'all worked together?

19 A. I think Clemmie had just started --

20 Q. Okay.

21 A. -- about the time of the murders.

22 Q. Did y'all happen to have a conversation at
23 Multi-Craft that had anything to do with the Tardy Furniture
24 murders?

25 A. Yes.

26 Q. What, if anything, developed out of that
27 conversation?

28 A. We had that conversation that morning where we
29 worked, in the department that we were worked, just general

1 talking about the murders. And it was brought up that my
2 youngest son and Bobo were really good friends and that BoBo
3 had been living with us. Later at lunch Clemmie and I ended
4 up in line together going to the break room, and she asked me
5 how my son was doing.

6 MRS. STEINER: I am going to object to what
7 Miss Fleming said as hearsay.

8 MR. EVANS: I don't think we have gotten into
9 any hearsay yet.

10 THE COURT: It sounded like she was about to
11 say what Miss Fleming --

12 Q. You can't say what she told you. But based upon
13 what she told you, what did you do?

14 A. I don't understand what you...

15 Q. All right. The Court says I can't ask you what she
16 told you. But based upon what y'all's conversations were, did
17 you call anyone?

18 A. I contacted John Johnson.

19 Q. Okay. And why did you contact John Johnson, if you
20 can answer that without saying what you had been told?

21 A. I contacted John because of what she said.

22 Q. Okay. And did that relate to the Tardy Furniture
23 murders?

24 A. Yes, it did.

25 Q. Once you contacted Mr. Johnson, what happened next?

26 A. Clemmie met with John.

27 Q. Okay. And where was that meeting, if you remember?

28 A. Here at the courthouse.

29 Q. Okay. Were you present for any of it?

1 A. Clemmie wanted me to come with her, but I was not
2 present when she and John spoke. No.

3 Q. Okay. Did you overhear any of the conversation?

4 A. No.

5 Q. Okay. But you were the one that got her and John
6 Johnson together.

7 A. Correct.

8 Q. And it was based on what she had told you.

9 A. Correct.

10 MR. EVANS: That's all, Your Honor.

11 MRS. STEINER: One moment, Your Honor. I need
12 to get something out of the box.

13 THE COURT: Sure.

14 CROSS-EXAMINATION BY MRS. STEINER:

15 Q. Good morning, Miss Meeks.

16 A. Good morning.

17 Q. Miss Robertson. Excuse me. You -- would you --
18 when you and -- the conversation you overheard, I believe you
19 testified, was in general about the murders at Tardy's; is
20 that correct?

21 A. No, ma'am.

22 Q. Oh, I'm sorry.

23 A. I didn't overhear a -- we -- there was a
24 conversation earlier. The conversation that Clemmie and I had
25 was between ourselves.

26 Q. Oh, I realize that. But it followed a general
27 conversation on the floor about the incident at Tardy
28 Furniture.

29 A. (Nodded.)

1 Q. And as I understand it, within 24 hours of receiving
2 the information from Miss Fleming, you had set up her meeting
3 with Mr. Johnson; is that correct?

4 A. Correct.

5 Q. So if Mr. Johnson says that meeting happened on
6 April 11, 1997, you would not dispute that. Does that fit
7 with your recollection?

8 A. I honestly don't recall when the meeting took place.

9 Q. All right.

10 A. But it was after the murders.

11 Q. Within 24 hours of when Miss Fleming and you had had
12 the conversation.

13 A. It happened that afternoon.

14 Q. All right. Now, in April of 1997, is it not true
15 that Mr. Flowers had been -- already been arrested? Is that
16 correct?

17 A. I assume.

18 Q. All right. And do you remember that March 24 or
19 March 25 he had actually gone to court and been arraigned and
20 there had been a lot -- there had been a front page story in
21 *The Winona Times* after that, the last week in March? Do you
22 recall that?

23 A. Not the exact dates. No, ma'am.

24 Q. Not the exact dates, but you do recall that at some
25 point prior to Miss, Miss Fleming and you having this
26 conversation Mr. Flowers had actually already been to court to
27 be arraigned the first time.

28 A. No, ma'am, I don't recall that.

29 Q. All right. You don't read *The Winona Times*.

1 A. Yes, ma'am.

2 Q. All right. Now, these events happened in April of
3 1997. At any point did you provide any sort of written report
4 to the office of the district attorney about these events?

5 A. Yes.

6 Q. And when did you do that?

7 A. About a month ago.

8 Q. All right. If the written report that you provided
9 said it was provided May 25, 2010, does that refresh --

10 A. That would be about right. Yes.

11 Q. All right. How did you come to provide that one
12 report 13-plus years after the events that happened?

13 A. I was asked by John Johnson.

14 Q. All right. Had you ever prior to that been asked to
15 prepare any sort of report?

16 A. No, ma'am.

17 Q. To your knowledge, did Mr. Johnson take any notes
18 about what you said to him when you brought Miss Fleming to
19 the building? Did you see him taking notes?

20 A. Yes, ma'am.

21 Q. He did take notes of what you said.

22 A. (Nodded.)

23 Q. But you don't know whether he wrote it up in a
24 formal report.

25 A. No, ma'am.

26 Q. All right. It's safe to say that at the point at
27 which this conversation occurred with Miss Fleming, people had
28 been concerned about talking about what had happened at
29 Tardy's on July 16, 1996, for the entire seven months between

1 when that had happened and when you and Miss Fleming had this
2 conversation; is that correct?

3 A. Yes, ma'am.

4 Q. Thank you. That's all.

5 That's all I have, Your Honor, of this witness.

6 REDIRECT EXAMINATION BY MR. EVANS:

7 Q. Did you or anybody else in your presence try to get
8 her to identify any certain person?

9 A. No, sir.

10 Q. She just said who she saw running from the store.

11 A. Yes, sir.

12 Q. Now, you don't know why it was necessary for us to
13 get a statement to furnish to the defense, do you?

14 A. No sir.

15 Q. Do you have any problem remembering what happened
16 that day?

17 A. Not at all.

18 MR. EVANS: Nothing further, Your Honor.

19 THE COURT: Miss Robertson, you may step down.
20 You are excused.

21 THE WITNESS: Thank you.

22 MR. EVANS: Your Honor, the State will finally
23 rest.

24 THE COURT: Ladies and gentlemen of the jury,
25 both sides have now rested their case. It's going to be
26 necessary now for us to recess to go over jury
27 instructions. I say it will probably take 30, 45
28 minutes. I don't know exact timeframe for that, because
29 you know, there will be a number of issues we have to

1 look over. Just be knowing that we will be working
2 diligently to have those instructions ready to present to
3 you as quickly as possible.

4 If you will just step in the jury room and wait on
5 that. And please, do not discuss the case with anyone,
6 well, it is only going to be among yourselves while you
7 are back there.

8 (THE JURY LEFT THE COURTROOM.)

9 I was advised by the bailiff at some point this
10 morning Mr. Robinson, one of the jurors, has got to
11 receive a shot that he has to have periodically. And
12 they are going to make an arrangement -- well, they need
13 to do -- whoever is going to do it needs --

14 You need to arrange for a nurse to have it before
15 any deliberations begin. It will have to be in your
16 presence while that shot is being administered to make
17 sure that no improper statements or contact is made.

18 BAILIFF BROWNING: Okay, sir.

19 I will inform the sheriff to get a nurse up here.

20 THE COURT: Okay.

21 We will proceed with going over jury instructions.
22 And I, I don't know -- I need a copy of the State's
23 instructions.

24 (MR. HOWIE HANDED THE COURT A COPY OF THEIR JURY
25 INSTRUCTIONS.)

26 I am going to need quiet in the jury room -- I mean
27 the courtroom, while we are going over instructions.

28 The Court has C-1, -2, -3 and -4 that would be
29 things the Court would intend to offer at this time.

1 Is there any objection to these four instructions?

2 MRS. STEINER: Your Honor, on some of the
3 subject matters the State has -- I'm sorry, the defendant
4 has submitted supplemental instructions to further
5 clarify some of the matters discussed by the Court. But
6 the only objection would be the denial of those further
7 instructions to the extent that they either elaborate on
8 or say things on subject matters the Court does not say.
9 That would be our only objection to 1, 2, 3 and 4 by the
10 Court.

11 THE COURT: C-1, -2, -3 and -4 are given.

12 Okay. Let's see. Any objection to S-1?

13 MRS. STEINER: Forgive me, Your Honor. It was
14 just physically handed to me. I need to make sure it is
15 similar to the one that I reviewed the prior trials. It
16 appears to accurately state the elements of capital
17 murder, Your Honor, with respect to each of the four
18 counts of the indictment.

19 THE COURT: S-1 will be given.

20 Any objection to S-2?

21 MRS. STEINER: Yes, Your Honor. We would
22 object. The evidence respecting the robbery is entirely
23 circumstantial. And we would object to giving this
24 without the words after, in the first line, beyond a
25 reasonable doubt, we would object unless the words and to
26 the exclusion of every other reasonable hypothesis
27 consistent with innocence.

28 The testimony -- the only thing that -- and, and we
29 will later be arguing that this is so flimsy and

unreliable, it should not even be considered direct testimony. But the only direct evidence of guilt of anything is the testimony by Odell Hallmon that Mr. Flowers had told him he killed those people. That is direct evidence only under these context of murder.

Whether or not the robbery occurred is an entirely circumstantial case, and we, therefore, object to the giving of an instruction regarding robbery that does not include the necessary language for an entirely circumstantial case. So we object to it unless the Court also inserts the words after beyond a reasonable doubt, unless it inserts and to the exclusion of every other reasonable hypothesis consistent with innocence.

THE COURT: Response.

MR. EVANS: Your Honor, this is not a circumstantial evidence. There is direct proof. He admitted to Odell Hallmon he killed them, and that takes it out from under the circumstantial cases.

You don't -- you don't break it down to the elements. If there is direct proof of any of the crime, then it is a direct proof case.

MRS. STEINER: Your Honor, the instructions are separate. And I believe that we are entitled, with respect to the robbery, even if the Court finds that Mr. Hallmon's testimony is sufficient to be treated as direct evidence of the murders, it is not sufficient to be direct evidence of the robbery. And I believe on some of the documentation on our circumstantial evidence, *Sandstrom versus Wyoming*. It's a United States Supreme

1 Court case regarding looking up circumstantial elements
2 and requiring that each chain in the circumstance be
3 proved -- be proved beyond a reasonable doubt.

4 Mississippi Supreme Court is very clear you do break
5 down. For instance, *Barry Hill versus State*, as a matter
6 of law. Because the indictment did not state the
7 burglary charge with sufficient specificity, that was
8 parsed out and treated separately. And, in fact, the
9 capital murder aspects were completely quashed.

10 It's a similar situation under *Sandstrom* and the
11 general rules of Constitutional Right under Sixth and
12 Fourteenth Amendment. We are entitled, with respect to
13 the robbery, to a circumstantial evidence instruction.

14 And in -- and we would, in fact, with respect to
15 S-2, tender the instruction as I have described it with
16 the insertion of the words and to the exclusion of every
17 other reasonable hypothesis consistent with innocence.

18 MR. EVANS: The case that she cited had nothing
19 to do with burden of proof. There isn't -- the law in
20 Mississippi is if it's a capital case that relates to a
21 burglary, you have to put in the indictment what the
22 underlying elements for burglary were. That has nothing
23 to do with the burden of proof.

24 If there is direct proof of any elements of the
25 crime, it takes it out from under being a circumstantial
26 evidence case. I have never seen a case that the Court
27 has tried to break down or could break down whether one
28 element is circumstantial and one is not.

29 THE COURT: Well, I'm of the opinion -- I mean

1 we have got direct testimony, if they believe Odell
2 Hallmon. We have got direct proof, and so I am going to
3 grant S-2.

4 MRS. STEINER: We would object to the granting
5 of S-2 in that form.

6 THE COURT: Well, that's noted.

7 Any objection to S-3?

8 MRS. STEINER: No. No objection.

9 THE COURT: It will be given.

10 MRS. STEINER: No objection to S-4.

11 THE COURT: It is given.

12 MRS. STEINER: No objection to S-5.

13 Has that been granted, Your Honor?

14 THE COURT: Ma'am.

15 MRS. STEINER: I said we had no objection.

16 THE COURT: Oh, it is given. Yes, ma'am.

17 MRS. STEINER: No objection to S-6.

18 THE COURT: We will take up the form of the
19 verdict after we take up your instructions, because you
20 had requested some lesser included.

21 I -- you know, will take note that by offering
22 D-1-A, -B, -C, -D, you are moving for directed verdict
23 again at the conclusion of all the evidence and seeking a
24 peremptory instruction. And I'm of the opinion that
25 there are facts that would make these jury issues so
26 D-1-A, -B, -C, and -D are refused.

27 MRS. STEINER: Thank you, Your Honor. I was
28 going to stand up on those instructions and make a motion
29 to exclude the evidence and enter the directed verdict on

1 all four counts on the basis that the State has not
2 proved the essential elements beyond a reasonable doubt
3 and the evidence is insufficient to do so on the basis of
4 the record before this Court in the fashion in which the
5 State has finally rested.

6 THE COURT: I'll deny that. As I say, I think
7 you covered that issue anyway in D-1 -- the D-1
8 instruction.

9 MRS. STEINER: Yes, sir.

10 THE COURT: I'll take up now D-2.

11 MRS. STEINER: Yes, Your Honor. That is our
12 lesser included murder, which I believe we are entitled
13 to under *Fairchild* and *Lanier*. Actually, I -- when I
14 pulled the jury instructions from -- I thought it was
15 from the fifth trial, it turned out to have been from the
16 fourth trial. The State had submitted a lesser included
17 instruction. And I don't even know if we tendered this
18 and if the State has a formal objection to this lesser
19 included instruction. Had the State tendered the lesser
20 included for murder instruction that it did in the 2007,
21 we would not have objected to it, very frankly, Your
22 Honor.

23 So allow me to say it for the record, that should
24 the State -- should the Court find or the State object to
25 the form of this as a lesser included instruction for
26 murder, I have an alternative to submit that is the
27 State's own language. Let me say this. Although Your
28 Honor has ruled that for purposes of instructions that
29 the fact of direct evidence bleeds over and, and does not

1 entitle us to a separate instruction on robbery, the fact
2 is the evidence is different. And I think we are
3 entitled.

4 There is support for a basis for the jury to
5 consider the robbery. The jury will have to consider the
6 robbery element separately and make a finding on it. And
7 if -- to not grant this instruction with the lesser
8 included of murder is effectively to grant the State a
9 directed verdict on the -- on the element of robbery.

10 THE COURT: I believe in all the previous
11 proceedings that the lesser included of murder has been
12 given. I know I gave it back in 2008, and I intend to
13 again.

14 MRS. STEINER: This -- then D-2 is what we
15 would --

16 MR. EVANS: Your Honor.

17 THE COURT: I mean I'm like you. I kind of
18 like the way the State had worded it in the past, and if
19 they have one --

20 MR. EVANS: We, we do have one, Your Honor. I
21 didn't know whether they were going to want one or not so
22 we held off on offering it until we could see if they
23 did.

24 THE COURT: If you will just pass that along to
25 Mrs. Steiner. And if she can read it, y'all might can
26 just agree on that instruction. And then D-2 could
27 perhaps be withdrawn in lieu of another instruction.

28 MR. EVANS: Your Honor, we can proceed. We
29 will get that instruction finished, if we can proceed, as

1 we are going through some of these others.

2 MRS. STEINER: And that -- the one that we are
3 anticipating offering is going to be S-7; is that
4 correct? Would that be numbered S-7?

5 MR. EVANS: Right. Right.

6 MRS. STEINER: Well, let me just say. I guess
7 we should pass on this, but I will announce that this
8 will be withdrawn if S-7 as given in the two prior
9 proceedings -- in the prior proceeding over which this
10 Court presided. But let's just move on. I won't
11 withdraw it until we make sure it's granted.

12 THE COURT: That's fine.

13 MRS. STEINER: Your Honor, D-3 is a
14 manslaughter instruction. The evidence, I think, from
15 Miss Ballard would support that there was a heightened
16 level of emotion with respect to -- their theory appears
17 to be that the motive was heightened level of anger,
18 emotion and perhaps both pecuniary gain and revenge for
19 apparently depriving him of \$87 in pay because of a
20 workplace related accident.

21 I believe that is sufficient to raise the question
22 of whether or not if, in fact, the jury were to determine
23 that Mr. Flowers is the person who fired the shots which
24 killed these people that they were fired under sufficient
25 circumstances to warrant a manslaughter instruction.

26 Now, I realize this does not go down for each of the
27 four, and I would -- if there were an objection as to
28 form, I would ask for the right to take the State's
29 lesser murder instruction and track it with respect to

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

1 the elements of manslaughter here, as we are asking for a
2 lesser of manslaughter in light of Miss Ballard's
3 testimony concerning the emotions around -- heightened
4 emotions around the alleged firing and anger at not
5 getting a paycheck.

6 MR. EVANS: Your Honor, we would disagree. We
7 would strongly object to a manslaughter instruction.
8 There has been nothing in this case that would indicate
9 manslaughter. As a matter fact, just the opposite.
10 There was proof in the case that this was a planned out
11 robbery, murder. That he went through the effort of
12 going across town to steal a gun to commit the robbery.
13 He went into the store with the gun to commit this crime.

14 For heat of passion, it would require an argument,
15 that something occurred at that time. There is no
16 indication of that. Matter of fact, all indications are
17 complete opposite. So an instruction of lesser included
18 should never be given if there is nothing to base it on.
19 In this case, there is not.

20 THE COURT: The Court -- if, if the testimony
21 of the State is, is believed then he went and armed
22 himself before he went to the store. I don't think if
23 you go and arm yourself and head somewhere that you can
24 then claim that you suddenly had a heat of passion and
25 committed a murder. There is -- there is just really
26 zero evidence to support a manslaughter instruction. So
27 it, it will be refused.

28 MRS. STEINER: Your Honor, that, that is not
29 because of this particular form here. It's the substance

1 of --

2 THE COURT: Well, it's not the form. It's the
3 substance, the substance of the law dealing with
4 manslaughter. There is just nothing here that would
5 support a manslaughter instruction being granted.

6 MRS. STEINER: Thank you, Your Honor. Your
7 Honor, the next one, D-4, is withdrawn. D-5, we will
8 defer until looking --

9 THE COURT: Yeah, we need to get the -- because
10 the State will need to prepare a sentencing instruction
11 as well, or somebody is going to have to.

12 MRS. STEINER: If, if there is a sentencing
13 proceeding.

14 THE COURT: Well, I mean, no, the form of the
15 verdict is what I mean. I mean that is what I meant was
16 form of the verdict.

17 MRS. STEINER: Okay. I was going to --

18 THE COURT: And I think the -- I think -- let
19 me, the form of the verdict -- okay.

20 MRS. STEINER: Given that we have withdrawn one
21 of the instructions that D-5 would have referred to, this
22 one would also have to be revised. So let's defer it
23 until the Court determines finally.

24 THE COURT: I will mark it withdrawn. I mean
25 there is going to be an instruction -- I mean, I am
26 sorry, a form of the verdict that lays out murder as an
27 alternative for a possible --

28 And Mr. Evans, do you have somebody that can be
29 preparing that form?

Consideration of Jury Instructions

1 MR. HILL: Yes, sir.

2 MR. EVANS: They should be.

3 THE COURT: And I'll take up D-6.

4 MRS. STEINER: Your Honor, this is the
5 instruction that we respectfully submit is required by
6 the United States Supreme Court in *Sandstrom versus*
7 *Montana*, at least where even though it's not a
8 circumstantial case entirely, there are -- there is
9 circumstantial evidence. This is not -- and that each --
10 all of the circumstances must be proved beyond a
11 reasonable doubt.

12 There is considerable circumstantial evidence in
13 this case, and I believe we are therefore entitled to
14 this instruction under *Sandstrom versus Montana*, the
15 Sixth and Fourteenth Amendment of the United States
16 Constitution and the comparable Mississippi provisions in
17 the Mississippi Constitution.

18 MR. EVANS: Your Honor, we object to this
19 instruction. The instructions already given set -- given
20 set forth, state the direct law that the jury must find
21 beyond a reasonable doubt that the elements of the crime
22 are proven. This is going way, way, way far beyond that.
23 It is -- besides the fact, that it is not a proper
24 instruction of the law, it is so confusing it's no way
25 anyone could understand what it means.

26 THE COURT: I, I think it is somewhat
27 confusing. S-1 has laid out each of the elements for
28 each of the four victims, laid out each of the facts that
29 have to be proven. And then goes further says and says

1 if the State has failed to move -- prove any of those
2 beyond a reasonable doubt, you must find the defendant
3 not guilty.

4 Also, the Court has given an instruction, C-2, that,
5 that requires that they find the defendant guilty beyond
6 a reasonable doubt. So I -- C-2, I'm sorry, S-1 and C-2
7 instruct on reasonable -- on what they have to find. D-6
8 would be repetitive and, and very, very confusing as
9 well. So it's refused.

10 MRS. STEINER: Your Honor, in light of the
11 Court's ruling on that, to the extent that the confusion
12 of putting it down the road from reading the State's --
13 the Court's instructions, we would request that the Court
14 instruction be modified where it is talking about burden
15 of proof and beyond a reasonable doubt to include this
16 language in closer proximity to eliminate the possible
17 confusion that having it given in isolation after other
18 subject matters have been covered that might entail.

19 THE COURT: Well, I think I usually read the
20 beyond a reasonable doubt instruction right after the,
21 the State instruction or probably would do it right after
22 the lesser included instruction, because that, you know,
23 lays out all the elements.

24 MR. EVANS: We would object to the part of her
25 request changing the Court's instruction to put her
26 language in it.

27 THE COURT: Well, I'm, I'm not going to change
28 the language of the Court instruction. I mean it -- this
29 talks about before an inference essential to establish

1 guilt. Well, the Court does not deal in inferences. It
2 -- the jury is called upon to rule based on facts and,
3 you know, they have laid out -- you know, S-1 lays out
4 the facts that must be considered. So because of that,
5 you know, D-6 is not appropriate.

6 MRS. STEINER: You've refused the instruction
7 in any -- in this form and/or to be inserted closer to
8 the Court's instruction on --

9 THE COURT: I mean it's refused. So you know,
10 it wouldn't be inserted anywhere if it's refused.

11 MRS. STEINER: Thank you, Your Honor. Are you
12 ready for D-7?

13 THE COURT: I am.

14 MRS. STEINER: That is our circumstantial
15 evidence instruction on the entire case. That is based
16 on the legal insufficiency of Odell Hallmon's testimony
17 to rise even to the minimal standard of evidence that can
18 be considered by the jury.

19 The internal evidence of that testimony is that he
20 has lied self-admittedly. He has come up with excuses
21 that are self-evidently contradictory. He needed
22 cigarettes because his family had cut him off for lying,
23 which is why he lied.

24 Your Honor, the State has submitted a snitch
25 instruction, and McNeal says that at the very least that
26 instruction is required. In this case, the evidence of
27 Odell Hallmon is so completely ineffective that it does
28 not rise even to evidence the jury can consider as, as
29 any evidence, direct evidence of this matter. I believe

1 there was a pretrial motion made about excluding such
2 testimony for extreme unreliability that was previously
3 denied. We would reurge that motion.

4 THE COURT: That motion has never been made in
5 front of me, and I have never ruled on that.

6 MRS. STEINER: Thank you, Your Honor.

7 THE COURT: But --

8 MRS. STEINER: In any event, I believe that
9 evidence is so fundamentally incredible that this should
10 be granted under the circumstances of this particular
11 testimony.

12 MR. EVANS: Basically, in response, Your Honor,
13 the State would testify that it's a jury decision of what
14 weight and credibility to give each witness for either
15 side. There is some testimony that witness lied, but
16 only that he lied for the defense at the request of the
17 defendant in one trial. And it is up to the jury. It is
18 a jury issue, and there is direct proof that the
19 defendant admitted to him that he murdered these people.

20 THE COURT: In C-1 I've told the jury that they
21 are to consider and weigh the credibility of each witness
22 who has testified. If they believe this testimony, there
23 is direct proof of guilt that takes it out from under
24 circumstantial evidence case. And it's not -- in jury
25 instructions, this Court cannot and should not weigh the
26 testimony of all witnesses and decide based on that
27 whether to grant a particular instruction or not.

28 Right now the Court has proof before it that he --
29 Mr. Hallmon had a confession -- or Mr. Flowers confessed

1 to Mr. Hallmon that he had committed the murders. So
2 that makes it a direct evidence case and not a
3 circumstantial evidence case. And he even went so far as
4 to say he basically came clean, because he was trying to
5 get right with God, because he knew based on his illness
6 he wouldn't be around that long. So the Court will
7 refuse D-7.

8 MRS. STEINER: Thank you, Your Honor.

9 D-8 is an instruction given the large quantity of
10 circumstantial evidence that is supporting this
11 exceedingly feeble direct evidence, I believe the Court
12 having, having refused the general circumstantial
13 instruction, the Court should nonetheless give this
14 instruction to explain to the jury how they handle the
15 aspects of this case that are being established through
16 circumstantial evidence. And that would be required
17 under Fourth Amendment due process and Sixth Amendment
18 right to a trial by jury and the corresponding
19 Mississippi Constitution provisions.

20 MR. EVANS: Same argument as on the last one,
21 Your Honor.

22 THE COURT: Again, for the reasons stated on
23 denying D-7, D-8 is refused, because -- again, because of
24 the testimony of Mr. Hallmon, this is not a
25 circumstantial evidence case. And so it will be refused.

26 MRS. STEINER: Is Your Honor waiting for me to
27 proceed or are --

28 THE COURT: You know, I am.

29 MRS. STEINER: I'm sorry I thought you were

1 reviewing.

2 D-9 is our instruction that we are proposing under
3 *Chapman versus State* to give the jury a picture of the
4 aspects they may consider to determine credibility and
5 believability. And I believe we are entitled to it under
6 *Chapman versus State*. I don't believe either the Court
7 or the State have an instruction that, that does what
8 *Chapman* says may be done if requested.

9 MR. EVANS: Your Honor, we have no problem with
10 a similar instruction being given. We do have the proper
11 instruction prepared if the Court would like to give one
12 on witnesses. This instruction is not proper. It does
13 list elements that are not approved by the Court. But we
14 do have one that has been approved by the Supreme Court,
15 if the Court feels that it's necessary to give one on
16 eyewitness identification.

17 THE COURT: Well, I will review your, your
18 instruction.

19 MRS. STEINER: Right. I haven't seen what the
20 State's proposed instruction on this is so I can't say
21 whether that would solve the problem of tendering this or
22 if I wish -- I can't say whether I would still entertain
23 that.

24 Your Honor, what, what number do you want to assign
25 to this instruction?

26 THE COURT: I actually think this instruction
27 is the one you are tendering later as D-14.

28 MRS. STEINER: Oh, well.

29 Oh, yes, Your Honor. I will withdraw D-9 in favor

1 of D-14.

2 THE COURT: And I'll grant D-14. I mean I
3 guess I am taking it out of order a little bit, but I'll
4 go ahead. Because I think D-14 is an appropriate
5 statement of the law and will grant it.

6 MRS. STEINER: Your Honor, D-10. I believe
7 there is expert testimony in this case. I think this is
8 a standard expert instruction. I don't think the Court
9 has an expert instruction in its charge, nor has the
10 State tendered one.

11 THE COURT: I'll grant D-10, because I mean we
12 have a large number of experts. And I think that is an
13 appropriate instruction.

14 I'll take up D-11.

15 MRS. STEINER: I believe that one of the issues
16 is an eyewitness, not to the crime itself, but to one of
17 the -- the damaging circumstances in which the State is
18 attempting to prove the crime. And we are entitled to
19 the Court's instruction on this.

20 MR. EVANS: I object to it. I don't think it
21 is a correct statement of the law or -- and I think it is
22 trying to single out and tell the jury how they are to
23 view the witnesses. D-14 covers the identification part
24 and the other elements in here are inappropriate.

25 MRS. STEINER: Your Honor, our -- we believe
26 that although there is no Mississippi case law on this
27 particular instruction, it is required by the Sixth and
28 Fourteenth Amendments of the United States Constitution
29 and the comparable provisions of the Mississippi

1 Constitution.

2 MR. EVANS: There is nothing before the jury
3 about any scientific studies.

4 THE COURT: That was a big -- I mean I had
5 major concerns when you the start telling the jury about
6 scientific studies that are not in evidence or have
7 any -- I mean there is just no proof at all of that.

8 D-14, I'm satisfied covers the issue that you are
9 attempting to cover in D-11. So it would be cumulative.
10 And also, when you start putting in instructions
11 something scientific studies that the Court is not aware
12 of, has not had anything presented to that effect, nor
13 has the jury heard that, I think D-11 would be totally
14 inappropriate. And actually, I think the language that
15 I've already given in S-6 is probably better than D-12,
16 because it actually even says a jailhouse informant.

17 MRS. STEINER: Yes, Your Honor. I was going to
18 withdraw that in favor of S-6.

19 MR. EVANS: There is absolutely no basis for
20 13.

21 MRS. STEINER: I believe it covers the same
22 territory as S-6. I will withdraw that.

23 Fourteen is -- you have already granted that.
24 Fifteen, Your Honor. I think that there have been many
25 witnesses who have been impeached.

26 Just a moment, Your Honor.

27 Your Honor, I'm sorry. I was looking at it
28 differently. We will withdraw D-15.

29 D-16, Your Honor, I believe is supported by the

1 authority of Wharton's Criminal Evidence and as required
2 by the Sixth and Fourteenth Amendments of the United
3 States Constitution, the -- certainly for due process
4 under the Fourteenth Amendment and right to trial before
5 a fair and impartial jury. And therefore we think we are
6 entitled to D-16. Neither the State's instruction, nor
7 the Court's instructions heretofore granted deals with
8 this aspect.

9 MR. EVANS: The Court and the State's
10 instructions clearly set forth what the burden of proof
11 is and this is, I think, repetitive, plus it is
12 misleading.

13 THE COURT: C-3 has already told the jury to
14 consider the case separately, to deliberate, not to
15 change their opinion unless convinced that their opinion
16 is erroneous. So C-3 has already been given. D-16 would
17 be cumulative and, and unnecessary. And, of course, you
18 know, the S-instruction, S-1, tells each of them they
19 must -- I means tells the, the facts they must find
20 before they can find Mr. Flowers guilty. So D-16 is not
21 proper and is refused.

22 MRS. STEINER: Thank you, Your Honor.

23 D-17, again, I believe that this is a clear
24 statement of the law as to which they have been being --
25 been having conversations during voir dire. I believe we
26 are entitled to, to this instruction under the
27 Mississippi -- the authority of the Mississippi Supreme
28 Court about burden of proof and reasonable doubt and
29 under the Sixth and Fourteenth Amendment provisions of

1 the United States Constitution and the corresponding
2 Mississippi state constitution provisions previously
3 identified in further -- in prior objections.

4 MR. EVANS: Again, we object, because the Court
5 and the State instructions more properly explain
6 reasonable doubt to the jury and this is repetitive.

7 THE COURT: In C-2 the Court has already
8 instructed the jury that the burden of proof is on the
9 State. They must prove the defendant guilty of every
10 material element of the crime before they can return a
11 verdict of guilty. The State must prove the case beyond
12 a reasonable doubt. So they have already been instructed
13 on that. So they could only find guilt if they found all
14 these elements listed in S-1 beyond a reasonable doubt.

15 And further, at the conclusion of C-2, the Court
16 instructs the jury that the defendant is not required to
17 prove his innocence. So they have already been
18 instructed on anything that was attempting to be offered
19 in D-17. So it's refused.

20 MRS. STEINER: Thank you, Your Honor.

21 D-18 is language proved in *Edlin versus State*. If
22 there is any doubt, that it should be given as part of
23 the initial charge to the jury. We would ask that should
24 there be an *Allen*-type charge to the jury, that this be
25 given, if not in the initial deliberations, at such time
26 as any *Allen* charge was given to the jury.

27 THE COURT: An *Allen* charge is not allowed in
28 state courts in Mississippi.

29 MRS. STEINER: Right.

1 THE COURT: And actually, I -- because I came,
2 you know, when preparing these, I've looked back at every
3 instruction I had given by the Court. And, you know,
4 it's not numbered. It's, it's a *Sharplin* instruction.

5 MRS. STEINER: *Sharplin*.

6 THE COURT: Which I think was handed to both of
7 you. I mean, I am going to cross that bridge when -- if
8 we get to it. But I don't -- you know, it wouldn't be an
9 appropriate instruction at this point.

10 MRS. STEINER: Right. I think that was just a
11 misspeaking. I think that this would cure any defect in
12 the *Sharplin* instruction that are condemned by *Allen*.
13 But I will reserve that to the point at which we are
14 crossing that bridge.

15 THE COURT: So I am going to mark D-18
16 withdrawn pending further developments.

17 MRS. STEINER: Well, we are not offering it as
18 the initial charge to the jury, but we would reserve the
19 right to offer it should *Sharplin* be done.

20 And similarly, for D-19, that is supplemental to a
21 *Sharplin* instruction to cure the problems that make *Allen*
22 instructions improper in this state.

23 THE COURT: Well, I, I mean I'll, for this time
24 and for the record to be clear, consider it withdrawn at
25 this time.

26 MRS. STEINER: Right.

27 THE COURT: If there is some time in the future
28 where it needs to be reconsidered then, then I will
29 reconsider it.

1 MRS. STEINER: Thank you, Your Honor. I'll
2 bear that in mind if we get to a *Sharplin* instruction.

3 THE COURT: And then let's now...

4 MRS. STEINER: Your Honor, does the --

5 THE COURT: Let's now take back up the State
6 instruction on the lesser included.

7 MRS. STEINER: Should we call that S- -- I
8 believe there is two. Are those S-6 and S-7?

9 THE COURT: Well, I don't remember --
10 What was the last instruction numbered by the State?

11 MR. EVANS: One second, Your Honor.

12 S-6.

13 (BAILIFF BROWNING APPROACHED THE BENCH.)

14 THE COURT: Incidentally, I, I think that we
15 have got a shot that some juror needed, and I think -- I
16 was advised we have two nurses on the jury. So I am
17 going to just hand that in to the -- I am going to allow
18 the bailiff to open the door and hand that in the jury
19 room.

20 MRS. STEINER: Do they have gloves?

21 THE COURT: Well, they may need gloves. I
22 have -- am told they didn't use them the other day.

23 Apparently, one of the nurses has already
24 administered a shot.

25 BAILIFF BROWNING: To another person.

26 THE COURT: With the lady that had the swelling
27 after the shellfish.

28 MR. CARTER: Just for the record, Your Honor,
29 we object to that.

1 THE COURT: Well, I'm not going to -- you want
2 somebody to die on us or get sick during --

3 MR. CARTER: I don't want them to get sick. I
4 just want somebody else to do it besides them. But if
5 that's fine with the Court...

6 THE COURT: I think the best thing to do is
7 have somebody that's on the jury. Therefore, there is no
8 outside person coming in and having any contact with the
9 jury. Are you saying you would prefer somebody that has
10 no contact -- I mean that has some contact with the juror
11 that is not on the panel?

12 MR. CARTER: I don't want the juror feeling
13 beholden to this person and seeing this person as some
14 medical provider to him.

15 THE COURT: Well, I --

16 MR. CARTER: I will leave it up to the Court to
17 decide how to do it.

18 THE COURT: Well, I don't see any reason why
19 somebody that is a trained nurse on the jury can't give
20 it, and I think that is a much better procedure than to
21 have some medical person that has not been sequestered up
22 here having some contact with the jurors. So I am going
23 to allow it.

24 BAILIFF BROWNING: It is not an emergency. It
25 is B-12 shot.

26 THE COURT: I am going to ask the bailiff to go
27 ahead and hand that in there.

28 You may do it.

29 (THE BAILIFF HANDED THE SHOT INTO THE JURY ROOM.)

1 THE COURT: Okay. We will mark this next one
2 as S-6, and I guess the one after that --

3 MR. HOWIE: S-7, Your Honor.

4 THE COURT: Okay. S-7.

5 MR. EVANS: Yes, sir.

6 THE COURT: And the one following that would be
7 marked S-8.

8 MRS. STEINER: So S-7 is the single page.

9 THE COURT: And then the multi-page would be
10 S-8.

11 MRS. STEINER: Thank you, Your Honor. We would
12 object to S-7. I think it's confusing and puts in
13 information which goes beyond what the law presently is.

14 S-8, which is what has been granted in the past, it
15 specifically states the fact that you deliberate first on
16 the charge of capital murder and then subsequently
17 deliver -- deliberate on others. We believe that even
18 that language may go too far, but that is the
19 introductory language the Mississippi Supreme Court has
20 approved, and then this properly instructs as this Court
21 has in the past on each --

22 (THERE WAS A KNOCK FROM THE JURY ROOM.)

23 THE COURT: Wait.

24 I have got the jury apparently with a note or
25 question. So I want to wait, have you open the door.

26 (BAILIFF BROWNING OPENED THE JURY ROOM DOOR.)

27 BAILIFF BROWNING: He wishes not to take it,
28 because it makes him sleepy. And it is not going to hurt
29 him to miss it by a couple of days.

1 THE COURT: Okay. That's good. He said it
2 makes him sleepy, and he doesn't choose to take it. It
3 can wait for a couple of days.

4 Okay. And I want to make clear on this. The single
5 line -- page instruction is S-7; right?

6 MR. EVANS: Yes, sir.

7 MRS. STEINER: Yes, sir. And we object to
8 that.

9 MR. EVANS: As far as S-7, this is the same
10 instruction that we have given for as many years as I can
11 remember on every case dealing with lesser included. I
12 think it is a correct statement of the law. It has been
13 approved in many, many, many cases, and it's been given
14 in this case at a previous times.

15 THE COURT: I have given S-7 every time -- I
16 mean every time there has been a lesser included
17 instruction that has been warranted in any trial I have
18 ever presided over S-7 has been given. It's an
19 appropriate and correct statement of the law. It will be
20 granted.

21 MRS. STEINER: We have no objection to S-8.

22 THE COURT: It's given. With that, I assume
23 now that D-2 can be withdrawn.

24 MRS. STEINER: Yes, Your Honor. Yes, Your
25 Honor. To the -- it's withdrawn other than to the extent
26 it supports an alternative to giving S-8.

27 MR. EVANS: Has the Court got the corrected --

28 THE COURT: Form of the verdict?

29 MR. EVANS: -- form of the verdict?

1 MRS. STEINER: Your Honor, I think this
2 actually two fold. There is a --

3 THE COURT: A form of the verdict and an
4 instruction telling them to plainly mark.

5 MRS. STEINER: How do we want to mark those?

6 MR. EVANS: Probably should be Court
7 instructions.

8 THE COURT: I want to make sure that I've got
9 them all. Let me take this one. I think the original
10 one, let's just have it marked. What was the last Court
11 instruction? We will call it C-5-A. So it will be clear
12 in the record. Then the next one will be C-5-B, which
13 will be the one granted which gives the lesser included.

14 MRS. STEINER: So the one -- so the less --

15 THE COURT: The one that originally was handed
16 by the State, that just had capital murder in it --

17 MRS. STEINER: Okay.

18 THE COURT: -- will be C-5-A, and it will be
19 withdrawn.

20 MR. EVANS: Yes, sir.

21 THE COURT: And then the next one that now
22 includes another -- the lesser included will be called
23 C-5-B, and it will be given.

24 MRS. STEINER: Do we want to assign a number to
25 the verdict form itself?

26 THE COURT: Well, the form of the verdict would
27 just be something that would be attached to it, but it's
28 not an instruction. It is just something that they mark.
29 So I don't think we assign a number to it.

1 Let me now...

2 MRS. STEINER: We have no objection to this
3 form of the verdict entitled verdict form.

4 THE COURT: I am going to now try to put these
5 in a semblance of order that makes sense when I am
6 reading them. Then I will read in the record the order
7 in which they are to be read.

8 MR. HILL: Your Honor, would the Court allow
9 the clerk to copy the instructions as given for the
10 parties?

11 THE COURT: We will take a brief recess before
12 we bring the jury back in.

13 MRS. STEINER: I was going to ask for that,
14 Your Honor.

15 THE COURT: Ma'am.

16 MRS. STEINER: I was going to ask for that.

17 THE COURT: Oh, okay.

18 Now, I am going to read in the record the order in
19 which the instructions would be given. C-1 will now be
20 given as Instruction Number 1. S-1 will be Instruction
21 2.

22 MRS. STEINER: Your Honor, I'll write these
23 down too.

24 THE COURT: She is going to make a copy for you
25 too.

26 MRS. STEINER: Thank you, Your Honor.

27 THE COURT: Are you with me now?

28 MRS. STEINER: Yes, I am.

29 THE COURT: Then instruction S-5 will be given

1 as Instruction Number 3. S-2 will be Instruction 4. S-3
2 will be Instruction 5. S-7 will be Instruction 6. S-8
3 will be Instruction Number 7. C-2 will be Instruction
4 Number 8. D-10 will be Instruction Number 9. S-6 will
5 be Instruction 10. S-4 will be Instruction Number 11.
6 C-3 will be Instruction Number 12. C-4 will be
7 Instruction 13. C-5-B will be Instruction Number 14.

8 These will all be stapled together. And then paper
9 clipped on to the instructions will be the form of the
10 verdict.

11 MRS. STEINER: Your Honor, I believe the, the
12 defense instructions that were granted are not included
13 in that.

14 THE COURT: D-10.

15 MRS. STEINER: Oh, I thought you said C-10.

16 THE COURT: No. D-10 is given as Instruction
17 Number 9, and...

18 MRS. STEINER: D-14.

19 THE COURT: Let me find it again.

20 MRS. STEINER: I don't believe D-14 is included
21 in the list, unless I misheard.

22 THE COURT: Let me make sure I didn't put it in
23 the wrong pile here by mistake.

24 I thought D-14 was withdrawn.

25 No, I'm sorry.

26 MRS. STEINER: It is granted.

27 THE COURT: No. I'm sorry. It is granted, and
28 the State instruction had the same thing.

29 MRS. STEINER: I thought D-14 --

1 THE COURT: No, it is. And I appreciate your
2 calling that to my attention.

3 MRS. STEINER: I think that is my job, Your
4 Honor.

5 THE COURT: Well, thank you. Because I
6 certainly -- I had two instructions that said the same
7 thing, and I was -- put it in the wrong stack. And now
8 I've got to go back. I'm going to just mark this as
9 Instruction 7-A. Because otherwise, I would have to go
10 back and instruct. And I think it needs to be read after
11 the -- after the elements of the crime instructions would
12 be, I think, the most appropriate place would be to put
13 that one.

14 MRS. STEINER: So put that after S-8 and before
15 C-2.

16 THE COURT: It will be after -- yeah. It will
17 be instruction, read after -- yes, ma'am, you are
18 correct.

19 Okay. Have I overlooked any other one, because I
20 certainly...

21 MRS. STEINER: I hope not, Your Honor.

22 THE COURT: I don't think so.

23 But I will have the clerk stamp these all filed and
24 make copies for both of you before we resume.

25 How long do y'all desire to argue?

26 MR. CARTER: I need at least a hour, Your
27 Honor, hour and 15 minutes.

28 MR. EVANS: I think an hour would be fine for
29 us. I think that is pretty much what we have had in the

1 past.

2 THE COURT: I'll give each side an hour. If
3 you get to the point, Mr. Carter, where you just
4 absolutely have something else to say, and you hadn't got
5 it said, then you can request additional time.

6 MR. CARTER: Thank you.

7 THE COURT: Also, you know, some lawyers ask me
8 to give them a warning when their time is about up. Some
9 just ask me to advise them to sit down. And I don't know
10 if y'all are going to intend to split your time up
11 either, if you want me to give you any warnings of any
12 kind.

13 MR. HILL: Your Honor.

14 MRS. STEINER: Your Honor. Sorry.

15 MR. HILL: I'll probably go first for the
16 State, and I would like a five-minute warning at the end
17 of 25 five minutes. We will split ours 30 minutes and 30
18 minutes.

19 THE COURT: Okay.

20 MRS. STEINER: Your Honor, I believe Mr. Carter
21 is going to go first for the defendant. I -- let me say
22 this, and I am hoping we can control this within
23 ourselves. I would like to go second and argue for a
24 total of 15 minutes with a five-minute warning at -- with
25 a warning at ten minutes. If that turns out it -- if he
26 goes 55 minutes, that would be de facto of a request for
27 an extension of our argument time for the defendant.

28 THE COURT: Okay. Right now it would appear 45
29 minutes would be your time, Mr. Carter. Do you want me

1 to give you some --

2 MR. CARTER: Can I at least get another 10,
3 Your Honor? Fifty-five minutes.

4 THE COURT: I'll give you 55. Does the State
5 want additional?

6 MR. EVANS: Yes, sir.

7 THE COURT: You are entitled to it. That will
8 be an hour and ten minutes. So I guess --

9 MR. HILL: Thirty-five.

10 THE COURT: Thirty-five and 35.

11 MRS. STEINER: Your Honor, I think Mr. Carter
12 has asked to be warned or notified at 50 minutes.

13 THE COURT: Okay. Mr. Evans, you want me to
14 give you any kind of warning?

15 MR. EVANS: Yes, sir. If you would just give
16 me, maybe, a five-minute warning be fine.

17 THE COURT: Okay.

18 MR. EVANS: That is, if I go that far.

19 THE COURT: That will be fine.

20 And so we will take a short recess to have the
21 instructions labeled.

22 (A RECESS WAS TAKEN.)

23 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
24 AND THE DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS
25 WERE AS FOLLOWS:)

26 THE COURT: If you will, bring the jury in for
27 a second.

28 I am going to recess and let them be back at 12:15.
29 So they can just eat a little early. I am going to have

1 the jury brought out.

2 If you will open the door and let the jury out.

3 (THE JURY RETURNED TO THE COURTROOM.)

4 Court will come back to order.

5 Ladies and gentlemen, because of the length of time
6 that closing arguments are going to take place, and I
7 know that you would probably get hungry before we got
8 through with those. So we are just going to have you go
9 to lunch a little early today, and we will recess until
10 12:15.

11 They have told me they will have lunch prepared very
12 shortly for you. And so we will just recess until 12:15.
13 That way we won't have to break during closing arguments
14 or anything like that.

15 So if you will just step in the jury room for a few
16 minutes until everybody is cleared out. They can take
17 you to lunch. Then we will resume at 12:15 with closing
18 arguments to begin at that time. So you may step in
19 there.

20 (THE JURY LEFT THE COURTROOM.)

21 Stand in recess.

22 (COURT RECESSED FOR THE NOON HOUR.)

23 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
24 AND THE DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS
25 WERE AS FOLLOWS:)

26 (THE JURY RETURNED TO THE COURTROOM.)

27 THE COURT: Court will come back to order.

28 Members of the jury, you have heard all the testimony,
29 received the evidence and will shortly hearing arguments

1 of counsel. The Court will presently instruct you as to
2 the rules of law which you will use and apply to this
3 evidence in reaching your verdict.

4 When you took your places in the jury box, you made
5 an oath that you would follow and apply these rules of
6 law to the evidence in reaching your verdict in this
7 case. It is therefore your duty, as jurors, to follow
8 the law which I shall now state to you.

9 You are not to be concerned with the wisdom of any
10 rule of law. Regardless of any opinion you may have as
11 to what the law ought to be, it would be a violation of
12 your sworn duty to base your verdict upon any other view
13 of the law than that given to you in these instructions
14 by the Court.

15 You are not to single out one instruction alone as
16 stating the law, but you must consider these instructions
17 as a whole. Neither the manner in which these
18 instructions are given, nor the number of instructions on
19 any given proposition is of any significance in
20 determining the importance of such instructions.

21 It is your exclusive province to determine the facts
22 in this case and to consider and weigh the evidence for
23 that purpose. The authority thus vested in you is not an
24 arbitrary power but must be exercised with sincere
25 judgment, sound discretion and in accordance with the
26 rules of law stated to you by the Court.

27 Both the State of Mississippi and the defendant have
28 a right to expect that you will conscientiously consider
29 and weigh the evidence and apply the law of the case and

1 that you will reach a just verdict, regardless of what
2 the consequences of such verdict may be.

3 It is your duty to determine the facts and to
4 determine them from the evidence produced in open court.
5 You are to apply the law to the facts and in this way
6 decide the case.

7 You should not be influenced by bias, sympathy or
8 prejudice. Your verdict should be based on the evidence
9 and not upon speculation, guesswork or conjecture. As
10 sole judges of the facts in this case, you determine what
11 weight and what credibility will be assigned the
12 testimony and supporting the evidence of each witness in
13 this case. You're required to use your good common sense
14 and sound honest judgment in considering and weighing the
15 testimony of each witness who has testified in this case.

16 The evidence which you are to consider consists of
17 the testimony and the statements of the witnesses and the
18 exhibits offered and received. You are also permitted to
19 draw reasonable inferences from the evidence as seem
20 justified in the light of your own experience.

21 Arguments, statements and remarks of counsel are
22 intended to help you understand the evidence and apply
23 the law but are not evidence. If any argument, statement
24 or remark has no basis in the evidence then you should
25 disregard that argument, statement or remark.

26 The production of evidence in court is governed by
27 rules of law. From time to time during the trial it has
28 been my duty as judge to rule on the admissibility of
29 evidence. You must not concern yourself with the reasons

1 for the Court's rulings since they are controlled and
2 governed by rules of law. You should not infer from any
3 rulings by the Court on these motions or objections that
4 the Court has any opinion on the merits of the case
5 favoring one side or the other.

6 You should not speculate as to possible answers to
7 questions which the Court did not require to be answered.
8 Further, you are to dis -- further, you should not draw
9 any inference from the content of those questions. You
10 are to disregard all evidence which was excluded by the
11 Court from consideration during the course of the trial.

12 Shortly after you were selected, I informed you that
13 you could take notes, and I instructed you as to the
14 appropriate use of any notes that you might take. Most
15 importantly, an individual juror's notes may be used by
16 that juror only and may not be shown to or shared with
17 other jurors.

18 Notes are only a memory aid, and a juror's notes may
19 be used only as an aid to refresh that particular juror's
20 memory and assist that juror in recalling the actual
21 testimony. Each of you must rely on your own independent
22 recollection of the proceedings.

23 Whether you took notes or not, each of you must form
24 and express your own opinion as to the facts of this
25 case. Be aware that during the course of your
26 deliberations there might be the temptation to allow
27 notes to cause certain portions of the evidence to
28 receive undue emphasis and receive attention out of
29 proportion to the entire evidence. But a juror's memory

1 or impression is entitled to no greater weight just
2 because he or she took notes, and you should not be
3 influenced by the notes of other jurors. Thus during
4 your deliberations, do not assume simply because
5 something appears in your notes that it necessarily took
6 place in court.

7 The defendant, Curtis Giovanni Flowers, has been
8 charged in four separate indictments with the crimes of
9 capital murder of Bertha Tardy, Robert Golden, Carmen
10 Rigby and Derrick Stewart. These charges have been
11 consolidated for trial in this case. Therefore, all 12
12 of you must unanimously agree on and return a separate
13 verdict in each of the four charges.

14 If you believe from all the evidence in this case
15 beyond a reasonable doubt that the defendant, Curtis
16 Giovanni Flowers, did on or about July 16, 1996, in
17 Montgomery County, Mississippi, willfully, unlawfully,
18 feloniously, either with or without deliberate design,
19 then and there kill and murder Bertha Tardy, a human
20 being, without authority of law, when engaged in the
21 commission of the crime of armed robbery, then the
22 defendant is guilty of the crime of capital murder of
23 Bertha Tardy, and it is your sworn duty to so say -- to
24 say so by your verdict.

25 If the State is has failed to prove any one or more
26 of these elements beyond a reasonable doubt, then you
27 shall find the defendant not guilty of the capital murder
28 of Bertha Tardy.

29 If you believe from all the evidence in this case,

1 beyond a reasonable doubt, that the defendant, Curtis
2 Giovanni Flowers, did on or about July 16, 1996, in
3 Montgomery County, Mississippi, willfully, unlawfully,
4 feloniously, either with or without deliberate design,
5 then and there kill and murder Robert Golden, a human
6 being, without authority of law, when engaged in the
7 commission of the crime of armed robbery, then the
8 defendant is guilty of the crime of capital murder of
9 Robert Golden, and it is your sworn duty to say so by
10 your verdict.

11 If the State has failed to prove any one or more of
12 these elements beyond a reasonable doubt, then you shall
13 find the defendant not guilty of the capital murder of
14 Robert Golden.

15 If you believe from all the evidence in this case
16 beyond a reasonable doubt that the defendant, Curtis
17 Giovanni Flowers, did on or about July 16, 1996, in
18 Montgomery County, Mississippi, willfully, unlawfully,
19 feloniously, either with or without deliberate design,
20 then and there kill and murder Carmen Rigby, a human
21 being, without authority of law, when engaged in the
22 commission of the crime of armed robbery, then the
23 defendant is guilty of the crime of capital murder of
24 Carmen Rigby, and it is your sworn duty to say so by your
25 verdict.

26 If the State has failed to prove any one or more of
27 these elements beyond a reasonable doubt, then you shall
28 find the defendant not guilty of the capital murder of
29 Carmen Rigby.

1 If you believe from all the evidence in this case,
2 beyond a reasonable doubt, that the defendant, Curtis
3 Giovanni Flowers, did on or about July 16, 1996, in
4 Montgomery County, Mississippi, willfully, unlawfully,
5 feloniously, either with or without deliberate design,
6 then and there kill and murder Derrick Stewart, a human
7 being, without authority of law, when engaged in the
8 commission of the crime of armed robbery, then the
9 defendant is guilty of the crime of capital murder of
10 Derrick Stewart, and it is your sworn duty to say so by
11 your verdict.

12 If the State has failed to prove any one or more of
13 these elements beyond a reasonable doubt, then you shall
14 find the defendant not guilty of the capital murder of
15 Derrick Stewart.

16 The Court instructs the jury that deliberate design
17 as used elsewhere in these instructions means intent to
18 kill without authority of law and not being justifiable
19 or legally excusable. A deliberate design cannot be
20 formed at the very moment of the fatal act; however, the
21 deliberate design need not exist in the mind of the
22 defendant for any definite time, not for hours, days or
23 even minutes.

24 If you believe from all the evidence in this case,
25 beyond a reasonable doubt, that the defendant, Curtis
26 Giovanni Flowers, did on or about July 16, 1996, in
27 Montgomery County, willfully, unlawfully and feloniously,
28 with the felonious intent to permanently deprive the
29 owner thereof, take, steal and carry away or attempt to

1 take, steal and carry away the personal property of
2 Bertha Tardy, doing business as Tardy Furniture store,
3 from the presence and against the will of Bertha Tardy,
4 Robert L. Golden, Carmen Rigby and/or Derrick Stewart, or
5 any one of them by the violence to their person, with a
6 deadly weapon, then the same would constitute armed
7 robbery.

8 A thing is in the presence of a person with respect
9 to robbery which is so within his or her reach,
10 inspection, observation or control that he or she could,
11 if not overcome with violence or prevented by fear,
12 retain their possession of it.

13 The Court instructs the jury that if warranted by
14 evidence, you may find the defendant guilty of a crime
15 lesser than capital murder on any one or more of the four
16 charges. However, notwithstanding this right, it is your
17 duty to accept the law as given to you by the Court, and
18 if the facts and law warrant a conviction for the crime
19 of capital murder, then it is your duty to make such
20 findings uninfluenced by your power to find a lesser
21 offense.

22 This provision is not designed to relieve you from
23 the performance of an unpleasant duty. It is included to
24 prevent a failure of justice if the evidence fails to
25 prove the original charge of capital murder on any one or
26 more of the four charges but does justify a verdict for
27 the lesser crime of murder.

28 If you find that the State has failed to prove any
29 one or more of the essential elements of the crime of

1 capital murder on any or all of the four charges of
2 capital murder, you may -- you must find the defendant
3 not guilty of capital murder on that charge or charges,
4 as the case may be.

5 You will then proceed with your deliberations to
6 decide whether the defendant has proved beyond a
7 reasonable doubt -- whether the State has proved beyond a
8 reasonable doubt all the elements of the lesser crime of
9 murder on that charge or charges, as the case may be.

10 The crime of murder is distinguishable from the
11 crime of capital murder by the failure to prove the
12 murder or murders, as the case may be, were committed
13 when the defendant was engaged in the crime of armed
14 robbery. If you believe from all the evidence in this
15 case beyond a reasonable doubt that the defendant, Curtis
16 Giovanni Flowers, on or about July 16, 1996, in
17 Montgomery County, Mississippi, did willfully,
18 unlawfully, feloniously, and with the deliberate design
19 to effect death, then and there kill and murder Bertha
20 Tardy, a human being, without authority of law, then the
21 defendant is guilty of the murder of Bertha Tardy, and it
22 is your sworn duty to say so by your verdict.

23 If the State has failed to prove any one or more of
24 these elements beyond a reasonable doubt, then you shall
25 find the defendant not guilty of the murder of Bertha
26 Tardy.

27 If you believe from all the evidence in this case
28 beyond a reasonable doubt that the defendant, Curtis
29 Giovanni Flowers, on or about July 16, 1996, in

1 Montgomery County, Mississippi, did willfully,
2 unlawfully, feloniously and with the deliberate design to
3 effect death, then and there kill and murder Robert
4 Golden, a human being, without authority of law, then the
5 defendant is guilty of the murder of Robert Golden, and
6 it is your duty -- sworn duty to say so by your verdict.

7 If the State has failed to prove any one or more of
8 these elements beyond a reasonable doubt, then you shall
9 find the defendant not guilty of the murder of Robert
10 Golden.

11 If you believe from all the evidence in this case,
12 beyond a reasonable doubt, that the defendant, Curtis
13 Giovanni Flowers, on or about July 16, 1996, in
14 Montgomery County, Mississippi, did willfully,
15 unlawfully, feloniously and with the deliberate design to
16 effect death, then and there kill and murder Carmen
17 Rigby, a human being, without authority of law, then the
18 defendant is guilty of the murder of Carmen Rigby, and it
19 is your sworn duty to say so by your verdict.

20 If the State has failed to prove any one or more of
21 these elements beyond a reasonable doubt, then you shall
22 find the defendant not guilty of the murder of Carmen
23 Rigby.

24 If you believe from all the evidence in this case,
25 beyond a reasonable doubt, that the defendant, Curtis
26 Giovanni Flowers, on or about July 16, 1996, in
27 Montgomery County, Mississippi, did willfully,
28 unlawfully, feloniously and with the deliberate design to
29 effect death, then and there kill and murder Derrick

1 Stewart, a human being, without authority of law, then
2 the defendant is guilty of the murder of Derrick Stewart,
3 and it is your sworn duty to say so by your verdict.

4 If the State has failed to prove any one or more of
5 these elements beyond a reasonable doubt, then you shall
6 find the defendant not guilty of the murder of Derrick
7 Stewart.

8 The Court instructs the jury that in reaching your
9 verdict, you are to consider all of the evidence
10 concerning the entire cause and the circumstances
11 surrounding the crime.

12 One of the issues in this case is the identification
13 of Curtis Flowers as the perpetrator of the crime. As
14 with each element of the crime charged, the State has the
15 burden of proving identity beyond a reasonable doubt.
16 And before you may convict Mr. Flowers, you must be
17 satisfied beyond a reasonable doubt of the accuracy of
18 the identification of Mr. Flowers.

19 If after considering all of the evidence concerning
20 the crime and the witnesses' identification of Mr.
21 Flowers as the person who committed the crime, you are
22 not convinced beyond a reasonable doubt that he is the
23 person who committed the crime, then you must find him
24 not guilty.

25 Identification testimony is an expression of belief
26 or impression by the witness. You must judge its value
27 and reliability from the totality of the circumstances
28 surrounding the crime and the subsequent identification.

29 In appraising the identification testimony of a

1 witness, you should consider the following. Did the
2 witness have an adequate opportunity to observe the
3 offender? Did the witness observe the offender with an
4 accurate -- with an adequate degree of attention? Did
5 the witness provide an accurate description of the
6 offender after the crime? How certain is the witness of
7 the identification? How much time passed between the
8 crime and the identification? If after examining all the
9 testimony and evidence you have a reasonable doubt that
10 Curtis Flowers is the person who committed the crime,
11 then you must find Curtis Flowers not guilty.

12 The law presumes every person charged with the
13 commission of a crime to be innocent. This presumption
14 places upon the State the burden of proving the defendant
15 guilty of every material element of the crime with which
16 the defendant is charged. Before you can return a
17 verdict of guilty, the State must prove to your
18 satisfaction beyond a reasonable doubt that the defendant
19 is guilty.

20 Presumption of innocence attends the defendant
21 throughout the trial and prevails at its close unless
22 overcome by evidence which satisfies you, the jury, of
23 the defendant's guilt beyond a reasonable doubt. The
24 defendant is not required to prove his innocence.

25 The law permits evidence of certain persons who are
26 termed expert. Experts may testify to their opinions
27 derived from their knowledge of particular matters.
28 However, the ultimate weight to be given to an expert --
29 given to expert testimony is a question to be determined

1 by you. Testimony of an expert, like that of any other
2 witness, is to be received by you and given such weight
3 only as you think it is properly entitled to receive.
4 You are not bound by the opinion testimony of any
5 witness, expert or otherwise.

6 The Court instructs the jury that the law looks with
7 suspicion and distrust on the testimony of a jailhouse
8 informant and requires the jury to weigh the same with
9 great care and suspicion. You should weigh the testimony
10 from a jail informant in passing on what weight, if any,
11 you should give this testimony. You should weigh it with
12 great care and caution and look upon it with distrust and
13 suspicion.

14 This phase of the trial deals only with the question
15 of the guilt or innocence of the defendant, Curtis
16 Giovanni Flowers. In the event you find the defendant
17 guilty of capital murder, you will then and only then,
18 after being further instructed by the Court in the second
19 phase of the trial, consider the appropriate sentence to
20 be imposed.

21 The verdict of the jury must represent the
22 considered judgment of each juror. In order to return a
23 verdict, it will be necessary that each juror agree
24 thereto. In other words, all 12 jurors must agree on a
25 verdict in this case.

26 It is your duty, as jurors, to consult with one
27 another and to deliberate in view of reaching an
28 agreement if you can do so without violence to your
29 individual judgment. Each of you must decide the case

1 for yourself but do so only after impartial consideration
2 of the evidence with your fellow jurors.

3 In the course of your deliberation, do not hesitate
4 to re-examine your own views and change your opinion if
5 convinced it is erroneous, but do not surrender your
6 honest conviction as to the weight or effect of the
7 evidence solely because of the opinion of your fellow
8 jurors or for the mere purpose of returning a verdict.

9 Upon retiring to the jury room, you will need to
10 select one from among your number to act as a foreman,
11 who may be a man or woman. A foreman will preside over
12 your deliberations and will be your spokesperson before
13 the Court. If it becomes necessary during your
14 deliberations to communicate with the Court, please write
15 out your message or question and pass the note to the
16 bailiff.

17 No member of the jury should ever attempt to
18 communicate with the Court by any means other than in
19 writing, and the Court will never communicate with any
20 member of the juror on any subject touching the merits of
21 the case, other than in writing or orally here in open
22 court.

23 Bear in mind also, that you are never to reveal to
24 any person, not even the Court, how the jury stands
25 numerically or otherwise on the question of the guilt or
26 innocence of the defendant until after you have reached a
27 unanimous verdict.

28 Your verdict must be plainly marked on the separate
29 form provided by the Court. It need not be signed by

1 you, and may be in either of the following forms.

2 Count I: If you find the defendant, Curtis Giovanni
3 Flowers, guilty of the capital murder of Bertha Tardy,
4 then the form of your verdict shall be, we, the jury,
5 find the defendant guilty of the capital murder of Bertha
6 Tardy.

7 If you find the defendant, Curtis Giovanni Flowers,
8 guilty of the lesser included offense of murder of Bertha
9 Tardy, then the form of your verdict shall be, we, the
10 jury, find the defendant guilty of the lesser offense of
11 murder of Bertha Tardy.

12 If you find the defendant, Curtis Giovanni Flowers,
13 not guilty of the capital murder or lesser included
14 offense of murder of Bertha Tardy, then the form of your
15 verdict shall be, we, the jury, find the defendant not
16 guilty.

17 As to Count II: If you find the defendant, Curtis
18 Giovanni Flowers, guilty of the capital murder of Robert
19 L. Golden, then the form of your verdict shall be, we,
20 the jury, find the defendant guilty of the capital murder
21 of Robert L. Golden.

22 If you find the defendant, Curtis Giovanni Flowers,
23 guilty of the lesser included offense of murder of Robert
24 L. Golden, the form of your verdict shall be, we, the
25 jury, find the defendant guilty of the lesser included
26 offense of murder of Robert Golden.

27 If you find the defendant, Curtis Giovanni Flowers,
28 not guilty of the capital murder or lesser included
29 offense of murder of Robert Golden, the form of your

1 verdict shall be, we, the jury, find the defendant not
2 guilty.

3 As to Count III: If you find the defendant, Curtis
4 Giovanni Flowers, guilty of the capital murder of Carmen
5 Rigby, then the form of your verdict shall be we, the
6 jury, find the defendant guilty of the capital murder of
7 Carmen Rigby.

8 If you find the defendant, Curtis Giovanni Flowers,
9 guilty of the lesser included offense of murder of Carmen
10 Rigby, the form of your verdict shall be we, the jury,
11 find the defendant guilty of the lesser included offense
12 of murder of Carmen Rigby.

13 If you find the defendant, Curtis Giovanni Flowers,
14 not guilty of the capital murder or lesser included
15 offense of murder of Carmen Rigby, the form of your
16 verdict shall be we, the jury, find the defendant not
17 guilty.

18 As to Count IV: If you find the defendant, Curtis
19 Giovanni Flowers, guilty of the capital murder of Derrick
20 Stewart, the form of your verdict shall be we, the jury,
21 find the defendant guilty of the capital murder of
22 Derrick Stewart.

23 If you find the defendant, Curtis Giovanni Flowers,
24 guilty of the lesser included offense of murder of
25 Derrick Stewart, the form of your verdict shall be, we,
26 the jury, find the defendant guilty of the lesser
27 included offense of murder of Derrick Stewart.

28 If you find the defendant, Curtis Giovanni Flowers,
29 not guilty of the capital murder or lesser included

1 offense of murder of Derrick Stewart, the form of your
2 verdict shall be we, the jury, find the defendant not
3 guilty.

4 Ladies and gentlemen, those are the instructions of
5 law from the Court. We will now begin hearing closing
6 arguments, first beginning with the State of Mississippi.

7 MR. HILL: May I begin, Your Honor?

8 THE COURT: You may proceed.

9 MR. HILL: Ladies and gentlemen of the jury,
10 you are a special people. You have been selected for a
11 very special task. The task in this case, to sit here
12 for the days of live testimony and to weigh and evaluate
13 the testimony in the greatest crime in at least the
14 recent history of this fair city.

15 You are to weigh the evidence not just for the
16 murder of one person, not for the murder of two people,
17 nor three. But this case involves the murder of four
18 people. These people were completely innocent, having
19 done no wrong. They were just working on a routine day
20 in their lives. They were all at the store. They were
21 all at work.

22 And the defendant in this case, for reasons that we
23 are going to go through, walked in that day with the a
24 .380 semi-automatic handgun and executed Bertha Tardy,
25 Carmen Rigby, Derrick Stewart and Robert Golden. He
26 killed them all. They were all killed in one place, at
27 one time, in one way, by one gun. These murders were
28 committed while the defendant was engaged in the
29 commission of armed robbery. There is no question that a

1 handgun was the gun used, the weapon used. There is no
2 question that the store was robbed. This is the ultimate
3 crime quadrupled.

4 Now, ladies and gentlemen, you have taken a solemn
5 oath to return the just and right verdict in this case.
6 We now are going to take a few minutes and commence a
7 short journey back through the evidence. The evidence
8 that proved beyond any reasonable doubt whatsoever that
9 the defendant, Curtis Flowers, is the person responsible
10 for these awful acts. We are now going to do an
11 analysis, just a little recap, if you will, of the
12 evidence that has been produced for you in this case.

13 But first, I just want to comment to you that after
14 we finish the analysis, I think you will all agree that
15 the man that did these crimes is seated right over there.
16 (Pointed.) He has been with us here in this courtroom
17 for the last two weeks. He has seen it all, just as you
18 have.

19 Ladies and gentlemen, this wasn't a two-day
20 investigation. This was an extensive investigation. It
21 was huge. It was huge in both its scope and both the
22 time and the energy devoted to it. It was huge in the
23 sense that all the agencies assisted and cooperated with
24 each other in unprecedented teamwork. I want you to keep
25 in mind that there was no rush to accuse. There was no
26 rush to arrest. The defendant was not arrested on the
27 first day. He was talked to on the first day, as he
28 should have been, but he was not arrested. Nor was he
29 arrested the second day or the third. It was some six

1 months later before he was arrested. He wasn't arrested
2 until all the ducks were in a row, until the final note
3 had been written. And he was arrested and he has been
4 charged.

5 Now, I think you should also keep in mind that in a
6 criminal investigation it's all about linkages. It's all
7 about connections. It's about evidence. And we are now
8 going to go through and talk to you just a little bit to
9 perhaps refresh your memory. I see many of you have note
10 pads and you can, I'm sure, follow with me.

11 Mr. Sam Jones who had worked for Tardy Furniture - I
12 think he was like 87 years old at the time - worked for
13 Tardy Furniture for many years. He walked into that
14 • store on the morning of July 16, 1996, and he heard the
15 labored final breaths of Derrick Stewart laying on the
16 floor, gurgling in his own blood. He walked up close
17 enough to see what was going on, and there he discovered
18 the bodies of all four victims basically laying in a
19 pile, in a group right at the front counter in Tardy
20 Furniture store.

21 We are going to talk about connections. There is a
22 lot of things that connect this defendant. That's what
23 you look for in criminal investigation. You look for
24 connections. What connected this defendant to these
25 crimes?

26 Well, let's look. First of all is we have here a
27 timeline. I'm going to talk to you about times and about
28 witnesses and about identification. And I'm going to
29 just point out to you, I've written this on a marker

1 board.

2 Mr. Sam Jones came into the store slightly after
3 10:00 on the morning of the 16th and discovered the
4 bodies. The 911 dispatched, dispatched the MedStat
5 ambulance crew at 10:20 a.m. Chief Hargrove was the
6 first to arrive between 10:20 and 10:21 a.m. Hargrove is
7 on the scene and locks down the crime scene.

8 So we have a fixed point in time from which to
9 operate, and we know that the murders occurred before
10 10:20 a.m. That is beyond any question. We know it
11 happened before then. The investigators learned pretty
12 quickly when they asked who in the world could have had
13 some reason, some motive, some anything to attack four
14 people like this.

15 Have you had anybody that's had any beef with the
16 store? Just one. Well, that doesn't mean he did this
17 though, does it? No. But you check that out. You look
18 at him. And in the course of deciding what, if anything,
19 Curtis Flowers had to do with this crime.

20 You heard the officers say they canvassed, they went
21 door to door. They talked and they walked for many
22 months. I mean we didn't talk to all these people the
23 first day. But what we did find out was that Miss
24 Patricia Odom, Patricia Hallmon Odom, who lived near the
25 defendant, was his neighbor. And according to her, she
26 thought she was a friend. She was up for her morning
27 walk between 4:45 and 5:00 on the morning of the 16th of
28 July. And she saw the defendant, who she knew, on the
29 porch smoking a cigarette.

1 There is one other thing important about what she
2 saw. The defendant was wearing his Fila Grant Hill II
3 tennis shoes. She knew him to have the shoes. She had
4 seen them before. They were, you know, kind of a special
5 shoe. And so she just saw him and she spoke. The only
6 thing, he didn't return. He didn't speak back.

7 Another neighbor, Miss Elaine Gholston, saw the
8 defendant on the porch between 6:30 and 6:45. Miss
9 Gholston had to go to work and be there at 7:00. That is
10 what she was doing up. She said she was out on the porch
11 waiting for a ride. Probably closer to 6:45. She sees
12 the defendant sitting on the porch smoking a cigarette.
13 What does she know about Curtis? She knows he has a pair
14 of Grant Hill Fila tennis shoes because she has seen him
15 wearing them. Okay. That will come in to -- we will
16 take note of the importance of that in a few minutes.

17 Mr. James Edward Kennedy. 7:15 in the morning.
18 He's up. He sees Curtis, who he knows, turning in off of
19 Highway 51 on to Angelica, walking in the direction of
20 Angelica. And he sees him out there at the corner of
21 Angelica and 51 Highway at 7:15.

22 Miss Catherine Snow, who was already on the job at
23 Angelica. I think she testified she come in a little
24 late that day, had to park the car in a place she didn't
25 want to park. And at 7:15 she came out to move her car
26 and saw somebody she knew at Doyle, Doyle Simpson's car.
27 And who was that? It wasn't somebody she had never seen
28 before. It was somebody that she knew. It was Curtis
29 Flowers leaning up on the car of Doyle Simpson.

1 Now, who is Doyle Simpson? He said he called
2 himself the defendant's uncle. They were kin, maybe by
3 marriage. But they were related. What's important about
4 Doyle's car? That's where the gun was stolen from.

5 Okay. So you have got both James Edward Kennedy and
6 Catherine Snow seeing him in the area of Angelica. Mr.
7 Kennedy at the highway. Catherine Snow at the car.

8 Between 7:30 and 8:00 Edward Lee McChristian, who
9 doesn't know anything about the defendant being at
10 Angelica, sees the defendant, knows him on sight. It is
11 not somebody he had to -- never seen before. Knows him
12 on sight. Mr. McChristian and a couple of friends
13 Clarence Forrest and Mr. Seales were sitting on the front
14 porch at 605 Academy. And Mr. McChristian testified that
15 he saw the defendant walking away from Angelica. That
16 pretty well puts him in there, doesn't it? Patricia Odom
17 says she saw the defendant coming back home, coming up
18 the hill, going toward the back door of the apartment
19 around 7:30. And she says the only other time she saw
20 him that day was a little while later after 7:30 he left
21 home again.

22 So we've got him going to Angelica, leaning on the
23 car, leaving Angelica, coming back home. And that's by
24 one, two, three, four, five different witnesses that all
25 agree.

26 Miss Beneva Henry is sitting on her porch that
27 beautiful morning between 9:15 or so. She saw the
28 defendant walking toward town in front of her house. Her
29 testimony was her and Miss Vera Latham were sitting on

1 the porch and Curtis is walking toward Tardy Furniture
2 company, walking down Academy, which intersects with
3 Church, which makes a little double corner on to Calvary.
4 And Calvary runs right beside the back of the store.
5 Miss Henry saw him.

6 Mary Jeanette Fleming who knows Curtis, basically
7 all of his life. Well, I don't know. A long time. I
8 wouldn't say all of his life. Mary Janette Fleming knows
9 him well. She had been to Weed Brothers to drop her car
10 off to have the windshield repaired, relaced. She didn't
11 have but one car. They were working on it.

12 So she had to come back. She had to walk back home.
13 She walked down Carrollton, cornered off on Church, made
14 the corner on Campbell, was walking back toward Miss
15 Beneva Henry's house when she saw Curtis Flowers. She
16 estimated at 9:05. He was almost at Tardy's when she saw
17 him. He was just a -- the little double corner in the
18 road.

19 And you've got a map there. You can look at it. He
20 was, what, 100 yards? She saw him within a 100 yards of
21 the back of the store. Now, she didn't know Porky
22 Collins, and she had no connection at that time with
23 Clemmie Fleming.

24 The next person that we've got on the list here on
25 the timeline is Charles Porky Collins. Y'all sat through
26 about three hours of transcript, prior testimony. But it
27 really boils down to something very simple. Porky had a
28 honey-do list to do that morning. He had to go to the
29 bank and the post office and get some spark plugs, all

1 that kind of stuff to get the car fixed.

2 Shortly after 10:00 -- I'm sorry. Shortly after
3 9:00 he saw something going on in front of Tardy's. He
4 saw one man facing him, and the other one back toward
5 him. The one that he saw appeared to be angry. Caught
6 Porky's attention. Porky looked at him. Made the block
7 to look at him again.

8 When Porky found out that some people had been
9 murdered in front of Tardy's, he told James Taylor
10 Williams. He said I saw something I think y'all ought to
11 know about. He said I think I can identify that guy if I
12 see him again. Now, here's the interesting thing about
13 Mr. Porky Collins. Porky didn't know Curtis. Never
14 claims to have ever seen him before. Didn't know him.
15 Didn't know those other people, as far as them having
16 seen him. Porky says I can identify him.

17 I'm going to refer to this some more in a minute but
18 I just want you to -- you've seen these. We had them
19 passed to y'all. Here are two line-ups. These line-ups
20 were shown to Porky at the same setting. First was this
21 one that has Doyle Simpson's picture on it. Because
22 later on when they did this line-up, they already knew
23 that the gun came out of Doyle's car. And so they gave
24 this thing to Porky first and said is the guy that you
25 saw in front of Tardy's in this group.

26 Now, if he was going to make a misidentification,
27 ladies and gentlemen, that would have been the perfect
28 time for him to pick one of these guys and say yeah,
29 there he is right there. But you know what? Porky did

1 not misidentify anybody. He said the guy ain't in there.
2 They took another six photographs and said look at this
3 second set. He said that's him right there. You heard
4 Mr. Miller talk about Porky, said he was positive. He
5 made a positive identification.

6 Now, why is Porky's i.d. -- Porky doesn't know him.
7 Porky wasn't able to say yeah, I know who it was and
8 that's him. Porky said he didn't know him. When he saw
9 the photograph of Curtis Flowers, he pointed him out.

10 So you have got two different kinds of
11 identifications and they agree. You've got
12 identification by all of these witnesses who knew him,
13 Porky, who didn't know him, and they both agree. And he
14 was offered -- Porky was offered a prime chance to mess
15 up. The perfect chance to make a mistake. He almost --
16 it didn't develop out the way it, but it was almost like
17 a trick.

18 You know, see if he is in there. No, he is not. Is
19 he in this second group? Yeah. That's him right there.
20 So that's pretty strong identification, isn't it?

21 Then you have Clemmie Fleming. What about Clemmie?
22 And this is huge. She said she saw Curtis running hard
23 at the back of the store. You were shown that photograph
24 S-5 over there. She marked down there where she saw him.
25 She knows him. No mistake. Doesn't have to pick him out
26 of a line-up. She knows him. Knew him on sight.
27 Recognized him instantly. And when they were talking
28 about Derrick's death a little while after the crime, she
29 told Wanda Meeks I know something. I saw him, saw him

1 running away from behind the store.

2 Okay. That's your timeline. There he is at the
3 store. Do you understand? That is what this shows.
4 This is him at the store. This is in front of the store
5 after 9:00, running away right at 10:00. That's just
6 witness testimony. He is in the front before, and he is
7 running away right after.

8 All right. Let's talk about some more stuff. Let's
9 talk about the shoes. All of these people right here,
10 Sam Jones, Barry Eskridge, Johnny Hargrove, in addition
11 to the other officers that came on made sure they
12 preserved. Barry and Johnny -- Chief Hargrove said when
13 he saw that print he knew it was important. Barry
14 Eskridge, the ambulance owner, said he had had a lot of
15 crime scene training with Jackson Police Department. He
16 recognized instantly they had bloody footprints leading
17 away from the scene there beside BoBo's body.

18 When they saw it they immediately, immediately
19 recognized the value of what they had. They preserved
20 it. They locked it up. They had somebody on that scene
21 from the time they arrived that there was not a time when
22 there was not a officer. And most of the time, it was
23 the chief of police himself guarding those prints.

24 The crime scene lady, Miss Schoene, came on and gave
25 you extensive testimony that was so long that I was
26 concerned y'all might get bored through the presentation
27 of all of that. But it was so long and so necessary.
28 She talked about how she took two rolls, 48 shots, of
29 those bloody foot tracks with different lighting and para

1 plains level and all the special techniques that she used
2 to make sure that she had the photographs just right so
3 they could use it in analytical processing. And they did
4 that.

5 Let's talk about those shoes. First of all, from
6 the photographs, they were able to determine some things.
7 They were able to tell what kind of shoes. Of all the
8 shoe kinds in the world, they were able to say that is a
9 Fila Grant Hill II Mid. That means, I guess, high top.
10 Ankle top. Men's. Not a ladies' but a men's shoe.
11 Grant Hill. Fila Grant Hill, second edition, men's high
12 top. That's a lot of individual characteristics to be
13 able to tell about a shoe.

14 What else could they tell? They could tell what
15 size it was. It was size 10 1/2. So you have got a
16 special kind of shoe of a certain size. I've already
17 told you Miss Gholston said Curtis had a pair of those.
18 Patricia Hallmon said Curtis had a pair of those, and he
19 was wearing them that day. We even had some evidence, I
20 think when Mr. Johnson was testifying, he talked to other
21 people that knew Curtis had those shoes.

22 We had testimony from former Sheriff Thornburg, said
23 when the first time they went to Curtis' house to look
24 around he was looking in a chest of drawers in the
25 bedroom. And there in the bedroom in a chest of drawers
26 is a shoe box. Can you imagine what kind of shoe box of
27 all the shoe boxes in the world, what kind was it? Fila
28 Grant Hill. Ladies shoes? No. Size 9 1/2? No. Size
29 10 1/2. There is the box. Right there in Curtis'

1 bedroom in his apartment in his chest of drawers. There
2 is the shoe box right there. What does it say? 10 1/2
3 Grant Hill Fila shoes. Men's.

4 How did that box get there? Connie said I bought
5 that box and put it there. The shoes -- the shoes wasn't
6 for her. Keep this also in mind. Shoes weren't there.
7 Look on the price tag. I think them shoes cost about
8 \$90. Ladies and gentlemen, \$90 for a pair of tennis
9 shoes back in '96 was expensive. I don't know what they
10 cost now but \$90 back in '96, that was an expensive pair
11 of shoes. And they are just up and gone. No. Don't
12 know where they went. Connie said hey, I bought them
13 shoes for Marcus, but Marcus didn't wear a size 10 1/2.
14 Well, just get him to bring them over. Where, where are
15 they? Why would they be on his feet that morning and
16 unlocatable that afternoon?

17 If you think about it -- let's talk some more about
18 the shoes. When Officer Johnson spoke with him he asked
19 him, determined the first day what size shoes do you
20 wear? 10 1/2. He had 10 1/2's on his feet. About a day
21 or two later when they had contact with him again they
22 took those shoes off his feet. And they are a size 10
23 1/2. They searched his house and they took a second pair
24 of 10 1/2's. Curtis wore a size 10 1/2. That's for
25 sure. Because he had them on his feet, and he said he
26 wore 10 1/2's. So that puts the shoes on his feet. What
27 did they say? If the shoe fits...

28 Let's talk about the gun. What did Mr. Balash say?
29 One gun. What have you got? One gun. You've got one

1 shooter. How do we know it was one gun? Do we know what
2 gun? Absolutely we know what gun. But just like the
3 shoes involved in this murder, the gun is gone. Do we
4 know who had the gun? Well, it came up stolen out of
5 Doyle's glove box. It had to be right around there.
6 Sometime maybe a little after 7:15 after she moved the
7 car. Either that or before. Curtis had the gun.

8 How do we know it's that gun? Well, Doyle said he
9 had it in the glove box and it was locked. When he left
10 to go get the lunches, the glove box started moving in
11 the car. The glove box lid fell open. The gun was gone.
12 He said I looked in there. I could tell somebody had
13 been rummaging in my glove box, and my pistol was gone.

14 Before he left he went in there and told his
15 supervisor my car had been burglarized. My gun is gone.
16 That was before he left at 10:45 or whatever to go get
17 the lunches. That was before. Whatever -- I forget now
18 what time it was he said he went to get the lunches. But
19 it was right at 11:00, somewhere close to 11:00, because
20 they got to work early and I guess they eat around 11:00.
21 He was quarter of 11:00 leaving the plant, the box fell
22 open. The gun was gone.

23 How do we know it's that gun? He took them out to
24 the place where he had been shooting the pistol. They
25 dug a couple of bullets out of the post very carefully so
26 as not to damage them, and they took them to the crime
27 lab. The crime lab people looked at those two bullets
28 and they looked at the bullet that the investigators got
29 out of the mattress near where Miss Tardy had been

1 murdered.

2 Remember, she had a bullet through and through. It
3 entered back of her head, came out the front, bounced off
4 the brick wall. You've got a big picture of it there
5 with a yard stick pointing to it. Went into the
6 mattress. They didn't know where that bullet was, but
7 they had seen that. And they decided that they needed to
8 try to locate that bullet. That's the proverbial needle
9 in a haystack. In a furniture store full of mattress and
10 chairs and what all, they are going to go look for a
11 bullet in one of those.

12 They go right up there and look where that nick is.
13 They look across, start feeling along. They found a
14 little perforation hole in the plastic on top of the
15 mattress. They start feeling around there. They feel a
16 lump. They cut it open. They got a bullet. What do
17 they do with that bullet? They send it to the lab. What
18 does the lab do? They look at that bullet. That is a
19 crime scene bullet now. That is the bullet that killed
20 Miss Tardy.

21 They have got that bullet and they have got the
22 bullets that came out of the post and they are undamaged
23 enough that they can put them together and look at them
24 and do a positive match. So the gun at the crime scene,
25 the gun that killed Miss Tardy is the gun that shot the
26 bullets in the post at Doyle's house. The bullet missing
27 -- the gun missing out of his glove box of the car where
28 Curtis was seen the morning of the murders.

29 What else do we know? We know that all the shell

1 cases fired in the same gun. Mr. Balash is able to take
2 five of those projectiles and parts of projectiles, one
3 of the bullets that killed Miss Rigby, he was able to
4 make a positive identification of that to the mattress
5 bullet and the post bullets. And I think there was one
6 additional bullet that he was able to match conclusively.
7 And I pressed him on this point. He said look, I'm 100
8 percent -- I don't make a positive identification unless
9 I can tell you it's 100 percent positive. And that
10 agrees with what the other expert said.

11 All right. That's one gun, one shooter, one place.
12 Even the -- even the overall composition of all the
13 firearm evidence, all the brass and all the projectiles,
14 when you sort it all out, it matches what Doyle said was
15 in the gun that was stolen.

16 THE COURT: Mr. Hill, you have got five
17 minutes.

18 Mr. Hill.

19 MR. HILL: Thank you, Your Honor.

20 THE COURT: You can proceed.

21 MR. HILL: Okay.

22 Let's talk about gunshot residue. Curtis had
23 gunshot primer residue on his hand. That's a substance
24 that is unique in the world. In other words, it does not
25 occur in nature. Mother Nature doesn't make it, primer
26 residue. Because it's barium, antimony and lead in a
27 molten, spherical form, because it melts together when
28 it's fired in a gun. And it isn't just any gun, it's a
29 gun that uses center -- center fire primer cartridges,

1 like those on the floor at Tardy Furniture store.

2 And at the end of the envelope where you might think
3 the gunshot residue was all gone, what did Curtis have on
4 his hand, top of his right hand, right there. What is
5 that? That is the most likely place that you are going
6 to find it if you find it at the end of three and a half
7 to four hours. It's going to be right there. Gunshot
8 residue.

9 Now you know you don't have to be -- you can wipe it
10 on somebody, just like you can do anything else. You can
11 put it on somebody. But it only comes from shooting a
12 gun. It don't come from breaks or batteries. It comes
13 from shooting a gun. It's the only place it comes from.

14 Let's talk about the robbery. I had Roxanne go
15 through meticulously the financial documents, the time
16 card. It was the every day routine business practice of
17 that store to have \$300 for start up. I think they call
18 it normal balance in cash register to do business. The
19 everyday routine procedure is go get the cash drawer out
20 of the safe, put it in the cash drawer in the counter and
21 it's got \$300 or more. Some time -- this time it had
22 extra \$100 from late charges that were in a little box on
23 the counter.

24 The robber, the murderer took all that money, except
25 for the change. The total being \$389. It was cleaned
26 out when the cops got there. And it ain't never been
27 found since.

28 Okay. Let's talk about connection. I told you we
29 were going to speak about connections again. And I want

1 you to think of the interlocking corroboration and
2 connections. Also, I want to tell you, I think -- you
3 think -- I want you to think about this too. This is
4 really big. It's the defendant's statement. The
5 defendant, when he gave a statement, incriminated
6 himself, I want to ask y'all that. Did he? He denied
7 doing the crimes. But you know what he said when they
8 first talked to him? He said I got up at 6:30 in the
9 morning, and I left some time after 9:00. A couple of
10 days later when they got ready to take a taped statement
11 from him, low and behold, his story had changed. He
12 skewed the -- he skewed it for three hours. Said I got
13 up at 9:30. And I stayed at the house till around noon,
14 which does what? Puts him at the house at the time of
15 the murder, right? It doesn't account for any of that
16 stuff though, does it? Every one of those people right
17 there that knew Curtis said that's not right.

18 I tell you one other thing too. They asked him
19 specifically, Curtis were you ever on the east side of
20 Highway 51? Were you on the Angelica side? Were you on
21 the Tardy Furniture store side of town? Were you east of
22 the 51 Highway at all, any time the morning of the 16th?
23 No, sir, I wasn't over there.

24 Look a here. (Indicated.) Not a variation in the
25 bunch. Curtis was over there. What did he do? He lied.
26 He falsified the information that he gave. Why?
27 Probably the same reason that he got Odell Hallmon to
28 buddy up with him and go to court to try to help him in
29 his case. It's called cover up. It's lying. It's

1 changing the truth.

2 THE COURT: Mr. Hill.

3 MR. HILL: Time?

4 THE COURT: Time.

5 MR. HILL: I'll close up then.

6 Ladies and gentlemen, Odell told you that he's got
7 AIDS, HIV. There is one thing he wanted to do. He
8 doesn't know how long he has got to live, but he don't
9 want to go to his grave with that falsehood that he did
10 for Curtis on his mind, on his conscience. So he came
11 over there, and he told you while they were locked up
12 together Curtis told him that he killed them people and
13 he wanted Odell to help him cover it up. And Odell went
14 along with it at first, until he got out. And then his
15 momma knew he had lied because he lied on his sister. So
16 that made it an internal family thing. Odell came and
17 told you what Curtis said.

18 Okay. My time is up. But ladies and gentlemen, I
19 just want to tell you this. This evidence puts the gun
20 in Curtis' hand. It puts Curtis' feet in the shoes of
21 the person that left that bloody footprint in the blood
22 of the victims. It puts that stolen money in his pocket.
23 It puts him in the store. And it tells you beyond any
24 question whatsoever Curtis Flowers is guilty as charged
25 on all of these crimes.

26 THE COURT: You may proceed, Mr. Carter.

27 MR. CARTER: Good afternoon, ladies and
28 gentlemen.

29 As you have seen, Mr. Hallmon likes to write

1 letters. But you haven't seen a letter written to Mr.
2 Evans about him having AIDS or HIV or his cons before he
3 went to the grave, because he is lying. He may be sick.
4 But I don't believe a word of the stuff about him wanting
5 to clear his conscience before he goes to his grave. I
6 am going to tell you why that was said.

7 As a little boy, I grew up in Louisville,
8 Mississippi. I used to wonder why certain people would
9 come to our neighborhood and talk with us and visit my
10 parents and visit other relatives around election day.
11 And I finally discovered because those people knew a few
12 dollars would buy votes.

13 I used to wonder why certain people would show up at
14 fish fries in my neighborhood around election time and
15 buy fish fries and buy fish sandwiches and pass out the
16 bucks. Because they knew it didn't take much to get
17 certain people, poor people who never had nothing to go
18 along, to give them something.

19 Now, you are talking about the identification that
20 Porky Collins made. John Johnson went to visit Mr.
21 Collins and showed him those pictures. I asked him about
22 it. I said did somebody tell you to go visit him before
23 this hearing. No, I went on my own. He took the
24 pictures to his house before a hearing to get those
25 pictures suppressed.

26 Now, we know Porky was driving. We knew he only got
27 a glimpse. We know he said he saw light-skinned people
28 or medium-complexion people. And certainly, Mr. Flowers
29 is not that. He admitted he had a problem remembering,

1 that he wore glasses. Clemmie Fleming even said she
2 didn't believe Mr. Flowers did it.

3 Now, remember that none of the experts can say that
4 Mr. Flowers committed this crime despite all the good
5 work they did. None of them connected Mr. Flowers to
6 this crime. Two pairs of shoes were taken from Mr.
7 Flowers. You saw one pair. You didn't see the other
8 pair. The other pair was given back. Do you want to
9 know why? They didn't fit the script. They are not a.
10 10 1/2.

11 Now, just that quickly, we don't have any proof, as
12 far as I'm concerned, that anything was collected at
13 Doyle Simpson's mother's house. You have to be
14 suspicious. They document everything else. Why didn't
15 they document that?

16 I'll tell you why they didn't document it. They
17 want you to take their word it. They believe you will do
18 it. They think -- I am just being honest with you. The
19 prosecution believes you'll find Mr. Flowers guilty just
20 because they said it, no matter the facts to the
21 contrary. They are banking on that. They are thinking
22 if we just get the right people on the jury, everything
23 will be all right. Their whole case is based on that.

24 Mr. Hill and Mr. Evans don't know anything they
25 couldn't prove to you. So don't think they know
26 something that didn't come from that stand. I don't care
27 how much they sit up here and pretend they know that Mr.
28 Flowers did it, do their best and make all kinds of
29 claims. If they can't prove it from there, then they

1 can't prove it. They don't know.

2 What kind of person would bring Odell Hallmon, a
3 pathetic individual who has written letters back and
4 forth. An individual you can't even say he is
5 trustworthy, can't even say he is honorable, because he
6 isn't. There is no doubt about that. He said in his own
7 words that he and his sister will do anything for money,
8 and I believe it. I'll tell you what kind of person I
9 would call Odell Hallmon, a desperate person and a person
10 who is acting dishonorably in this case.

11 There is a unstated reason why Odell Hallmon is
12 being used. Of course, he came here. And when you go
13 back and you look at the statements, you are going to see
14 that he said Mr. Flowers told him he committed the
15 murders. And you are going to see where he said Mr.
16 Flowers told him he didn't commit the murders. He said
17 something about it depend on the situation.

18 He does what he needs to do depending on the
19 situation. I am going to tell you the unstated reason
20 why Odell Hallmon is being used. They know if they can
21 make you believe that Mr. Flowers is cunning, is tricky,
22 is controlling and possesses some kind of evil power over
23 others that you won't give him the benefit of the doubt.
24 You will believe this is a man who can't be trusted, who
25 does not deserve the benefit of a doubt because he is
26 tricky, because he is dishonest. That is the reason.

27 Because if you believe he, he is cunning, and he is
28 dangerous, you are going to convict him. You are going
29 to be led to convict him because of that and you won't

1 give him the benefit of any doubt, no matter the
2 evidence. That's what the hope is. Mr. Flowers deserves
3 a fair trial before a impartial jury. He has to have
4 that.

5 Now, you -- we heard somebody testify that Tardys
6 considered Mr. Flowers to be some kind of threat, and you
7 heard the flimsy evidence about how that came about and
8 what facts existed to support it. And there wasn't
9 really any. There wasn't really any.

10 Now, Mr. Evans knows that Odell Hallmon doesn't have
11 any credibility, and he knows any reasonable person would
12 figure that out too. That is why he wanted you to hear
13 so bad that man had AIDS, HIV. I didn't want to get it
14 in. I wasn't going to do it, because I knew it didn't
15 have anything to do with anything.

16 It doesn't make you honest. If you are not honest,
17 you are not honest. He wanted to get that in, because he
18 wanted that man to say he thought he was about to meet
19 his maker. Therefore, he wanted to clear his conscience.

20 Now, he is up there in jail, still getting
21 marijuana, still getting cell phones. Now, marijuana,
22 possession of marijuana is a crime. Possession of a cell
23 phone while you are in prison is a crime. So we ain't
24 got no saint up there in prison. Everywhere this man
25 goes, he take his past with him. And the reason he has a
26 past is because he's an individual who will do anything.

27 In my opening statement I told you this case was
28 about tunnel vision, the focus on one person and trying
29 to confirm tunnel vision and confirmation bias. Now, I

1 know that you wonder how Curtis could be a suspect just
2 because he work at Tardy's and just because he left and
3 didn't go back. And they want you to think that Mr.
4 Flowers is mad at Miss Tardy. That something bad went on
5 between them, and she didn't trust him.

6 If she didn't trust him, why did she give him \$30?
7 If she didn't trust him, why did she write him that
8 check? I guess, if he showed back up. He didn't show
9 back up. There isn't and wasn't any hatred or ill will
10 between the two.

11 And I ask you to use your own judgment. Don't
12 believe it existed just because they said it, if they
13 ain't got the facts to support it. Where are the facts?
14 And, of course, I will ask where are the facts on a lot
15 of things in this case.

16 Now, Mr. Flowers, all of a sudden, is a suspect, and
17 there is no proof that he did anything. Now, Doyle,
18 Doyle brought a gun to work, took it to the school too.
19 I guess he was going to take it to school. The gun got
20 taken. He lied about where he got the gun from. We know
21 he did, yet he is not a suspect.

22 Oh, he got ruled out quickly. And I suppose he got
23 ruled out quickly, because he did something. Started
24 working for them, I guess. What did he do? We can't be
25 sure about it. They make no report of that. They didn't
26 even make a report of what they found at the house.

27 Doyle's sister said she saw him between 9:30 and
28 10:00. And, you know, they want you to believe that
29 every time Doyle went out to check his car, somebody saw

1 him. Somebody was looking at him. Somebody went and saw
2 him. Make sure what you are doing. Who saw him? Who
3 knew where he was at all times? Where are the
4 statements? Where is the proof? There isn't any. Lots
5 of proof missing in this case. If it's not documented,
6 it didn't happen.

7 I also told you this was a flawed investigation.
8 And I know you had to see that. You can't sit here and,
9 and hear this case and not feel that's wrong. I'm
10 worried that a person in Mr. Flowers' situation, who
11 looks like Mr. Flowers, can't get a fair trial. I can't
12 deny it. I'm worried about that.

13 I think it's time Mr. Evans get shown and
14 prosecutors like him that any philosophy which hold one
15 group of people superior and another one inferior --

16 MR. EVANS: Your Honor, I object to this line
17 of argument. I think it --

18 MR. CARTER: -- should be --

19 THE COURT: I sustain the objection.

20 MR. CARTER: I also told you in the opening
21 statement that a crime narrative requires a motive. If
22 you don't have a motive, how can it be plausible or
23 persuasive or believable? A crime story without a motive
24 is incomplete, make believe. It's fantasy.

25 I also told you this ways a leaderless
26 investigation. You've sit here and watched this case.
27 You heard all this evidence. You saw nobody wanted to be
28 a leader. They wanted to work on the case, but nobody
29 wanted to be a leader. Nobody wanted to be leader.

1 Nobody wanted to be accountable. Nobody wanted to
2 document it. Nobody wanted to know what the next person
3 was doing. No one wanted to make assignments. Nobody
4 wanted to be in control.

5 This investigation is like sending the Los Angeles
6 Lakers to play without a coach. It's like sending a
7 platoon out to fight the enemy with no leader. And we
8 know what's going to happen when that occurred. You
9 can't help but wonder about the great and astounding
10 failure to document and to know what other members of the
11 team are doing. How can you justify that? The voice of
12 many is loud and can be heard across the continent. But
13 most important of all is it is heard.

14 What each of us consider as facts is a very
15 important thing. And it's only with the aid of these
16 facts that we can arrive at making a sound and logical
17 determination of what actually happened. Now, you should
18 be asking yourself lots of things. How can I be fair?
19 How can I do what is right? How can I be fair to both
20 sides? How can I be opened-minded? If you listen to the
21 facts in these cases -- this case, I really don't know
22 how you can just conclude as they expect you to, that Mr.
23 Flowers is guilty.

24 The incompetence and abuse of the criminal justice
25 system has time and time again caused innocent people to
26 go to jail. We hear all the time about people who's
27 innocent coming into some DNA and wind up getting out of
28 jail. And everybody thought they were guilty. I have
29 represented some just like that. I do nothing but

1 capital murder cases.

2 The mechanics of a wrongful prosecution, such as the
3 manipulation of eyewitness testimony, the abuse of inmate
4 snitch testimony, the use of junk science, attempts to
5 maximize the number of certain people and the exclusion
6 of others from the jury, the tunnel vision of the
7 prosecution very evidenced in this case.

8 I don't believe, believe that evidence should be
9 manufactured. I don't believe it should be hidden. I
10 don't believe testimony should be manipulated. Somebody
11 once told me that some prosecutors act as if they believe
12 that if I win, I'll look good for the public.

13 MR. EVANS: Your Honor, that is inappropriate
14 closing argument. I object to it.

15 THE COURT: I, I sustain the objection.
16 Arguments are supposed to be based on the evidence
17 presented at trial, and that's not a proper argument. So
18 I am sustaining the objection.

19 MR. CARTER: Ladies and gentlemen, a person
20 should be convicted based on reliable, trustworthy
21 testimony or facts or evidence that is documented. Not
22 on flimsy, weak or non-compelling evidence. Curtis
23 Flowers is being tried for the sixth time. And it's not
24 his fault that he is being tried for the sixth time. It
25 is not his fault it has been reversed.

26 MR. EVANS: Your Honor, none of this is
27 appropriate argument.

28 MR. CARTER: The investigators and prosecutors

29 --

1 MR. EVANS: I would ask that he be directed to
2 stop, and that the jury disregard this inappropriate --

3 THE COURT: I sustain. That is not in
4 evidence. So that's -- I sustain the objection.

5 MR. CARTER: When investigators and prosecutors
6 decide a person is guilty --

7 MR. EVANS: Your Honor --

8 MR. CARTER: -- before the investigation --

9 MR. EVANS: Your Honor, I --

10 MR. CARTER: -- even begins as in this case --

11 MR. EVANS: I object, Your Honor. None of this
12 has --

13 MR. CARTER: Look --

14 MR. EVANS: -- anything to do with the facts --

15 MR. CARTER: Mr. Flowers --

16 MR. EVANS: -- of this case and --

17 COURT REPORTER: Judge. Judge.

18 THE COURT: May he shut up while I'm objecting?

19 MR. CARTER: You shut me up. Shut me up.

20 THE COURT: Gentlemen, you better both refrain
21 from making comments to each other.

22 Now, if there is an objection make it.

23 And Mr. Carter, you can respond.

24 MR. EVANS: Your Honor, my objection was that
25 none of these arguments that he is making have anything
26 to do with the evidence in this case. They are
27 inappropriate and should not be made in this case.

28 THE COURT: Now you can respond.

29 MR. CARTER: Your Honor, in this particular

1 situation, I believe the evidence shows that Mr. Flowers
2 made a suspect. Mr. Flowers talked to them the first
3 day. And he clearly, according to Mr. Johnson or Mr.
4 Matthews, was a suspect on the second day.

5 THE COURT: You can make that argument.

6 MR. EVANS: That argument I didn't object to,
7 Your Honor.

8 THE COURT: You may proceed.

9 MR. CARTER: A person should become a suspect
10 based on facts, based on evidence and not before an
11 investigation is actually conducted. If it's not
12 documented, it didn't happen, as far as I'm concerned.

13 Now, I have my own opinion about why the evidence
14 and so much evidence wasn't documented and why Mr.
15 Johnson, who I believe is lead investigator, failed to
16 document so many -- so many things. I have my own
17 opinion about why Mr. Matthews failed to document so many
18 things. And I have my opinion about why all of them
19 failed to document what they did.

20 Yet they want to claim that so many different things
21 happen. And again, I say that is because they want you
22 to believe what they say and not what is documented, not
23 what you can prove independently, that somebody can read.

24 Now, we know from the facts that Mr. Evans was on
25 the scene the first day. We also know that Mr. John
26 Johnson was on the scene the first day. And we also know
27 that Chief Hargrove was there on the first day. And we
28 know that Chief Hargrove at some point -- although he did
29 a wonderful job of calling E.M.T., although he did a

1 wonderful job of calling C.S.I. people from Jackson and
2 calling highway patrol, at some point it appears he was
3 relegated to a minor role in this investigation.
4 However, he did not do report of what he did at any
5 point. It's my position and I argue that John Johnson
6 was selected by his boss to run this investigation. Now,
7 in this investigation I, I recognize that there are many
8 questions that probably neither one of us addressed,
9 neither side, that neither one of us answered. And I
10 can't answer them. I wish I could answer them. But I
11 can't answer them, because I wasn't investigator. I
12 can't answer them, because I got on the case late. The
13 only person and the only group who could have filled in
14 the gaps and answered those questions are the people
15 investigating this case. That's why an investigation
16 must be complete. And in this case, it isn't complete.

17 Ladies and gentlemen, I concede, I admit this was a
18 terrible, terrible crime. And the victims didn't deserve
19 it. There is no doubt about it. I have nothing but
20 respect and sympathy for the victims. I want that to be
21 known. This is one of the worst crimes that anybody
22 should have to come up on. And I'm sure it surprised and
23 devastated some people.

24 You heard from police officer after police officer,
25 investigator after investigator, what they did at this
26 crime or what they didn't do. And you heard over and
27 over, over and over that it wasn't investigated. Nobody
28 made documents or made very few. There is no
29 accountability. It appears nobody wanted to be

1 responsible. This case is circumstantial. That is all
2 it is. And Mr. Hallmon can't be believed because he is a
3 liar. He will say anything.

4 Now, you've heard all of these people. And you saw
5 eyewitnesses. You saw Kittery Jones, very nice young
6 man. Came here. Told you what happened to him, what was
7 offered to him, who talked to him.

8 You heard Latarsha Blissett come in and tell you she
9 was gotten from school. She said it was without her
10 mother even being notified and taken to Greenwood and
11 talked to and told if she said she saw Mr. Flowers in
12 certain kind of shoes, she had the chance to get some
13 money, this kind of money. You heard her say that,
14 talked to her about getting a trailer. You heard Kittery
15 say he was offered money, even told something by Mr.
16 Evans about getting in the way of the prosecution.

17 Now, you hear them talk about over and over their
18 witnesses. Now, Patricia Hallmon, she talks about -- and
19 you hear all this talk about how popular those shoes
20 were. Now, but you didn't hear any evidence whatsoever
21 at any point that they went out and rounded up people,
22 saw who had these shoes and made sure that all those
23 people had alibis.

24 I think I even asked Mr. Johnson to name me somebody
25 else who had them. They couldn't name anybody else who
26 had them. If they were popular, they certainly weren't
27 popular in Winona, or they didn't care how many people
28 had them. And, and they want you to believe that
29 Patricia Hallmon is this, this honorable person. Now,

1 what did she say? She said she saw him around 4:45 to
2 5:00.

3 MR. EVANS: Your Honor, may we approach?

4 THE COURT: You may.

5 (MR. EVANS, MR. HILL, MRS. STEINER AND MR. CARTER
6 APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE HAD
7 OUTSIDE THE HEARING OF THE JURY.)

8 MR. EVANS: Your Honor, opposing counsel is
9 showing pictures of clothes not in evidence. I don't
10 have any objection to him talking about clothes, but he
11 cannot show photos that are not in evidence. This is
12 completely inappropriate.

13 MR. CARTER: Your Honor.

14 THE COURT: I think it just a demonstrative aid
15 that shows what the witnesses claimed to see. So I don't
16 see any problem with it.

17 MR. EVANS: All right, sir.

18 (THE BENCH CONFERENCE WAS CONCLUDED.)

19 MR. CARTER: Now, she saw -- she said she saw
20 Mr. Flowers, and she said she knew he wore Fila. And I
21 asked her what else did he wear. She blurted out I don't
22 know. I don't be looking at his feet. And I believe
23 her. I believe she, she wasn't looking at his feet.

24 However, she said they were best friends. And she
25 said she saw her best friend sitting on the porch looking
26 like he was bothered by something. And I asked her did
27 you go by and check and see how he was doing, see if you
28 could render any kind of aid. No. Walked straight on in
29 the house.

1 You heard Connie Moore say they were not -- they
2 were not friends. What did she say he had on? Short
3 pants, white t-shirt with black designs. That is what
4 she saw earlier. And again at 7:30, she saw him with
5 nylon zip-up sweat pants and white shirt.

6 Then Bo Jack Kennedy, James Kennedy, said he saw him
7 around 7:15 on Applegate going toward Angelica. He had
8 on white pants and a black sweater. Now, he didn't talk
9 to the police until 9 -- September 17, 1996. And Miss
10 Hallmon, she didn't give a statement until August 7,
11 1996.

12 Now, we have got Catherine Snow who saw somebody at
13 Mr. Flowers' car. She wouldn't tell the police who it
14 was the first time. She wouldn't tell the police who it
15 was the second time. And she testified she didn't even
16 need a photo line-up. But once they showed her one, then
17 she picked Mr. Flowers.

18 She said the person she saw -- and you heard all
19 this about she was scared to death, about her family was
20 going to wind up getting killed. But she didn't tell the
21 police. I guess she didn't have confidence in the
22 police. She didn't think anybody could protect her and
23 her family. She didn't tell anybody. Her husband, I
24 think, she said she told. She said he was wearing a
25 white top and black pants with no cap. She saw him
26 around 7:15. She didn't look at a line-up until August
27 19, and that's the time that she gave a statement.

28 Then we have Edward McChristian. Edward
29 McChristian. He saw him at 7:30 to 8:00 on Academy going

1 north. He didn't give a clothing description. He
2 finally talked to John Johnson on August 15.

3 Then we have got Mary Jeanette Fleming. She saw him
4 at 9:05 wearing brown pants and a white shirt and a gray
5 jacket. Now, she said black pants in one case, walking
6 east on Campbell.

7 Now, this is around the same time that Billy Glover
8 is testifying that he saw Mr. Flowers in a whole
9 different place.

10 Then we have Miss Beneva Henry. She saw him between
11 9:00 and 9:30 walking downtown on Campbell wearing white
12 shorts. Mr. Johnson talked to her on September 3, 1996.
13 And she admitted she had eye problems.

14 And then we have Mr. Collins, Porky Collins, who
15 testified he saw two black men, medium complexion by a
16 brown car. Now, we know Mr. Simpson has got a brown car
17 parked in front of -- parked on Front Street about 9:43.
18 He turned around. He saw these guys. They were doing
19 something with their hands. Made him notice them. Never
20 saw their face. He got a glimpse of one of them. I
21 think he saw that one's face just, just momentarily.
22 Never really got a good description of the other one or
23 saw his face. And again, I said Mr. Johnson, even though
24 he reluctantly did it, went by and visit him.

25 We have Clemmie Fleming who claims she went down to
26 Tardy's that morning to pay her bill, that she had been
27 told her furniture would be repossessed if she didn't
28 pay. She got there. She didn't pay. Didn't want to go
29 in. Couldn't get anybody else to go in for her and went

1 on.

2 Of course, we had her sister, Mary Ella, come here
3 and said that didn't happen. She knows it didn't happen,
4 because she was at her house. And they heard about the
5 crime, and she went down there later. They both went
6 down. And she said herself that if we had been down
7 there, we might have been in that.

8 Clemmie Fleming was also impeached by Stacey Wright,
9 who said they heard -- she told them that the reason she
10 was saying she saw Mr. Flowers was to get money and not
11 have to pay her furniture note off. She said she
12 personally never paid it.

13 Now, they want you to believe that their witnesses
14 are telling the truth and, and all our witnesses aren't.
15 I will leave it up to you to decide who is telling the
16 truth. You heard all of them. And so I am not going to
17 stand up here and tell you who to believe. I trust you
18 to decide who to believe. I know you can do it. I am
19 counting on you to do it.

20 Now, even if they plainly saw Curtis and, frankly, I
21 think they might have seen him at some time. But I don't
22 believe they saw him on that particular day. Because I
23 do not believe he changed clothes that many times. It
24 just doesn't make any sense.

25 Now, there are lots of people who, who despite the
26 facts want to believe and have been convinced that Mr.
27 Flowers committed these, these horrible crimes. I know
28 that's the case. They didn't get to sit through the
29 trial like you did. They didn't get to hear the facts

1 from both sides. They didn't get to see the witnesses
2 and judge them for themselves. They didn't get to see
3 how poorly this case was investigated and managed.

4 And they don't know that one particle of gunshot
5 residue is so small you can't even see it. You have to
6 have a machine to see it. They didn't get to hear that
7 you can get one particle of gunshot residue on your hand
8 from a myriad of ways. You can touch an ink pen that has
9 it on it. You can sit in a police car. You can get it
10 in a police station. You can be near somebody that has
11 it on them, or you could be around somebody who fired a
12 gun. I can't deny that. I wouldn't try to deny that.
13 But we do know there was only one. And we don't know
14 that he ever had any more on his hand, no matter what Mr.
15 Evans said. We don't know that.

16 Mr. Flowers was cooperative. When they came and got
17 him, he went. Every time they asked him to show up, he
18 showed up.

19 Now, I must tell you, I don't know if they had other
20 suspects or not, but I do know that Mr. Flowers shouldn't
21 have been the only suspect. I know that they should have
22 been out canvassing neighborhoods, which they claim they
23 did. But of course, where is the proof? Where is the
24 proof?

25 Pick up a high school student and drive her to
26 Greenwood. Where is the proof that you took her? I mean
27 they said they took her. Where is the proof what you
28 talked about? Where is the proof of what Mr. Johnson
29 said to Kittery, to Latarsha, to all of these various

1 people? Where is the proof? Where is the independent
2 proof that we can look at and decide what happened? It
3 doesn't exist. Don't believe the document. Believe us.
4 Believe what we said. Believe it because I said it,
5 because I wouldn't say it if it wasn't true. That's the
6 position I believe that is being taken. You don't have
7 to be gullible and accept that as the way a case should
8 be proven.

9 And, ladies and gentlemen, we know for ourselves how
10 memory works to some extent. And we know that we can't
11 go take a -- study for an exam today and never study
12 again and take the exam eight months later and expect to
13 remember what you read and learned eight months earlier.
14 You might remember some things, but I bet you, you won't
15 remember it that late as well as you remembered it on or
16 around the time it happened.

17 Police reports are supposed to be done as quickly as
18 possible, because you want to be accurate. There is no
19 doubt it's wrong, and very wrong to commit crimes. And
20 it's very wrong what happened out there at Tardy's.
21 There ain't no doubt about that.

22 It is also wrong to convict a person who is
23 innocent. It is wrong to convict a person when the
24 government does not prove their case beyond a reasonable
25 doubt, like they are supposed to. That's their charge.
26 That's their duty. Prosecutors are supposed to seek
27 justice, not just convict. Power is not supposed to be
28 compromised for the purpose of getting the advantage.

29 I just can't get passed this motive. What is the

1 motive? He broke some batteries on accident. Who among
2 us haven't made a mistake at our jobs, haven't done
3 something wrong? Who among us hasn't been chastised?
4 Who among us who hasn't had to pay for our mistake? Of
5 course, we know -- most of us don't get mad and beat our
6 boss up. I don't know of a case where anybody -- what
7 they claim happened between Miss Tardy and Mr. Flowers
8 went in a place and just killed people just for that.
9 That doesn't even make sense to me. It just doesn't.

10 We heard Connie Moore come here and testify that she
11 knows for a fact that she bought all of her children some
12 shoes. And she kept the box. You heard Miss Hallmon try
13 to imply that you can go back behind her house over that
14 hill and go to Angelica. And that's why I wanted to make
15 sure that you didn't believe that. That is why I wanted
16 to make sure that -- even the police admit you'll never
17 get to Angelica unless you turn right, then turn left.

18 Now, why do you think I had to make that clear?
19 Wouldn't, wouldn't you expect both of us to make that
20 clear? Because you shouldn't be deceived. You shouldn't
21 be mislead. I shouldn't mislead you. I shouldn't trick
22 you. Nobody should.

23 You have this awesome, awesome responsibility. And
24 you might look out here and say those guys are lawyers.
25 They have been to law school. In some situations those
26 guys make quite a bit of money. Those guys are powerful.
27 We are not more powerful than you are. That judge
28 sitting up there is not more powerful than you are, not
29 at this point. Because you and you alone get to decide

1 the fate of your fellow man.

2 I can't tell you what to do. At some point, you are
3 going to go back there, you are going to deliberate. And
4 you have got to decide based on your conscience on what
5 proof you require to decide the fate of your fellow man.
6 And it's your decision, each of your decision, how you
7 vote.

8 I was engaged in a baseball game in Houston one
9 time, and we played with all these people. And we had a
10 teammate that couldn't none of us stand, and I didn't
11 like him for sure. Because he made some comments to me
12 one time that made me not like him. So as we played that
13 game that night, this same teammate that couldn't nobody
14 on the team stand, did something to a player on the other
15 side, on the other team.

16 And this person from this other team came and got
17 this guy and was choking him to death. And wouldn't
18 nobody on my team help the guy. And I sat there. And I
19 thought man, he is going to kill this guy. I stood
20 there. I'm sorry I stood there. Finally, it dawned on
21 me that I shouldn't be waiting on nobody else to act,
22 that I had to do it.

23 So I walked up behind the guy, and I put my arm
24 under his, and I grabbed him. And everybody think that I
25 snatched his hand away from the guy, but I didn't. All I
26 did was grab him and told him you are wrong for choking
27 this guy to death. I know you don't like him. Don't
28 nobody like him. But is it proper for you to kill him?
29 No. I am going to tell you another reason why you

1 shouldn't kill him. If you choke him to death, you will
2 regret it.

3 MR. EVANS: This is inappropriate argument at
4 this phase of the trial.

5 MR. CARTER: Ladies and gentlemen, I'm finished
6 with that story. And the only reason I tell that story
7 is to illustrate how important responsibility is, how
8 important duty is and how seriously we have to take
9 power, whether it is given to us or we just suddenly wind
10 up with it. We have to do the right thing when we can.

11 What can we believe? What is undisputed? I think
12 it is undisputed that Mr. Flowers was made a suspect,
13 remained a suspect, that Doyle Simpson owned the gun.
14 And as a matter of fact, as I understand, he went to
15 Fuzzy's and telling somebody his gun had been taken, even
16 before he reported it back at his job. Because Porky
17 came up there telling Mr. Williams that somebody up here
18 reported his gun stolen. I mean they are talking about a
19 gun even before he told the folks at the job. It is
20 undisputed that no report was ever filed showing that.

21 It is undisputed they found Emmitt running,
22 sweating. It is undisputed that Doyle Simpson lied. And
23 he said he did it to protect Curtis. It is undisputed,
24 because he said it. Doyle said it. Curtis didn't even
25 know the gun was in there. Now, of course, he wants you
26 to believe that Curtis came up there anyway and looked in
27 there and found that. That is what he wants you to
28 believe. But you don't have to believe that. There is
29 no proof of it.

1 I remember asking who could sit and listen to the
2 evidence in this case and not be concerned about how you
3 would be viewed if you made a decision that was contrary
4 to what any of us wanted and desired. And we know no
5 decision could be made that please everyone. And you
6 said that you could put community sentiments aside. You
7 could even put aside any feelings you might have had
8 prior to sitting in this case. And only you know if you
9 can do that. And we hope, we pray that you can, and that
10 you make whatever decision you make based on the
11 evidence.

12 And I can tell you right now that I can live with
13 it, whatever it is, even though I have a preference.
14 It's your job. Listen to the evidence. Not favor any of
15 us based on something that has nothing to do with the
16 evidence. And go back and deliberate and make your
17 decision. You are expected to go back and use your own
18 moral conscience, not anybody else's. And you are
19 expected to make whatever decision you make based on
20 reliable, trustworthy, credible testimony. You said you
21 could. We believe you can.

22 And I remember saying or making a statement that as
23 hard as this might be to fathom, as hard as this might be
24 to do, that your job is not to give -- to merely give
25 some relief that you might think is desired, but to
26 listen to the facts and the evidence and make whatever
27 decision you believe is appropriate.

28 Now, I'm going to go and take my seat in a few
29 minutes, and my co-counsel is going to get up and talk to

1 you. And Mr. Evans is going to get up and talk to you.

2 But I just ask one thing. I want you to apply this
3 to me too and apply it to my co-counsel. No matter what
4 we say and how we say it or our tone or how much we act
5 like we believe it, ask yourself every time is that what
6 the evidence showed. Is that what the evidence showed?
7 Is that what the evidence showed? Is that what the
8 witnesses said? Is that what the proof showed?

9 And ladies and gentlemen, if you can do that, you
10 will have done your job, and we don't have anything to
11 complain about.

12 Thank you very much.

13 THE COURT: Miss Steiner, I think before we
14 continue we are going to just let the jury take about a
15 ten-minute recess. I imagine they are probably ready to
16 stretch and move.

17 Ladies and gentlemen, we will take a 10-minute
18 recess and then resume hearing closing arguments.

19 (A BREAK WAS TAKEN.)

20 (MR. EVANS, MR. HILL, MR. HOWIE, MRS. STEINER, MR. CARTER
21 AND THE DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS
22 CONTINUED AS FOLLOWS:)

23 (THE JURY RETURNED TO THE COURTROOM.)

24 THE COURT: Court will come back to order.
25 Miss Steiner, you may proceed.

26 MRS. STEINER: Thank you, Your Honor.

27 Ladies and gentlemen, it's my only time to speak to
28 you, and it's also going to be the last time anybody on
29 behalf of Mr. Flowers is going to speak to you. So to

1 some extent, I am going to have to anticipate some of
2 what Mr. Evans is going to talk to you about here. And I
3 want you to just remember I'm not going to be able to --
4 you need to keep things in your mind. Because if he
5 contradicts something, I can't stand up and correct it
6 again.

7 Now, I don't know -- I am sure some of y'all are old
8 enough to have, like me, listened for many years to Paul
9 Harvey's radio show. I was practicing law down in
10 Hattiesburg. He came on on the noon hour. And he always
11 had entertaining stuff to say in that wonderful voice
12 that just compelled you to listen.

13 My favorite segment on Paul Harvey was always just
14 before he would come to a break, he would give you a set
15 up. He would say this happened, this happened and
16 something told us about this. And you, you'd go to that
17 break thinking you were very sure about the point that
18 story was going to make. Then he would come back and
19 say, ladies and gentlemen, it may look like this, but
20 here, here's the rest of the story. And that's really
21 what you, ladies and gentlemen, are here to decide. What
22 is the rest of the story?

23 A terrible crime occurred here. Four people died
24 senselessly and without any -- having done anything
25 wrong. That's, that's there. But we are here. Y'all
26 have taken the oath to deliberate and decide the rest of
27 the story. And the rest of the story is not so much
28 about the fact that four people died, it's about who did
29 it. And as His Honor instructed you when he read you the

1 instructions, that is what the rest of the story is
2 about. Has the State proved beyond a reasonable doubt
3 that Curtis Flowers did it? The rest of the story says
4 no.

5 Just a minute before I -- having, having said that,
6 I guess I do have to go back. If you will recall, you
7 are considering not whether or not any crime has occurred
8 but there are two separate crimes His Honor has
9 instructed you on. He has instructed you on capital
10 murder. If you find that this crime was committed, if it
11 was committed, while as part of a robbery, then -- that
12 you must find both the robbery beyond a reasonable doubt
13 and a killing during that robbery. And if you can't find
14 both of those as His Honor has instructed you, you may
15 consider whether or not this was, the lawyers call it
16 simple murder. Murder, deliberate taking of the life.

17 Now, as I say, I don't think you are going to have
18 to worry. Mr. Flowers, they haven't proved Mr. Flowers
19 guilty. I do want to talk to you about that, because I
20 certainly think there is no proof beyond a reasonable
21 doubt that the killing and any stealing from -- of that
22 money from Miss Tardy's has been proven beyond a
23 reasonable doubt.

24 I believe Mr. Sam Jones, who I think the State said
25 was almost -- over 80 years old. And he came in -- and
26 you know, his testimony, I looked it up as they were
27 saying that. His original testimony was he might have
28 gotten there, started his voyage to go in to -- as early
29 as 9:00. He, he thought maybe he got there closer to

1 9:30. But we know from the police that the call came in
2 at 10:20. And if you will remember, Mr. Jones also told
3 you he thought it might have been 15 minutes before he
4 recovered himself enough to go and actually make the
5 report. So there is a bunch of time in there.

6 You know, it would take me time to recover. I know
7 so many of y'all winced when you first had to look at
8 those pictures. His time -- he may have also taken some
9 time to recover. You know, during that time there wasn't
10 any police lying around in the store. There wasn't
11 anything except, maybe, an 87-year-old man trying to get
12 over the shock of what he had seen.

13 Anybody could have walked into that store, seen
14 those people dead. And instead of doing what Mr. Jones
15 did, just said oh, there is cash in here. Gone in.
16 Cashed out. Gone. So even -- and I don't think you are
17 going to come to finding this beyond a reasonable doubt.
18 But even if you think, as the State said, that Mr.
19 Flowers was holding the gun that killed these people, you
20 do have to deliberate. And I don't believe they have
21 made any proof beyond a reasonable doubt that he also
22 robbed them.

23 And if you find that the crime was murder, that
24 whatever was stolen might have been stolen during that 15
25 minutes that Mr. Jones had to recover himself, then the
26 crime you would have to be considering, should you decide
27 that Mr. Flowers fired that gun, would be murder.

28 But let me just now turn to the rest of the story
29 here. Now, the State -- and I am sure Mr. Evans is going

1 to come up, and he is a very good lawyer. He is a very
2 good teller of what he thinks the facts are or what the
3 evidence showed. But I think he will tell you things,
4 you are going to say yes, yes. He has his little map.
5 He has his -- all these people and all these times. But
6 the rest of the story tells that doesn't hold water.

7 I agree with Mr. Carter. I mean Mr. Hallmon -- His
8 Honor has instructed you, view whatever Mr. Hallmon says
9 with suspicion. I think you can set that aside as any
10 proof of anything other than Mr. Hallmon's desperation
11 and unreliability.

12 Let's look at the circumstances. Let's see the rest
13 of the story. Now, unfortunately, because of the fact
14 that it didn't have a leader, didn't write things down.
15 And if you keep a organized organization to decide what
16 the rest of the story was, the State didn't get the rest
17 of the story. It didn't have it. Apparently, either it
18 chose not to or maybe was so overwhelmed by the magnitude
19 of the crime they couldn't get it together to do so.

20 You know, the highway patrol wanted -- the, the
21 detective from the highway patrol wanted to defer, and
22 they didn't want to intrude and nobody wanted to be a
23 leader. But for whatever reason, ultimately what
24 happened, instead of doing the investigation they should
25 have done to not only get the terrible story that these
26 people had died, but the rest of the story that would
27 help them and the people deciding this, you, the jury,
28 decide what really happened and whether the State could
29 prove this beyond a reasonable doubt. They didn't do

1 that.

2 Instead they found Mr. Flowers. Yes, he was the
3 most recent employee to leave there, and he had damaged
4 some property. And Miss Tardy's children with 20/20 --
5 Miss Tardy's daughter and Mr. Tardy's son, with 20/20
6 hindsight said oh, she had to let him go. And then from
7 then on they focused and said what we'll do is we'll pick
8 this person, we'll find out. But the rest of the
9 story -- the rest of the story that the State ignored,
10 that it didn't find, has -- points in a completely
11 different direction. And they didn't even rule it out.

12 They -- Doyle Simpson -- well, Doyle Simpson, we are
13 not quite sure what's true and what's bad memory and
14 what's a lie. Now, he did say he, he did tell one lie.
15 The first thing out of his mouth to the police was a lie
16 about the gun he claimed had been stolen. He claimed he
17 bought it from or gotten it from his brother in
18 Louisiana. He told you that was a lie.

19 But, you know, he also lied when he lied,
20 unfortunately, here in this court to y'all, about why he
21 told that lie in the first place. He said well, I was
22 trying to protect Curtis. But then remember, when I was
23 asking him questions, what did he say? I said but wait,
24 wait. You didn't know anybody had accused Curtis when
25 you told James Taylor Williams this lie.

26 You didn't know anybody had -- and James Taylor
27 Williams said the first anybody ever heard of it was when
28 James Taylor Williams went out to investigate, went up to
29 Fuzzy's and got a report that a nervous, flustered,

1 sweaty man had come in and started talking about a gun
2 being stolen. Everybody knew these horrible shootings
3 had happened and a man was nervous and flustered and
4 sweaty. And James Taylor Williams tells you comes into
5 Fuzzy's, and says ooh, my gun was stolen. My gun was
6 stolen.

7 Did they go down to Angelica when James Taylor
8 Williams called them? It wasn't Angelica calling. It
9 wasn't -- it wasn't Doyle Simpson calling. Good highway
10 patrol. Just he went -- even though he didn't have a
11 lead, he went out and he traced down this lead. That's
12 who brought that lead in.

13 But the first thing he told that -- right after he
14 comes back, they wait for Doyle to come back. And right
15 after he comes back, he doesn't have a chance even to go
16 in and, and -- into the floor. He is brought right into
17 that office before he has talked to Catherine Snow. He
18 said it didn't happen until several days later or at
19 least a couple of days later. Before he knows anything
20 about his step nephew, Curtis Flowers, being a suspect,
21 he is telling the lie about where he is getting the gun.
22 And he came and told you a lie that he was trying to
23 protect Curtis Flowers. He was trying to protect
24 himself.

25 We don't know. The State didn't do the
26 investigation that would either rule him out or rule him
27 in. They didn't -- they saw him within less than an hour
28 of that crime, of discovering those bodies. Did they
29 take out that gunshot residue kit? Apparently, they

1 carry that with them just for circumstances like this.
2 This is the only man who ever admitted to handling or
3 owning this gun. Why didn't they -- why didn't they say
4 well, let's make sure he is telling us the truth about
5 this gun being stolen. And, and it didn't take them
6 long. He, he told them a lie about where he had gotten
7 the gun. It was prudent police work. Let's do a job.

8 As, as you heard Mr. Andrews say, after four hours
9 it diminishes. But this was less than an hour later.
10 They didn't do that. They didn't look. I believe they
11 said they talked to people on the floor, and they thought
12 they ruled him out. But you remember what he testified
13 about his job. He came in. He was the janitor. He came
14 in before everybody else and swept in the morning.

15 Then once the rest of the people in this sewing
16 factory floor got there -- I think it was mostly ladies
17 who worked. They sat down at these big sewing machines.
18 I don't know if any of y'all ever worked a sewing machine
19 but I have to say when I'm sewing on my little home
20 sewing machine, my eyes are there with that needle going
21 up and down. And it could go right through my finger if
22 I didn't do it. I don't think anybody operating a sewing
23 machine on the floor of Angelica was looking up, looking
24 around, let's see if I can find Doyle.

25 He is -- he may be on the other end of another line
26 picking up someone else's scraps. He may be outside.
27 Remember, he told you, well, I took the scraps out every
28 once in awhile, five, six, times that morning. And I'm
29 sure -- if I'm sewing on my machine, I'm taking a break

1 to move my pieces, I may actually hear him. Up goes that
2 roll-up door he talked about. You hear that roll up, and
3 I go back to sewing. Maybe I take another pause, and I
4 hear it roll down. But you know, I get used to hearing
5 that up and down. I don't look to see which side of that
6 door Doyle Simpson was on when he rolled it up and when
7 he rolled it down.

8 The rest of that story was never investigated. It
9 hasn't been told to y'all, and it is not there. But it
10 is reasonable doubt on whether, in fact, what they
11 decided to put together. They started getting this
12 evidence, I. Think the earliest from other people
13 spotting him was a month after this all happened.

14 But that day they had Doyle Simpson, and he admitted
15 to them that he had been in and out of that plant three
16 times that morning. He had gone out. He had gone out.
17 He had opened the door to his car about 9:30, opened it.
18 And got his breakfast out. And I think he said he ate
19 his breakfast at his car. But he admitted he closed that
20 door. Nothing fell open on the glove compartment at
21 9:30. That's 9:30. After -- two hours after the State
22 would want you to construe what Miss Catherine Snow said
23 was when the gun was stolen. Two hours later. That
24 glove compartment didn't fall open.

25 And by the way, he wasn't in that building. So
26 nobody could have told the police that, well, I saw him
27 while he was out there in his car eating his breakfast.
28 And he went out again. He went in, did his scraps, put
29 them in the dumpsters. Open and close that door. And

1 then about 10:20 he admits he went out again. And he
2 went out to roll down his windows. He said he had
3 electric windows, which meant he had to open the door, go
4 in, turn the car on, or turn the electricity on, and roll
5 down the windows.

6 Now, you heard Miss Schoene say one of those doors
7 didn't even open. But he went in the passenger side,
8 opened and closed the door. Nothing happened to that
9 glove compartment.

10 The State didn't -- the State had this information.
11 The State had this information, and for whatever reason,
12 they didn't follow through on it. So by the time, maybe,
13 they decided they were only going to look at Mr. Flowers
14 the minute they got the report from Miss Ballard or Tom
15 Tardy. Or maybe they just were so disorganized nobody
16 realized the importance of this information. The fact is
17 they didn't look at it. They didn't look at the person
18 closest to the gun that they believed. They built a case
19 saying it was used in this case.

20 It's terrible. It's tragic. But they didn't look
21 at perfectly reasonable other suspects right there in
22 front of them and evidence was lost forever.

23 There, there are so many other things. The rest of
24 the story on, on the statements. Mr. Hill has argued
25 that the two conversations Mr. Flowers had with the
26 police he always said that he never came over on the
27 downtown side.

28 THE COURT: Miss Steiner, you have five
29 minutes.

1 MRS. STEINER: Thank you. But he, he -- that
2 he told them that -- and I was pondering that. Every
3 single witness who sat on that stand to give evidence
4 against him, they waited months to come forward. They --
5 most of them said -- I know Miss Mary Jeanette Fleming
6 said I, I didn't want to be involved. No one. Patricia
7 Hallmon had to wait -- waited till after he was
8 arraigned. And they didn't want to come forward. Curtis
9 was a witness perhaps, that he had been called in and as
10 a witness no one, no one, no one wants to be involved.

11 This -- the State would have you infer from two
12 contradictory statements that he was trying to hide
13 something. But, but the rest of the story on that is
14 every witness didn't want to come forward. Every witness
15 just wanted to get as far as possible from what happened
16 there. And the motive. The motive in this case, the
17 rest of the story on that. He lost his job for breaking
18 batteries and they were going to take an \$87 paycheck
19 from him. You heard his statement. He was getting
20 unemployment compensation. He got every dollar --
21 anything he earned came off of his unemployment
22 compensation. If he didn't get that \$87, that \$87
23 wouldn't come off of the unemployment compensation.

24 The glove box. The two officers, Mr. James Taylor
25 Williams and Mr. Thornburg, went and they looked in that
26 ratty, old brown car, and they said the glove box was
27 open. They knew they had had -- they had had the story
28 that the gun had been stolen. They saw pry marks. They
29 called in the specialist, Miss Schoene. She told you,

1 ladies and gentlemen -- she was asked by the State no,
2 those aren't pry marks. That was a beat up old car.
3 Those marks are consistent with that car's age.

4 The, the gunshot residue, ooh, there's a particle of
5 gunshot residue on his hand, on his fingers. But then
6 you heard what Jo Andrews said. Well, I can only tell
7 you three things. He might have fired a gun. He might
8 have been there when a gun was fired, or he might have
9 picked it up from somewhere where it also was. Well, he
10 told you it's in police cars. It's in police
11 interrogation rooms. It's not only where people have
12 fired guns. It's where people who have been near guns
13 that have been fired. Like people at a crime scene.

14 You heard Mr. Matthews and Mr. Johnson tell you,
15 they actually sat up the post where they were
16 interviewing witnesses inside that tape. So in addition
17 to the 27 people Miss Schoene found at that crime scene,
18 we had witnesses come in and out. But those officers,
19 they toured there within a few minutes or within less
20 than four hours of when those guns had been discharged.
21 And they could have picked it up on their clothes. They
22 can wash their hands. But if they put that gloved hand
23 down in their pocket, they could pick it up there.

24 There is no proof beyond a reasonable doubt that,
25 that Mr. Flowers got that gunshot powder residue from
26 anything other than sitting in that room, picking up a
27 pen and holding it in his hand.

28 And you know, I was just looking down here. On my
29 piece of paper, I typed out some notes and printed them

1 out last night. And I was too nervous to go powder my
2 nose and put on new lipstick before I stood up to talk to
3 y'all. But before we came in from lunch, I was in there.
4 I went in and I powdered my nose and I put on my
5 lipstick. And it is all pretty much gone now. You know,
6 how you probably watched that. I put my pen in my mouth.
7 I just noticed. There is a little trace of that lipstick
8 I put on right after lunch that is all gone now. I think
9 I must have just put my pen down or put it on my hands.
10 That's what gunshot residue is. It can be picked up from
11 anywhere and left around.

12 And the gun experts. We had Mr. Balash. He said
13 oh, everything matches up completely. And then the rest
14 of the story, we find out he's the second one that they
15 went to when it didn't fit their theory.

16 MR. EVANS: Your Honor, I object. That is not
17 true.

18 THE COURT: Mrs. Steiner, your time is up.

19 MRS. STEINER: Okay. Thank you.

20 May I have a moment, a minute or two to conclude?

21 THE COURT: You can have a minute.

22 MRS. STEINER: All right. Thank you.

23 Ladies and gentlemen, I'm sorry. I get a little
24 wound up, but this evidence -- the rest of the story does
25 not support the State's theory that it was Curtis Flowers
26 that did this. The State didn't find. They didn't
27 organize. They didn't document. They didn't investigate
28 this case to do anything except take the most convenient
29 suspect and make him guilty.

1 They went around, and they found all these people.
2 And they want to connect a bunch of dots, but those dots
3 don't connect. The man is wearing five different
4 outfits. He would have had to go home and come back to
5 each of those places 12 minutes, 17 minutes each way. It
6 is not possible. The dots don't connect. Their case is
7 only as strong as its weakest link. And that is a chain
8 whose links fall apart when you remember what they say he
9 was wearing.

10 Mr. Flowers is not guilty. The State has not proved
11 him guilty beyond a reasonable doubt and your verdict,
12 ladies and gentlemen, should be not guilty.

13 MR. EVANS: Your Honor, may I move these so
14 that I can put some up --

15 THE COURT: Sure. Take that down. It blocks
16 my view of the jury, and I don't like my view of the jury
17 to be blocked.

18 MR. EVANS: And I'd like -- I can either cut it
19 off or --

20 THE COURT: Have somebody from their office
21 turn it off.

22 Mr. Evans, you may proceed.

23 MR. EVANS: Thank you, Your Honor.

24 Ladies and gentlemen, I am not going to be long,
25 because y'all have heard the evidence in this case. And
26 I think it's very clear to y'all what happened on this
27 case.

28 I think it is funny any time that I see the defense
29 trying to attack everybody. In this case they talk about

1 junk science. They don't want you to believe the
2 experts. They've talked about every law enforcement
3 officer that worked this case. We don't have any
4 officers around this part of the country, I don't guess,
5 that are honest or capable. They talk about me. They
6 talk about my dishonesty. They talk about the
7 eyewitness. Apparently, the people that live in your
8 community are dishonest. They don't want you to believe
9 anything.

10 MRS. STEINER: Objection, Your Honor.

11 MR. EVANS: Why do they not want you to believe
12 anybody?

13 MRS. STEINER: Objection, Your Honor. We have
14 attacked in our argument -- in my argument, I have
15 attacked their memory and their veracity and their, their
16 motives on this. We have never attacked the character
17 for honesty of anybody except Odell Hallmon, whom the
18 Court has instructed the jury must be viewed with
19 suspicion.

20 MR. EVANS: May I proceed, Your Honor?

21 THE COURT: What do you consider veracity to
22 be?

23 MRS. STEINER: Yes, I'm sorry, Your Honor.
24 That they were influenced. But we have not attacked the
25 honesty in my -- in our argument, in my argument, at
26 least, of anything other than their recollections?

27 MR. EVANS: May I proceed, Your Honor?

28 THE COURT: You may.

29 MR. EVANS: I wrote it down. Ray Charles

1 Carter said the officers lied. He doesn't want you to
2 believe anybody. The experts. It's junk science. You
3 can't believe anybody. All of these people that came in
4 here from the community.

5 And I'll be honest about one thing - that they don't
6 want to have to testify. They are tired of testifying.
7 They are scared. They don't want to be involved. They
8 have told you that. But they did. They sat on that
9 stand right there and had the guts to tell you what they
10 saw. But they want to attack them.

11 Y'all will have this map to go back there. To me
12 this is one of the best things in this case. Because it
13 shows the exact path. You can pinpoint where he went,
14 what time he left his house, how he got to Angelica, how
15 he got back to his house, how he went to store, how he
16 went back to the his house.

17 I've never seen a case that had so much evidence.
18 I've never seen a case that had so much investigation.
19 We are talking about a case where the officers worked
20 together. They worked together daily on a endless battle
21 to try to solve this case. They searched house to house.
22 They searched manhole covers. They searched garbage
23 cans. They did everything in the world. They followed
24 leads. And this is what it lead to. It lead to the
25 proof that he did it.

26 The gunshot residue is on his hand. The expert
27 testified it is nothing else. It is gunshot residue.
28 And that's where you would expect to find it. The tennis
29 shoes prove that the person in the store was wearing Fila

1 Grant Hill 10 1/2 tennis shoes.

2 We have got the box they came out of. Why do they
3 want to hide the shoes? Why wouldn't they bring them in?
4 You heard Connie. She testified yeah, I admit it. I
5 said last time that I didn't want the shoes found, but I
6 really didn't understand your question. She understood
7 my question. She didn't want the shoes found. And she
8 wants to sit up here and tell y'all that Curtis doesn't
9 even wear a 10 1/2. The evidence is here.

10 This case proves beyond any doubt that this
11 defendant is guilty. There is only one verdict that can
12 be there. It's not murder. It is capital murder.
13 Because the proof is there that he also took the store
14 money and that's what makes it robbery.

15 Ladies and gentlemen, I could sit up here for five
16 days and argue the facts of this case, but y'all have
17 heard it. Y'all have heard the important parts. This
18 defendant is guilty. This was a well-worked case. The
19 officers that worked this case did an excellent job. You
20 might could have -- say okay, well, I might should have
21 written this note down. I might should have written that
22 note down. I might should have gone and checked to see
23 if Elvis was still in his grave. He might could have
24 committed the crime.

25 But you have to look at reality. What they did,
26 they followed the leads that were there, and they did an
27 excellent job of it. We have got officers here that were
28 dedicated. They wanted to make sure that they got the
29 right person. All the people that they eliminated from

1 the crimes, they went and made sure where they were.
2 They talked to people on the floor. They talked to
3 people that were in the break room with them. They made
4 sure that they knew what they were doing, because they
5 wanted the right person charged. And that's Curtis
6 Flowers.

7 And I ask that when you go back in the jury room,
8 this form -- this isn't the one, this is another copy of
9 it. There is a form of the verdict here. There is four
10 different counts because there are four victims in this
11 case. And on each one there are three choices. I ask
12 that the whoever y'all elect as foreman, mark on each of
13 the four counts we, the jury, find the defendant guilty
14 of capital murder, because that is what he is guilty of.

15 Thank you, Your Honor.

16 THE COURT: Ladies and gentlemen of the jury,
17 you have heard all the evidence. You have been
18 instructed on the law by the Court, and you now have
19 heard closing arguments. I'll ask that you retire now to
20 the jury room to deliberate. When you have reached a
21 decision, if you will mark that verdict on the form
22 attached by paperclip to these instructions. And then
23 knock on the door and let the bailiff know that you have
24 reached a decision.

25 We do have two alternates that have been here the
26 entire time, but we do still have a complete panel.

27 So Miss Julia Ray and Miss Beverly Williams, you are
28 excused at this time. You may have a handbag in the jury
29 room. If you do, you can step in there maybe and get

Jury Retires to Jury Room to Deliberate

1 those before the rest of the jury goes in.

2 (THE TWO ALTERNATE JURORS WENT IN THE JURY ROOM AND GOT
3 THEIR BELONGINGS.)

4 And ladies, if you will go around to the sheriff's
5 office. They can provide means of transportation so you
6 can get your belongings and all that have been left where
7 you have been staying.

8 A JUROR: Thank you.

9 THE COURT: Now, ladies and gentlemen, if you
10 will step in the jury room and begin your deliberations.

11 (THE JURY LEFT THE COURTROOM TO DELIBERATE THEIR VERDICT
12 AT 2:52.)

13 (THE EXHIBITS THAT WERE ADMITTED INTO EVIDENCE AND THE
14 JURY INSTRUCTIONS WERE HANDED INTO THE JURY ROOM.)

15 THE COURT: I'll go on record now and state
16 that all the exhibits that were introduced during
17 evidence have now been presented to the jury in the jury
18 room. None of the items that were marked for
19 identification, were not admitted, have been submitted to
20 the jury. So they have only things that were admitted
21 into evidence during the course of the trial.

22 Court will now recess to await the verdict of the
23 jury.

24 (THE JURY KNOCKED AT 3:21.)

25 THE COURT: Court will come back to order.

26 I will say to everybody, I don't know what -- the
27 jury's knocked. I don't know if it is a note or verdict
28 or what it is.

29 I just will say this. If it is a verdict, I don't

1 want to hear any comments from anybody in the audience.
2 If anybody thinks they can't control their emotions if it
3 is a verdict, they need to make their way out
4 immediately.

5 If you will find out what they are knocking about.

6 (THE JURY INDICATED TO THE BAILIFF THAT THEY HAD REACHED
7 A VERDICT.)

8 (THE JURY RETURNED TO THE COURTROOM.)

9 THE COURT: Who is the foreman of the jury?

10 A JUROR: (Indicated.)

11 THE COURT: Mr. Foreman, has the jury reached a
12 verdict?

13 A JUROR: Yes, they have, Your Honor.

14 THE COURT: Is that verdict written on the form
15 that was provided?

16 A JUROR: Yes, it is.

17 THE COURT: Would you hand that form to the
18 bailiff, please?

19 A JUROR: (Complied.)

20 THE COURT: Is this the verdict of all 12
21 members of the jury?

22 A JUROR: Yes, sir, it is.

23 THE COURT: I'll have the clerk read the
24 verdict.

25 If the defendant will please stand.

26 CIRCUIT CLERK LANELLE MARTIN: As to Count I,
27 we, the jury, find the defendant guilty of capital murder
28 of Bertha Tardy.

29 Count II, we, the jury, find the defendant guilty of

1 capital murder of Robert Golden.

2 Count III, We, the jury, find the defendant guilty
3 of the capital murder of Carmen Rigby.

4 Count IV, We, the jury, find the defendant guilty of
5 the capital murder of Derrick Stewart.

6 THE COURT: I am going to poll each one of you
7 on the jury.

8 Ma'am, is this your verdict?

9 A JUROR: Yes, sir.

10 THE COURT: And, ma'am, is this your verdict?

11 A JUROR: Yes, sir.

12 THE COURT: Sir, is this your verdict?

13 A JUROR: Yes, sir.

14 THE COURT: Sir, is this your verdict?

15 A JUROR: Yes, sir.

16 THE COURT: Sir, is this your verdict?

17 A JUROR: Yes, sir.

18 THE COURT: On the back row, sir, is this your
19 verdict?

20 A JUROR: Yes, sir.

21 THE COURT: Ma'am, is this your verdict?

22 A JUROR: Yes, sir.

23 THE COURT: Sir, is this your verdict?

24 A JUROR: Yes, sir.

25 THE COURT: Ma'am, is this your verdict?

26 A JUROR: Yes, sir.

27 THE COURT: Ma'am, is this your verdict?

28 A JUROR: Yes, sir.

29 THE COURT: And, ma'am, is this your verdict?

1 A JUROR: Yes, sir.

2 THE COURT: Sir, is this your verdict?

3 A JUROR: Yes, sir.

4 THE COURT: Ladies and gentlemen, if you will
5 now return to the jury room, and we will give you further
6 instructions.

7 (THE JURY LEFT THE COURTROOM.)

8 THE COURT: I am going to go ahead and start
9 proceeding in the second phase. The State or defense
10 need a few minutes before we start with --

11 MR. EVANS: Ten or fifteen will be enough, Your
12 Honor.

13 THE COURT: We will just recess for 15 minutes.

14 MRS. STEINER: Your Honor, I have to say that
15 if -- we had made a motion previously asking for a
16 24-hour cooling off period. We do not require that but
17 we would request that we not start the sentencing
18 proceeding until tomorrow morning.

19 We have got witnesses we have got to get here. We
20 need to get them sequestered. Some of them have been
21 permitted to remain in the courtroom.

22 THE COURT: You need to start doing that in the
23 next 15 minutes, because we are going to resume.

24 MRS. STEINER: Thank you.

25 (A RECESS WAS TAKEN.)

26 (MR. EVANS, MR. HILL, MRS. STEINER, MR. CARTER AND THE
27 DEFENDANT WERE PRESENT IN OPEN COURT. PROCEEDINGS WERE AS
28 FOLLOWS:)

29 MRS. STEINER: Your Honor, before bringing the

1 jury out I have some motions.

2 THE COURT: Proceed.

3 MRS. STEINER: Your Honor, the first motion
4 would be to move that the -- this jury be -- that the
5 State not be permitted to proceed --

6 THE COURT: Speak up.

7 MRS. STEINER: That the State not be permitted
8 to proceed to a sentencing phase for all of the reasons
9 cited in the motions previously heard by this Court - the
10 double jeopardy motion, the prosecutorial vindictiveness
11 motion, the Batson and no peremptories motion.

12 And also, we would move that the verdict that the --
13 this jury -- at the very least, this venire be dismissed
14 and that no sentencing proceeding take place on the basis
15 of the initial motion that no fair jury was constituted
16 in this matter in light of all the responses of all the
17 venire members, including those who were serving on this
18 jury. And with respect to that, there were 12 people.
19 This took barely over 35 minutes. They didn't even have
20 time to use the restroom and clear their throats. And it
21 appears that they -- that there was effectively no
22 deliberation.

23 And we would retrospectively under the Sixth
24 Amendment cite that as evidence, that this -- a fair
25 juror under the Sixth Amendment could not be constituted.
26 And we would therefore move that the State at least -- at
27 the very least be precluded from presenting any evidence
28 and seeking the death penalty at this time.

29 And then we have one further motion, Your Honor.

1 And she has been doing technical stuff. But at least
2 during -- as we were going in and out trying to get --
3 gather our boxes and our information, my -- one of -- two
4 of my interns observed the jurors taking their usual
5 smoke break under the supervision of the bailiff. What
6 was unusual was these jurors were also apparently engaged
7 in some sort of interaction or conversation with at least
8 two highway patrol members.

9 I would call Miss Pria Brandis to state under oath
10 what it was she observed in this regard. And we would
11 move that this jury, even if none of the other motions
12 with respect to seeking the death penalty be granted,
13 that this particular jury be discharged and not be
14 permitted to consider sentence because they have been
15 disobeying the Court's orders with respect to
16 communications with anybody besides the bailiff outside
17 of and, and in open court to the judge.

18 THE COURT: Well, the first issue on the length
19 of deliberations, I have never seen any case law that
20 would ever indicate that a jury has to deliberate a
21 certain length of time before they can return a verdict.
22 So that, that motion on its face is just spurious, is
23 totally ridiculous. And this jury is not going to be
24 dismissed because they didn't deliberate as long as,
25 maybe, defense counsel wishes they would.

26 I have never seen any evidence the prosecutor
27 engaged in any misconduct during the course of this
28 trial. And jeopardy certainly has never attached because
29 there has never been a not guilty finding. Jeopardy --

1 double jeopardy only attaches if there is a verdict of
2 not guilty. And so jeopardy has definitely not attached.

3 Because the prosecutor did not at one point seek the
4 death penalty does not preclude them from some later time
5 seeking the death penalty.

6 And then you have made great statements about the
7 makeup of the jury. So I'll just read into the record
8 how we got to the point where we had the jury we did.

9 Originally Juror Number 6, an African-American male,
10 was excused for cause because he knew the Flowers family,
11 said he could not be fair and impartial.

12 Juror 15, an African-American female, was excused
13 for cause because she had known Curtis Flowers all her
14 life and said she couldn't be fair and impartial.

15 Juror 16, an African-American male, was excused for
16 cause because he knows Curtis Flowers, worked in the past
17 with his sister, Priscilla, and said he couldn't be fair
18 and impartial.

19 Juror 21, an African-American male, was excused for
20 cause because his wife is a cousin of Curtis Flowers and
21 he said he couldn't be fair and impartial.

22 Juror 23, an African-American male, was excused for
23 cause because he is related to Curtis Flowers, said he
24 couldn't be fair and impartial.

25 Juror 24, an African-American female, was excused
26 for cause because she said she was close to Curtis
27 Flowers and she couldn't be fair and impartial.

28 Juror 31, an African-American female, was excused
29 for cause because she is the sister-in-law of Curtis

1 Flowers and she said she couldn't be fair and impartial.

2 Juror 33, an African-American male, was excused for
3 cause because his daughter and the brother of Curtis
4 Flowers have a child together and he said he couldn't be
5 fair and impartial.

6 Juror 34, an African-American male, was excused for
7 cause because he stated he could not judge anyone for any
8 reason.

9 Juror 36, an African-American male, stated that he
10 was married to a cousin of Curtis Flowers and he could
11 not be fair and impartial.

12 Juror 37, an African-American female, was excused
13 for cause because she said she was related to Curtis
14 Flowers and could not be fair and impartial.

15 Juror 41, an African-American female, was excused
16 for cause because she said she couldn't sit in judgment
17 of anyone.

18 Juror 43, an African-American female, was excused
19 for cause because she knows Curtis Flowers, has worked
20 with his sister and said she couldn't be fair and
21 impartial.

22 Juror 46, an African-American male, was excused for
23 cause because he is a cousin of Curtis Flowers, worked
24 with his brother and sister and stated he couldn't be
25 fair and impartial.

26 Juror 49, an African-American male, was excused for
27 cause because he stated he could not sit in judgment of
28 anyone.

29 Juror 42, an African-American male, was excused for

1 cause because he is related to Curtis Flowers, said he
2 couldn't be fair and impartial.

3 Juror 57, an African-American male, was excused for
4 cause because he stated that under no circumstances could
5 he accept -- consider the death penalty.

6 Juror 60, an African-American male, was excused for
7 cause. He stated that he could not be fair and impartial
8 since his son had been recently convicted of a felony.

9 Juror 65, an African-American female, was excused
10 for cause because she said under no circumstances could
11 she consider the death penalty.

12 Juror 70, an African-American female, was excused
13 for cause because she knows the parents of Curtis
14 Flowers, works with his sister and stated she couldn't be
15 fair and impartial.

16 Juror 71, an African-American female, was excused
17 for cause because she stated she had known Curtis Flowers
18 for many years and could not be fair and impartial.

19 Juror 74, an African-American male, was excused for
20 cause because he stated he knew the parents of Curtis
21 Flowers, works with his brother, Archie, Jr., and stated
22 he could not be fair and impartial.

23 Since the last juror selected was Juror 78, there is
24 no point in going past that in stating the reasons for
25 different African-Americans that stated that they could
26 be -- could not be fair and impartial because of
27 friendships or kinships with Mr. Flowers, but that was a
28 continuing theme throughout the course of the trial.

29 Then Juror 14, an African-American female was struck

1 for cause -- I mean was struck by the State
2 peremptorily - and I found it to be race-neutral -
3 because she had worked with Archie Flowers in the past,
4 who's the father of Curtis, and also she had been sued by
5 Tardy Furniture.

6 Juror 44 was struck by the State as peremptory
7 because she said she might could consider the death
8 penalty, not sure she could consider it, doubted she
9 could consider it. And she stated during voir dire that
10 she had worked in the same factory as the sister of Mr.
11 Flowers. She stated she didn't have any contact with his
12 sister, but then a manager from the plant came in to
13 court and testified that they work nine inches apart from
14 each other.

15 Juror 45, an African-American female, was excused
16 peremptorily by the State, because she stated in voir
17 dire that she couldn't judge anyone. Later changed her
18 mind, said she could judge. And she also had been sued
19 in the past by Tardy Furniture.

20 Juror 53, an African-American female, stated her
21 nephew is married to Curtis -- married to the sister of
22 Curtis Flowers. Also, her brother-in-law is married to
23 Curtis Flowers' aunt. On her jury questionnaire she
24 stated she could not under any circumstances consider the
25 death penalty, but in voir dire she stated she had lied
26 on her questionnaire when she said she could not consider
27 the death penalty. Also, she was late for court, I
28 believe, it was the second day of voir dire, and we had
29 to continue proceedings because we were waiting for her

1 and two other jurors that were extremely late.

2 Then Juror 62, an African-American female, stated
3 during voir dire that she had worked in the past with
4 Archie Flowers, the father of Curtis. She also stated
5 she had worked in the past with Lola Flowers, his sister.
6 She also stated that she could possibly lean towards the
7 Flowers family during the course of the trial.

8 So those are the reasons why the jury makeup ended
9 up being what it was. Again, the record can show that
10 there was countless people who had either kinships,
11 friendships or family ties with Mr. Flowers that
12 prohibited them from sitting in judgment.

13 I'll also note there was a concern about whether
14 there was a *Witherspoon* issue about the death penalty,
15 the seeking of the death penalty and permissibly striking
16 too many black jurors from the jury panel. However,
17 based on where the final jury -- juror was selected, and
18 that was Number 78, so only two people of the 78
19 African-Americans said they could not consider the death
20 penalty. That was Juror 57 and Juror 65. We had an
21 equal number of white jurors that said the same thing,
22 that they could not consider the death penalty under any
23 circumstances of that first group who could have possibly
24 ended up on the panel. So I do not find that there was
25 any *Witherspoon* issue.

26 There was not a disproportionate number of blacks
27 that were excused because of the death penalty question,
28 because, as I say, any juror that was passed Juror 78,
29 there is no reason to consider that because they would

1 not have ended up on the panel based on the challenges --
2 or the peremptorial -- peremptory challenges that were
3 offered by both sides. So I do not find there to be a
4 *Batson* problem. I do not find there to be a *Witherspoon*
5 problem. I do not find there to be any sign that there
6 was any racially discriminatory motives behind the jury
7 that was selected.

8 Now, if you want to call your interns for whatever
9 they have to say.

10 MRS. STEINER: If the Court, please I'd also
11 like a ruling on my general motion under the Sixth
12 Amendment renewal that no fair and impartial jury can --
13 was -- the jury as it sat was not a Sixth Amendment fair
14 and impartial jury, which the defendant is entitled to,
15 because of the extensive connections and the opinions
16 held by numerous members of the panel whose only
17 distinction in what the Court has said were justified
18 excuses was they said, well, they could set that aside.
19 And I believe that these are in many of these instances
20 imputed bias that is such that it does not pass Sixth
21 Amendment muster. This jury as it sat contained people
22 who had implied bias and otherwise were not qualified to
23 sit on the jury as a whole fails to meet the Sixth
24 Amendment standard of fair and impartial jury. That was
25 also one of my motions, and I would like a ruling from
26 the Court on whether it will quash this jury and send
27 them home on, on that basis.

28 MR. EVANS: Your Honor, the only thing I would
29 like to add to that is that every juror that ended up

1 serving on this case was accepted by both sides. Neither
2 side used all of their strikes. They had an opportunity
3 if it was somebody that they didn't want on the jury to
4 strike them and chose not to take it.

5 THE COURT: I have seen nothing about this jury
6 that would indicate that they were not a fair and
7 impartial jury. And I do agree with the State that there
8 was -- I don't remember the exact number. I don't have
9 that list sitting right here at my fingertips.

10 You had several other strikes which you could have
11 exercised if you had been concerned about somebody
12 sitting on the panel that could not be fair and
13 impartial. Everybody that was seated on this jury was
14 questioned at length about their ability to be fair and
15 impartial.

16 Everyone to a person said they could be a fair and
17 impartial juror, and I have no reason to believe that
18 they were not truthful with the Court.

19 Also, I mean they sat here for several days. They
20 have listened attentively -- they have listened very
21 attentively to the evidence, and they reached the verdict
22 they did. But there is no showing that this verdict, the
23 evidence is prejudged or rush to judgment or anything
24 else. And so I do not find any grounds whatsoever to
25 quash this jury or to set this verdict aside for anything
26 related to the jury.

27 MRS. STEINER: Your Honor, we would call Pria
28 Brandis as a witness.

29 (THE WITNESS APPROACHED THE BENCH.)

1 THE COURT: Do you solemnly swear or affirm the
2 testimony you give in this case will be the truth, the
3 whole truth and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE COURT: Come around. Have a seat.

6 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

7 State your name.

8 THE WITNESS: Pria Brandis.

9 PRIA BRANDIS, Called on behalf of the Defendant, having
10 been duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION BY MRS. STEINER:

12 Q. Miss Brandis, would you explain for His Honor where
13 you go to school and --

14 THE COURT: I don't care where she goes to
15 school. All I'm interested in is what she may have seen.

16 Q. All right. You are -- you have been -- all right.
17 Did you when the jury was dismissed and were you directed to
18 go out and bring in some new papers so that we could get ready
19 for the next phase of trial?

20 A. Yes. I was out back, in the back behind the
21 building in the parking lot.

22 Q. All right. And did you, in fact, go get things out
23 of the car and then turn around and proceed back into the
24 building?

25 A. Yes, I did.

26 Q. All right. Now, at that time, what did you observe
27 with respect to people you recognized as having been jurors
28 seated here?

29 A. I was with two other people who were working for the

1 defense, and we were walking out towards the parking lot on
2 our way to the cars. And I saw three jurors smoking outside
3 the building with the bailiff and talking to two highway
4 patrol officers.

5 Q. Now, can you describe -- how do you know those were
6 highway patrol officers? Can you describe the uniform, the
7 color, the cut, the color of the uniform?

8 A. Well, I have been in court for the past two weeks,
9 and I would describe the uniforms as being like bluish gray on
10 the gentleman that is sitting over there.

11 Q. Did you approach close enough to read the name badge
12 of the individuals?

13 A. No, we did notify the -- we did notify the chief
14 through Hargrove, I believe his name is.

15 Q. Um-hum. But you did not make any --

16 A. But I did not attempt to approach.

17 Q. -- attempt to approach.

18 MRS. STEINER: Thank you. I have nothing
19 further from Miss Brandis.

20 THE COURT: Any questions?

21 CROSS-EXAMINATION BY MR. EVANS:

22 Q. Are you saying that anybody said anything improper?

23 A. I -- well, I did hear the two jurors speaking to the
24 bailiff and the two highway patrolmen. I know that one of the
25 conversations was about one juror wanting to call her fiancée
26 after the verdict, and, I believe, have an escort. To who it
27 was, like, they had been out there for a bit when I left. But
28 apart from that, I didn't hear.

29 Q. Didn't hear anything inappropriate?

1 A. I, I mean not -- that's what I heard. I -- they
2 were talking.

3 Q. And the bailiff was out there.

4 A. The bailiff was out there.

5 MR. EVANS: Nothing else, Your Honor.

6 MRS. STEINER: We have no further questions of
7 her.

8 THE COURT: Anybody else?

9 MRS. STEINER: I think it would merely be
10 cumulative. We would rest on our --

11 THE COURT: You can step down.

12 Now, I am going to swear the bailiff in.

13 I mean swear you to tell the truth.

14 Do you solemnly swear or affirm the testimony you
15 give in this case will be the truth, the whole truth and
16 nothing but the truth, so help you God?

17 THE WITNESS: I do.

18 THE COURT: Have a seat first.

19 THE WITNESS: (Complied.)

20 THE COURT: And state your name.

21 THE WITNESS: Richard Whitfield.

22 RICHARD WHITFIELD, Called by the Court, having been duly
23 sworn, was examined and testified as follows:

24 EXAMINATION BY THE COURT:

25 Q. I just want you to advise if there has been any
26 improper conduct from anyone with the jury.

27 A. To the best of my ability, there has been no
28 improper conduct on the part of the Mississippi Highway
29 Patrol, the Montgomery County Sheriff's Department, the City

1 of Winona or any other law enforcement as far as this jury is
2 concerned. They are professionals from top to bottom, and
3 they know that they are not to have any type of contact other
4 than just a casual conversation with a bailiff -- with a
5 juror. And then most of them do not even say anything to
6 them.

7 Q. Well, so what kind of conduct -- has there been any
8 contact? I mean I know the patrol has been out there kind of
9 guarding the jury during the proceedings. But has there been
10 any -- have you been with the jury the entire time?

11 A. I have been with the jury the entire time except the
12 time that they were sequestered, Your Honor. Today one of the
13 jurors asked one of the highway patrolman when this thing is
14 over, could you call my fiancée and tell him to come and get
15 me. The highway patrolman to -- as far as to my knowledge,
16 did not answer her one way or the other.

17 Now, there is nothing that is going to stop a juror from
18 asking a question of me. That is just like asking a question
19 of me. There was nothing. There was nothing out of the way
20 as far as this case is concerned.

21 Q. Was any discussion of the verdict or anything
22 concerning the case?

23 A. There was nothing that pertained to this case
24 discussed.

25 THE COURT: Anybody want to ask Mr. Whitfield
26 any questions?

27 MR. EVANS: No, sir.

28 MRS. STEINER: I have one or two.

29 EXAMINATION BY MRS. STEINER:

1 Q. Mr. Whitfield, I believe your testimony is that your
2 understanding of your instructions were that the jurors could
3 have nothing except casual conversations with persons other
4 than yourself and Miss Browning.

5 A. Okay. When the jury is out there, they carry on
6 casual conversations. Okay. Now, the highway patrolman may
7 be around --

8 THE COURT: Talking among themselves?

9 A. Casual conversation among themselves. Okay. Just
10 about, you know, about the food they had last night, what they
11 want tonight and things of this nature.

12 Q. Mr. Whitfield, I am not asking about that. I am
13 talking about casual conversations as the one you have
14 recounted between it was a juror and the Mississippi Highway
15 patrolman. The juror spoke to the Mississippi highway
16 patrolman about something other than the fact this case or the
17 verdict or anything like that. But you do testify that that
18 did not --

19 A. I testified to the fact that one juror asked a
20 highway patrolman when this case is over and we are dismissed,
21 would you call somebody -- would you have somebody call my
22 fiancée or boyfriend, I forgot which exactly she used, to come
23 and get me.

24 Q. Thank you.

25 A. Other than that, there was nothing.

26 Q. And you have heard the judge's instructions to
27 yourselves and the jurors that the only people with whom the
28 jurors may have even casual conversations are each other and
29 the two of y'all. You have heard those instructions given to

1 the jury; is that correct?

2 A. I have heard that.

3 Q. And they were given to yourself as well.

4 A. Right.

5 Q. And you are telling this jury that in your presence
6 at least one of the jurors violated that stricture given by
7 the judge; is that correct?

8 A. One of the jurors was looking at a highway
9 patrolman. I was standing there beside him, also. Okay. And
10 she said when this thing is over, when we are dismissed, would
11 you have someone contact my, I think she used the word
12 boyfriend, and have him come and pick me up.

13 THE COURT: And was there a response.

14 THE WITNESS: I don't think there was a
15 response. As well as I can remember, there was no
16 response.

17 Q. And was there more than one highway patrol officer
18 standing there when this happened?

19 A. As well as I can remember, there were two at that
20 time.

21 Q. Do you recall the identities of --

22 A. No, I don't.

23 Q. -- which officers they were?

24 A. No, I don't.

25 Q. Do you know the identity of the juror who made this
26 contact with someone other than yourself and Miss Browning?

27 A. I know the juror's face. I don't know the juror's
28 name.

29 Q. Thank you.

1 A. But I can rest -- you may rest assured that there
2 was nothing pertaining to this case or the decision that this
3 jury reached was spoken or had anything said about it out
4 there.

5 Q. Thank you.

6 I have nothing -- one moment, Your Honor.

7 I have nothing further, Your Honor.

8 THE COURT: You can step down.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: I will just note for the record, my
11 count, I think I see seven or eight state troopers in
12 uniform, with a number of plain clothes people here
13 providing security throughout the course of the trial.
14 We have had troopers sitting over there close to the jury
15 box the, entire course of, the trial. They have been
16 there to provide security for the Court, for the jury and
17 for everyone else that might be up here at this
18 courthouse.

19 From what I have heard, I do not find there to be
20 any impermissible contact or anything that would indicate
21 that the juror in question could not continue to be fair
22 and impartial during this process. In fact, the
23 testimony I have heard indicates that there was not a
24 conversation. A juror may have made some statement that
25 the trooper was walking by. So there has been nothing
26 that has, I would say, polluted the jury pool or in any
27 way impermissible or improper.

28 So if you will bring the jury in now we will begin
29 the sentencing phase of --

1 MRS. STEINER: May it please the Court, Your
2 Honor? Let me just add, I don't know if I used the magic
3 word mistrial as to sentencing but that is what I sought
4 and that is what I understand your over ruling; is that
5 correct?

6 THE COURT: I am denying.

7 You can bring the jury in.

8 (THE JURY RETURNED TO THE COURTROOM.)

9 Court will come back to order.

10 We are going to, ladies and gentlemen, move into the
11 sentencing portion of this proceeding now.

12 The State wish to make any opening statement?

13 MR. EVANS: I hadn't even thought about opening
14 statements, Your Honor.

15 Do y'all want to make one?

16 MR. CARTER: I probably will. Go ahead. You
17 are not going to? Do something real briefly. I am sure
18 it will be a minute or two.

19 MR. EVANS: Your Honor, before we even do that,
20 I move at this point to reintroduce all --

21 THE COURT: Let's have -- if we are going to
22 have opening statements, they come before introduction of
23 evidence.

24 MR. EVANS: All right.

25 Ladies and gentlemen, this is going to be very
26 short. Y'all have heard all of the evidence and we will
27 be allowed to reintroduce everything that y'all have
28 heard and seen in this entire case. You will be able to
29 consider all of those facts in the second phase.

1 There is going to be -- other than that, probably
2 the only thing that we are going to put on is some victim
3 impact. So what we are asking y'all to consider is to
4 reconsider the physical evidence, the testimony that we
5 presented in the first phase and based upon that make
6 your decision.

7 And we will be arguing later what we think that
8 decision should be based on the evidence, but that will
9 be your determination.

10 MR. CARTER: Ladies and gentlemen, we talked a
11 while back about a case such as this involving two
12 phases - a guilt or innocent phase and a penalty phase.
13 And we have concluded the penalty phase. And just as I
14 told you in the closing argument, whatever your decision
15 is I would accept it without complaining, even if I
16 didn't like it.

17 At this point we begin the second phase. We will
18 call witnesses. The other side will call witnesses.
19 They will give testimony, and you will get a chance to
20 deliberate again.

21 We will put forth facts and circumstances of Mr.
22 Flowers' background and his social history. And we will
23 be asking you to vote for life without possibility of
24 parole. We also will be asking you to listen to all the
25 evidence before you make a decision.

26 We will specifically show that Mr. Flowers doesn't
27 have a criminal history, that he has a good prison
28 record, no rule violations, that he followed rules and
29 regulations of the prison. He does as he is told. He

1 does not cause trouble for the guards. We will show that
2 Mr. Flowers has a loving and supportive family and many
3 friends. And possibly a few other things that, that I
4 can't think of at this moment.

5 But we will furthermore argue that there is some
6 residual doubt as to Mr. Flowers' guilt, and we would ask
7 you to consider those things. Thank you.

8 THE COURT: Mr. Evans, you may proceed.

9 MR. EVANS: Thank you, Your Honor.

10 Your Honor, at this point, we would move to
11 reintroduce all of the testimony and all of the physical
12 exhibits from the first phase and the jury be allowed to
13 consider all of that in this phase.

14 THE COURT: I'll allow it to be admitted.

15 And I don't know if the rule is being invoked, if
16 there is anybody in the courtroom that is -- I mean that
17 --

18 MR. EVANS: We have no objection to witnesses
19 in this phase sitting in the courtroom, unless the
20 defense does.

21 MR. CARTER: We don't either. I don't see any
22 point.

23 THE COURT: The witnesses -- potential
24 sentencing witnesses can remain in the courtroom.

25 MRS. STEINER: And, Your Honor, they were
26 exempted from the rule for the first phase as well.

27 THE COURT: Yes, ma'am, they were.

28 You may proceed.

29 MR. EVANS: Our first witness would be Miss

1 Roxanne Ballard.

2 THE COURT: Miss Ballard, you have been
3 previously sworn in as a witness during the previous
4 phase in this trial. You are still under that same oath
5 that was previously administered.

6 If you will, have a seat, please.

7 MRS. STEINER: Your Honor, may we approach for
8 a minute?

9 (MR. EVANS AND MRS. STEINER APPROACHED THE BENCH FOR THE
10 FOLLOWING BENCH CONFERENCE HAD OUTSIDE THE HEARING OF THE
11 JURY.)

12 MRS. STEINER: Your Honor, I don't think I did
13 this. I forgot to do this. We would reiterate our
14 motion that victim impact testimony, even if permitted by
15 Payne, that, that Mississippi law does not permit victim
16 impact testimony. And further that constitutionally
17 Payne is wrongly decided and that, in fact, the Eighth
18 Amendment does preclude such testimony. We would ask --
19 that is our motion, renewal of our motion.

20 THE COURT: I think the case law is clear in
21 Mississippi on that issue. I am following the case law
22 zealously, as best as as I am capable of it. Based on
23 case law, I am going to deny that motion.

24 MRS. STEINER: Thank you.

25 (THE BENCH CONFERENCE WAS CONCLUDED.)

26 MR. EVANS: May I proceed, Your Honor?

27 ROXANNE BALLARD, Called on behalf of the State, having
28 been duly sworn, was examined and testified as follows:

29 DIRECT EXAMINATION BY MR. EVANS:

1 Q. Miss Ballard, you are the same Roxanne Ballard that
2 testified earlier before this jury; is that right?

3 A. That's correct.

4 Q. And I want to go back in just a little bit. What
5 was your connection to the victim's in this case?

6 A. Bertha Tardy was my mother. And Carmen Rigby worked
7 there for 20 years. Is that all you want me to -- I mean can
8 I keep --

9 Q. Yeah. That, that is the ones that you had -- that
10 you knew for a long time; is that right?

11 A. Yes. I did not know Bobo. I knew his family, and I
12 knew Robert's wife. She was in high school with me.

13 Q. I am going to be very brief. I just want you to
14 tell the ladies and gentlemen of the jury what impact the
15 death of your mother had on your family.

16 A. I have to be very brief, and I don't know how to do
17 that. I don't know how to summarize almost 14 years of this
18 in a brief statement. All I can say is that the horror
19 started on July 16, 1996. And I had a 4 1/2 year old son. I
20 worked in Grenada. And I guess it just started with a very,
21 very long ride from Grenada to here knowing that this
22 horrible, horrible thing had happened. And three weeks later
23 Tyler, my second child, was born.

24 And my mother and I were so close. I either was with her
25 or talked to her every day, sometimes five times a day. And
26 suddenly that only child syndrome of leaning on your mother
27 was just gone. And I had no, no, no -- anymore to lean on.
28 And it, it has just been absolutely horrible. And I lost that
29 support of having her there to raise my children with me and

1 to lean on for advice.

2 And you know, I think it changed my personality in a lot
3 of ways. And unfortunately, one was too young to know and one
4 wasn't born yet, so I don't guess they will ever know the
5 person I was before this crushed part of my soul.

6 And I also want to say that Carmen was part of my life
7 for 20 years. And I was even in one of the Rigby's weddings
8 33 years ago. So our families go way back. And I watched
9 those kids grow up. And I lost a friend, as well as a mother.

10 MR. EVANS: Tender the witness, Your Honor.

11 MRS. STEINER: We have no questions, Your
12 Honor.

13 THE COURT: Miss Ballard, you may step down.

14 MR. EVANS: Brian Rigby would be next.

15 (THE WITNESS APPROACHED THE BENCH.)

16 THE COURT: If you will raise your right hand.

17 Do you solemnly swear or affirm the testimony you
18 give in this case will be the truth, the whole truth and
19 nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE COURT: Have a seat, please.

22 THE WITNESS: (Complied.)

23 THE COURT: State your name for the record,
24 please.

25 THE WITNESS: Brian Rigby.

26 BRIAN RIGBY, Called on behalf of the State, having been
27 duly sworn, was examined and testified as follows:

28 DIRECT EXAMINATION BY MR. EVANS:

29 Q. Brian, what connections did you have with the

1 victims in this case?

2 A. My mom was Carmen Rigby. One of -- one of my best
3 friends was Bobo. And Miss Bertha is -- I knew my whole life.
4 I kind of grew up in the store.

5 Q. Can you tell us just a little bit about what type of
6 impact their deaths have had on your family?

7 A. It's really hard to put into words I mean. I was 18
8 years old when it happened, about to go to college and
9 supposed to be an exciting time in your life. And it wasn't
10 that for me.

11 You know, you miss these people every day. And you know,
12 when you pick up the paper every day and you read things like
13 this that happen all across the country, and it's not a
14 tragedy until it's your address. And you know, it's just not
15 a day goes by you don't think about them.

16 For a long time I didn't want to get close to anyone
17 else, because you don't want to go through that pain ever
18 again, and you are hurting for yourself. You are hurting for
19 yourself, but you see your family hurting. It just kills you.

20 And Bobo is -- the reason he was there that day is
21 because of me. I got him the job. And then he was -- he was
22 a good friend - I grew up with him - and a great person. All
23 four people were great people.

24 MR. EVANS: Your Honor, I am going to tender
25 the witness.

26 MRS. STEINER: We have no questions, Your
27 Honor.

28 THE COURT: Mr. Rigby, you may step down.

29 MR. EVANS: Kathy Permenter will be next.

1 Kathy Permenter.

2 (THE WITNESS APPROACHED THE BENCH.)

3 THE COURT: Raise your right hand.

4 Do you solemnly swear or affirm the testimony you
5 give in this case will be the truth, the whole truth and
6 nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 THE COURT: Have a seat, please.

9 THE WITNESS: (Complied.)

10 THE COURT: Please state your name.

11 THE WITNESS: Kathy Permenter.

12 THE COURT: You can proceed.

13 KATHY PERMENTER, Called on behalf of the State, having
14 been duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION BY MR. EVANS:

16 Q. Miss Permenter, what family connections did you have
17 with any of the victims in this case?

18 A. I'm Bobo Stewart's mom. Carmen Rigby was a very
19 close friend of mine. I knew Miss Bertha Tardy just from
20 being -- living in the community of Winona.

21 Q. I am going to ask you -- and I know it's hard to
22 briefly describe. But I want to ask you to briefly describe
23 to the ladies and gentlemen of the jury what impact your son's
24 death has had on your family.

25 A. Well, I think if anyone has children, to lose a
26 child, you could only imagine. The day July 16, 1996, when
27 this happened, it was kind of like a nightmare. After 14
28 years, it still is. You get up every day, just ask God to let
29 me make it through this day the best I can knowing that you

1 have lost a child. Since all this happened, I have lost a
2 sister. I've lost my mom and my dad. And losing a child is
3 one of the worst things.

4 And to tell you a little about Bobo, at the age of 16 his
5 death put a big impact on Winona, Mississippi. He was an all
6 star.

7 MRS. STEINER: Your Honor, may we approach?

8 (MR. EVANS, MR. HILL, MR. WHITFIELD, MRS. STEINER AND MR.
9 CARTER APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE
10 HAD OUTSIDE THE HEARING OF THE JURY.)

11 MRS. STEINER: Your Honor, I realize she is --
12 there is not a question to object to, but I believe that
13 under *Branch* and other -- and under *Payne* the victims
14 under *Payne* are described as the loved ones of the
15 decedent's. The city of Winona and the impact on the
16 city of Winona is not proper victim impact testimony and
17 rather than jumping up and objecting I thought we would
18 come to the bench and ask the State or the Court to
19 direct her to talk specifically about how the loss of, I
20 believe, it is her son and her friend has affected her.
21 I don't believe that it's appropriate for her to go into
22 the effect on the community as a whole.

23 MR. EVANS: I have no problem with doing that,
24 Your Honor. I did not ask the question. I do not have
25 any problem with instructing her specifically to family.
26 (THE BENCH CONFERENCE WAS CONCLUDED.)

27 Q. Miss Permenter, I need you to restrict it to just
28 the impact to your family.

29 A. Oh, okay. Yes, sir.

1 As I was saying, Bobo, he was an all star. He loved
2 baseball. The night before all this happened he had pitched a
3 winning game, no hitter game. He was -- he was a very lovable
4 child all through his years of growing up, very
5 tender-hearted. To have that taken away from you has really
6 been hard, like I say. It's tough on the whole family. We
7 have all stuck together through this. And we talk about him a
8 lot. That's one way to keep him close to us, is just to talk
9 among ourselves.

10 MR. EVANS: Your Honor, I will tender this
11 witness.

12 MRS. STEINER: We have no questions, Your
13 Honor.

14 THE COURT: Miss Permenter, you may step down.

15 THE WITNESS: Yes, sir.

16 MR. EVANS: Mr. Willie Golden would be next.

17 (THE WITNESS APPROACHED THE BENCH.)

18 THE COURT: If you will, raise your right hand.

19 Do you solemnly swear or affirm the testimony you
20 give in this case will be the truth, the whole truth and
21 nothing but the truth, so help you God.

22 THE WITNESS: I do.

23 THE COURT: Have a say seat, please.

24 THE WITNESS: (Complied.)

25 THE COURT: State your name, sir.

26 THE WITNESS: Willie George Golden.

27 THE COURT: You can proceed.

28 MR. EVANS: Thank you.

29 WILLIE GEORGE GOLDEN, Called on behalf of the State,

1 having been duly sworn, was examined and testified as follows:

2 DIRECT EXAMINATION BY MR. EVANS:

3 Q. Mr. Golden, who were you related to in this case?

4 A. Robert Lee Golden.

5 Q. And how were you related to him?

6 A. He was my brother.

7 Q. Can you tell the ladies and gentlemen of the jury a
8 little bit about what impact that had on your family?

9 A. Well, it had a great impact on me, because we got a
10 small family. And he and I was close together. We was always
11 around each other. We grew up together. We was always
12 around. The rest of my sisters and brothers left home, moved
13 to different places. But he and I was always close together.
14 And just sometimes you feel like you see him -- supposed to
15 see him, you just come around. And you just miss that, miss
16 that connection. And it's, it's been a struggle on me for
17 quite a while.

18 Q. Thank you, sir.

19 MR. EVANS: We tender.

20 THE COURT: Any questions.

21 MRS. STEINER: Nothing from this witness.

22 THE COURT: You may step down.

23 MR. EVANS: Your Honor, at this point the State
24 of Mississippi will rest on its case in chief on the
25 second phase.

26 THE COURT: Who would be the first witness for
27 the defense?

28 MRS. STEINER: Your Honor, we would reiterate
29 the motion made prior to the commencement of this with

1 respect to the delay, for the time.

2 THE COURT: It is denied. You may proceed with
3 your next witness or first witness.

4 MR. CARTER: Nelson Forrest.

5 THE COURT: What is the name?

6 MR. CARTER: Nelson Forrest.

7 THE COURT: Nelson Forrest. Is he in the
8 courtroom?

9 (THE WITNESS APPROACHED THE BENCH.)

10 THE COURT: If you will, raise your right hand,
11 take the oath.

12 Do you solemnly swear or affirm the testimony you
13 give in this case will be the truth, the whole truth and
14 nothing but the truth, so help you God.

15 THE WITNESS: I do.

16 THE COURT: Would you state your name for the
17 record, please?

18 THE WITNESS: Nelson Forrest.

19 THE COURT: You can proceed.

20 MR. CARTER: All right. One second.

21 NELSON FORREST, Called on behalf of the Defendant, having
22 been duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION BY MR. CARTER:

24 Q. Mr. Forrest, how long have you lived in Winona,
25 Mississippi?

26 A. All my life.

27 Q. Which is how many years?

28 A. Fifty-four years.

29 Q. Fifty-four years. And do you know -- what is your

1 occupation?

2 A. I'm employed with Mississippi Military Department at
3 Camp McCain. I'm a pastor for the United Methodist Church,
4 Starkville District, Supervisor of Montgomery County District
5 5, retired Mississippi National Guard.

6 Q. Okay. You know Curtis Flowers?

7 A. Yes.

8 Q. How long have you known him?

9 A. All his life.

10 Q. And did y'all have some kind of close relationship
11 where y'all interacted and met a lot, visit each other or he
12 visited you?

13 A. Yes. Call our relationship big brother little
14 brother relationship, Curtis and I. He would visit maybe two
15 or three times a week when he was in high school. He come by,
16 talk with me. Report card time, I checked his grades. I
17 didn't have to didn't ask him for them. He brought them to
18 me. So we had a good relationship.

19 Q. Why, why would he do that? Do you know?

20 A. Well, he just like to, you know, be around me. He
21 was -- he was a fine guy. I guess he sought me for a lot of
22 advice about, about things that he was dealing with, things
23 that in his life.

24 Q. What is your favorite memory of him?

25 A. Well, my favorite memory of Curtis I guess would be
26 through his singing with, with his father. A lot of times he
27 would -- if he had a new song, he wanted to work with me. He
28 would come by and tell me what it was and have me to listen to
29 it, ask me to, you know, help him because he wanted to get it

1 right. He wanted to do a good job with it.

2 Q. Do you sing as well?

3 A. Yes.

4 Q. You and Mr. Flowers ever sung together?

5 A. Well, we sing together around my house when we just
6 practicing on some. I been on program, my group. The group
7 that he was singing with, we sang on a program together.

8 Q. Did he ever sing at your church?

9 A. Yes.

10 Q. Now, what penalty do you think would be -- at this
11 point you know what the circumstances are; is that correct?

12 A. That's right.

13 Q. Two penalties. Do have you a preference to one over
14 the other. If so, why?

15 A. I would prefer, you know, life without parole
16 because I feel that --

17 MR. EVANS: Your Honor, I don't know that that
18 is even appropriate.

19 MR. CARTER: Your Honor, I don't know of any,
20 quite honestly, any law that precludes it. And I do it
21 routinely in other jurisdictions. If there is some law
22 that precludes it, I am not aware of it.

23 THE COURT: I'll over rule the objection.

24 A. Because I, I feel that, you know, Curtis could -- he
25 could be of access to maybe some other person that may be
26 incarcerated. I think Curtis would be a great impact on
27 helping somebody else in life.

28 Q. One moment.

29 Mr. Forrest, what kinship are you to Mr. Curtis Flowers?

1 A. Curtis', Curtis' father and my father are first
2 cousins.

3 Q. Okay. Now, by asking this jury to spare Mr.
4 Flowers' life, are you meaning to be disrespectful or demean
5 the loss of the victims in any way?

6 A. No. No. My heart goes out to, to all these, these
7 families that lost their loved ones in this tragedy. I, I
8 sympathize with them. I understand their pain. But you know,
9 I got -- that's it.

10 Q. But you just simply feel that punishing Mr. Flowers
11 with life without possibility of parole is a significant
12 punishment. Or do you believe life without possibility of
13 parole is a significant punishment?

14 A. Well, I believe it would be significant.

15 MR. CARTER: I tender, Your Honor.

16 MR. EVANS: No questions.

17 THE COURT: Mr. Forrest, you may step down.

18 THE WITNESS: Okay.

19 MR. CARTER: Thank you.

20 Next we call Jimmy Forrest, Reverend Jimmy Forrest.

21 (THE WITNESS APPROACHED THE BENCH.)

22 THE COURT: If you will raise your right hand.

23 Do you solemnly swear or affirm the testimony you
24 give in this case will be the truth, the whole truth and
25 nothing but the truth, so help you God?

26 THE WITNESS: I do.

27 THE COURT: If you will please have a seat.

28 THE WITNESS: (Complied.)

29 THE COURT: If you will state your name for the

1 record.

2 THE WITNESS: My name is Jimmy Lewis Forrest.

3 JIMMY LEWIS FORREST, Called on behalf of the Defendant,
4 having been duly sworn, was examined and testified as follows:

5 DIRECT EXAMINATION BY MR. CARTER:

6 Q. Okay. And how old are you, sir?

7 A. I'm 66.

8 Q. Okay. What is your occupation at this time?

9 A. Pastor.

10 Q. Okay. And where did you work? Are you retired
11 also?

12 A. Yes.

13 Q. What did you do before you retired?

14 A. I work for the M.D.O.T.

15 Q. How long?

16 A. Thirty years.

17 Q. Do you know Curtis Flowers?

18 A. Yes.

19 Q. How -- are you related?

20 A. Yes.

21 Q. How?

22 A. He is my second cousin.

23 Q. Okay. And I take it you know his parents.

24 A. Yeah. Me and his parents sing together.

25 Q. Sing together.

26 A. Used to. Yeah.

27 Q. Okay. And how long have you known Curtis?

28 A. All his life.

29 Q. Tell us about some of your favorite memories of

1 Curtis.

2 A. Like when we go on program he would sing, and I
3 would -- found joy in the song that he sang.

4 Q. Why would you get joy? Can he -- is he a good
5 singer?

6 A. He can sing, yes sir, just like his dad.

7 Q. His dad a good singer?

8 A. Yes.

9 Q. And where did y'all do the singing? Where did it
10 take place?

11 A. Churches. Auditoriums.

12 Q. Do you have an opinion as to what punishment Mr.
13 Flowers should get? If so, why? Or do you know the two
14 options? Well, maybe I need to ask you. Make sure you
15 understand the two options when a person is found guilty of
16 capital murder. Do you know what the two penalties are?

17 A. Yes.

18 Q. Two possible penalties.

19 A. Yes.

20 Q. And if you have a preference for one? Tell us what
21 it is and why.

22 A. Life without parole.

23 Q. Why do you think that would be appropriate for Mr.
24 Flowers?

25 A. I believe he has -- yet have influence over young
26 peoples, younger people, his age. And I believe that he would
27 serve significant means even in prison.

28 Q. Is -- to your understanding, is there a need in
29 prison for role models or people interested in helping?

1 MR. EVANS: I object to that, Your Honor. He
2 can testify about -- I don't object. I don't even
3 object.

4 Q. Is there any -- why do you believe he would be a
5 asset to people in prison? Is there anything in particular
6 you know about the situation?

7 A. His lifestyle. As far as I know, he was a kind
8 person, joyful person. And he had something to say that was
9 positive.

10 Q. You, you finished? I take it you think he can pass
11 that on too.

12 A. Yes.

13 Q. Now, with respect to the victims, do you have any
14 comments you would like to make too about them.

15 A. Great passion. I feel almost empathy rather than
16 sympathy. I feel the hurt. I know they are in pain. I have
17 passion for anyone that lose loved ones, no matter who it is.
18 I have that passion, spirit.

19 Q. Thank you.

20 MR. CARTER: I tender.

21 MR. EVANS: No questions.

22 THE COURT: Mr. Forrest, you may step down.

23 MR. CARTER: Oh, one moment. One moment. One
24 moment.

25 You are finished, sir.

26 THE COURT: Okay. You may step down.

27 MRS. STEINER: Your Honor, Your Honor, Reverend
28 Billy Little.

29 THE COURT: Reverend Little in the courtroom?

1 Okay. If you will come forward, please, sir.

2 (THE WITNESS APPROACHED THE BENCH.)

3 If you will, raise your right hand, take the oath.

4 Do you solemnly swear or affirm the testimony you
5 give in this case will be the truth, the whole truth and
6 nothing but the truth, so help you God?

7 THE WITNESS: Yes, sir, I do.

8 THE COURT: Have a seat, please.

9 THE WITNESS: (Complied.)

10 MRS. STEINER: Yes, Your Honor. Before I
11 begin, I would like the court reporter to mark some
12 exhibits for identification so we can move smoothly.

13 THE COURT: Okay. She can do that.

14 THE WITNESS: Judge, my hearing is not good.
15 So I may have difficulty hearing some times.

16 THE COURT: At any time you don't hear
17 something, you just tell us and we will make sure they
18 speak loud enough for you to hear.

19 (A CERTIFICATE OF RECOGNITION WAS MARKED DEFENDANT'S
20 SENTENCING EXHIBIT A FOR IDENTIFICATION.)

21 (A SELF WORTH CERTIFICATE WAS MARKED DEFENDANT'S
22 SENTENCING EXHIBIT B FOR IDENTIFICATION.)

23 (A SELF WORTH CURRICULUM WAS MARKED DEFENDANT'S
24 SENTENCING EXHIBIT C FOR IDENTIFICATION.)

25 (A CERTIFICATE OF APPRECIATION WAS MARKED DEFENDANT'S
26 SENTENCING EXHIBIT D FOR IDENTIFICATION.)

27 (CMRCF LETTERS WERE MARKED DEFENDANT'S SENTENCING EXHIBIT
28 E FOR IDENTIFICATION.)

29 MR. EVANS: Your Honor, we have seen these

1 exhibits before, and we do not object to them.

2 THE COURT: You agree to go ahead and have them
3 marked into evidence.

4 MR. EVANS: Yes.

5 MRS. STEINER: I'd be happy to have them marked
6 into evidence.

7 THE COURT: Go ahead and do that and save you
8 the trouble having to have them marked each time you show
9 Mr. Little.

10 MRS. STEINER: Thank you.

11 (THE CERTIFICATE OF RECOGNITION PREVIOUSLY MARKED
12 DEFENDANT'S SENTENCING EXHIBIT A FOR IDENTIFICATION WAS
13 ADMITTED INTO EVIDENCE.)

14 (THE SELF-WORTH CERTIFICATE PREVIOUSLY MARKED DEFENDANT'S
15 SENTENCING EXHIBIT B FOR IDENTIFICATION WAS ADMITTED INTO
16 EVIDENCE.)

17 (THE SELF-WORTH CURRICULUM PREVIOUSLY MARKED DEFENDANT'S
18 SENTENCING EXHIBIT C FOR IDENTIFICATION WAS ADMITTED INTO
19 EVIDENCE.)

20 (THE CERTIFICATE OF APPRECIATION PREVIOUSLY MARKED
21 DEFENDANT'S SENTENCING EXHIBIT D FOR IDENTIFICATION WAS
22 ADMITTED INTO EVIDENCE.)

23 (CMRCF LETTERS PREVIOUSLY MARKED DEFENDANT'S SENTENCING
24 EXHIBIT E FOR IDENTIFICATION WERE ADMITTED INTO EVIDENCE.)

25 THE COURT: Would you state your name for the
26 record, please?

27 THE WITNESS: Billy W. Little.

28 REVEREND BILLY W. LITTLE, Called on behalf of the
29 Defendant, having been duly sworn, was examined and testified

1 as follows:

2 DIRECT EXAMINATION BY MRS. STEINER:

3 Q. Reverend Little, would you tell the ladies and
4 gentlemen of the jury -- well, are you employed at the present
5 time?

6 A. I am. I pastor North Mission Baptist Church here.
7 I mean Mission Baptist Church on North Mission Road. And I am
8 part-time chaplain at the Carroll Montgomery Regional
9 Correctional Facility.

10 Q. And as chaplain at the Carroll Montgomery Regional
11 Correctional Facility, do you minister to people who are
12 convicted of crimes as well as people who are awaiting trial
13 on crime?

14 A. I minister to all who will show an interest to be
15 ministered to or will attend the services or attend classes.

16 Q. And the fact that someone is a convicted felon or
17 even a convicted murderer, you minister to them.

18 A. That's right. There is no partiality shown.

19 Q. In the hopes that even a convicted person serving a
20 sentence for murder can find God and you can help him reach
21 that; is that correct?

22 A. That's right. I sow with the seed of the gospel. I
23 teach the word. And it's up to the individual about their
24 response to it.

25 Q. All right. Now, for how long have you been being a
26 part-time chaplain at --

27 A. Ten years. Or maybe just a little over ten.

28 Q. All right. Have you in the course of serving as a
29 chaplain, particularly in the last couple of years, have you

1 had programs in which Mr. Curtis Flowers has participated?

2 A. Yes, ma'am.

3 Q. All right. And for, for inmates who -- and if he
4 were to stay -- I don't know that he will stay in your prison
5 for having been convicted -- in your jail having been
6 convicted, but would you continue to permit him to participate
7 in your programs if he remains in your jail the next time you
8 go and have an event that he wants to participate in?

9 A. Yes, ma'am. All have a privilege to do that if they
10 so desire.

11 Q. All right.

12 A. Unless they are in lock-down. You know, if they are
13 in lock-down they cannot.

14 Q. But he is not. He has been able to participate --

15 A. That's right.

16 Q. -- in your events, if not, so far as you know, been
17 in lock down.

18 A. That's right.

19 Q. I'm going to hand you -- I guess my first question,
20 do you have discipleship course called Experiencing God.

21 A. We do have. Yes, ma'am.

22 Q. And did you do such a study course? And that's from
23 the Mississippi Baptist Convention Board; is that right?

24 A. That's right.

25 Q. Is your church here in town a Baptist convention
26 church?

27 A. Southern Baptist.

28 Q. How long have you pastored to that church?

29 A. This church here two years.

1 Q. All right. And you consider what you do in the
2 church part of your ministry.

3 A. Yes, ma'am. That's correct.

4 Q. Your calling. In the church and also in the jail.
5 Is that correct?

6 A. Yes, ma'am.

7 MRS. STEINER: May I approach, Your Honor?

8 THE COURT: You may.

9 Q. Reverend Little, I'm handing you what the court
10 reporter has marked into evidence as exhibit D-A. And can you
11 explain for the jury what that is?

12 A. I believe you have in your possession all, all the
13 subject matter that is listed in regard to Experiencing God.
14 But it has to do with knowing the will of God, doing the will
15 of God, being involved in the work of God.

16 Q. Yes. I --

17 A. Obeying the Lord.

18 Q. All right. And I believe there is a curriculum that
19 the inmates attend classes; is that right?

20 A. That's correct.

21 Q. And Mr. Curtis attended those classes. Mr. Flowers
22 attended those classes.

23 A. And I made -- I made a note here. I believe this,
24 this is a 12-week course. He attended 10 out of 12 sessions
25 but still qualified for a certificate. Yes, ma'am.

26 Q. All right. And to your satisfaction he appeared to
27 receive the word. What is that certificate called?

28 A. Experiencing God. Certificate of recognition for
29 having completed the course.

1 Q. All right. Thank you.

2 MRS. STEINER: May I approach again, Your
3 Honor?

4 THE COURT: You may.

5 MRS. STEINER: May I just stay next to the
6 witness? It might be a little quicker.

7 THE COURT: That will be fine.

8 Q. All right. And this was awarded to Mr. Flowers and
9 signed by you.

10 A. Yes, ma'am.

11 Q. And he participated and completed that course.

12 A. Completed the course.

13 MRS. STEINER: I'd like to have this passed to
14 the jury.

15 THE COURT: You can hand it to the bailiff.

16 Q. Now, do you also run a class called the Incident of
17 Self -- the Institute of Self Worth at the prison?

18 A. Yes, ma'am.

19 Q. And did Mr. Flowers while he was living at Carroll
20 Montgomery Correctional Facility complete that institute
21 course that you --

22 A. He, he did. And I checked the file. He attended
23 eight of nine sessions of that, and that qualified him for
24 completion of the course.

25 Q. All right. I'm going to hand you what's been marked
26 Exhibit D-C and ask you does that -- is that a summary of what
27 the curriculum is for the Institute of Self-worth?

28 A. It is. Yes, ma'am.

29 Q. And now these people are -- and what, what sorts of

1 things -- is this also part of the ministry connecting them
2 with the love of God and themselves to their self worth?

3 A. Yes, ma'am. Self worth really begins by accepting
4 the Lord as your personal Lord and savior and then growing in
5 his grace and in his knowledge and learning the things of the
6 word and being able to apply them in your heart and in your
7 life.

8 Q. And that is as valid to people who will be living
9 out the rest of their lives inside prison as it is to someone
10 who may walk free again. Is that true?

11 A. That is correct. Yes, ma'am.

12 Q. You recognize the value of those human souls and
13 want to connect them with God, if you can; is that correct?

14 A. Yes, ma'am.

15 Q. And Mr. Flowers, did he complete that course?

16 A. He did complete it.

17 Q. I'm handing you what is marked Exhibit D-B and ask
18 you if you can tell the jury what that is.

19 A. Now, the Institute of Self Worth, that is what we
20 have been talking about.

21 Q. Yes, sir.

22 A. That is the same one.

23 Q. Yes.

24 A. I said it begins with trusting the Lord as your
25 personal Lord and Savior and then learning the things that we
26 should apply in our lives, the values day by day that we might
27 be a better person, a better Christian, a better servant of
28 the Lord.

29 Q. Is that a diploma that shows?

1 A. That, that is a diploma, yes, ma'am.

2 Q. That Mr. Flowers successfully completed that course.

3 A. He completed it. Yes, ma'am.

4 Q. And that was signed by you. It looks like the date
5 is the 31st day of March. Was that this year or this past
6 year, if you recall?

7 A. Okay. I'm sorry. That didn't get the date carried
8 on out it, did it, because it was typed in. 31st day of
9 March. I believe that was this year. And I would have to go
10 back to the records. I think you have a copy of the
11 attendance record. It will verify that.

12 Q. Would you like to look at that? I'd be happy to --

13 A. Please.

14 Q. Thank you. I'm happy to bring it.

15 A. Ma'am, it has the beginning date and the completion
16 date on it up at the top.

17 Q. Thank you. I'll -- let me hand it to you and
18 perhaps.

19 A. Because I teach the classes over and over and over
20 and it is sort of hard for me to remember.

21 Q. I see that, and I'm just trying to --

22 A. He completed it March 31 of this year.

23 Q. All right. Thank you. And he completed it
24 successfully. That is why he got this diploma.

25 A. Yes, ma'am.

26 MRS. STEINER: Your Honor, I would like to have
27 this circulated to the jury.

28 THE COURT: You may.

29 MRS. STEINER: These two exhibits D-B. and D-C.

Reverend Billy Little

1 (THE EXHIBITS WERE PASSED TO THE JURY BY THE BAILIFF.)

2 Q. Reverend Little, in addition to offering courses to
3 keep the inmates, even ones who will never see the light of
4 day outside of prison, connected spiritually to their
5 Christianity and to God's love, do you also supervise any --
6 the choir at the prison?

7 A. Yes, ma'am. I direct all the activities. I am not
8 present when that choir is practicing. They are under the
9 supervision of an officer at that time.

10 Q. All right. But you do direct their activities.

11 A. I do direct that.

12 Q. Do you hear them sing when they do performances for
13 inmates?

14 A. Yes, ma'am.

15 Q. Do they perform at the church services you offer for
16 inmates within the prison?

17 A. Within the prison, yes, ma'am.

18 Q. And do you believe that the music they give brings
19 spiritual comfort and connection to God, to the people singing
20 and the people hearing?

21 A. Would you state that again, please?

22 Q. I'm sorry. And do you believe that there is
23 spiritual value for even inmates to hear --

24 A. Yes, ma'am.

25 Q. -- their brothers sing --

26 A. Yes, ma'am.

27 Q. -- the praises of the Lord; is that correct?

28 A. Yes, ma'am.

29 Q. Now, does -- as Mr. Flowers participates in that

1 choir that sings at the services you, you hold for inmates at
2 Carroll Montgomery when he was living there.

3 A. Yes, ma'am.

4 Q. And is he just a member of the choir? Or does he
5 have a particular role or did he have a particular role?

6 A. He was a member of choir. But he was also a lead
7 singer. You know, you may have base, tenor and other
8 positions. But he was a lead singer in the choir.

9 MRS. STEINER: May I approach again, Your
10 Honor?

11 THE COURT: You may.

12 Q. Reverend Little, I'm handing you Defendant's Exhibit
13 D-D, and I'm going to ask you to tell the ladies and gentlemen
14 of the jury what that represents.

15 A. All right. I reviewed my notes or else I could not
16 remember the exact number. But there were eight people at
17 that time participating in the choir. All eight members of
18 the choir received an appreciation certificate for
19 participating in the choir and for their singing.

20 Q. And this is one for Mr. Flowers --

21 A. Yes. Yes, ma'am.

22 Q. -- who was lead singer.

23 A. Yes, ma'am.

24 Q. Is that correct?

25 A. That's right.

26 Q. And this was in June of 2009. That was a year ago.

27 A. That is correct. Yes, ma'am.

28 Q. Has, has he continued to participate in the choir?

29 A. He, he did continue to participate as long as he was

Reverend Billy Little

1 there. Yes, ma'am.

2 Q. He, he moved, I guess, some time last month or the
3 month before to another facility; is that correct?

4 A. That -- that's correct.

5 Q. And did he -- through the day he left -- was he able
6 to bring the spiritual connection and comfort you talked about
7 through his singing to other inmates for whom he performed?

8 A. Well, I, I feel that all the choir each time they
9 stand and sing, each one knows their own heart and their
10 motives in it. But I feel that they do provide inspiration
11 and spiritual help to those who are in the service. Yes,
12 ma'am.

13 Q. So he supports your ministries to others, as well as
14 connecting to your ministry to him; is that correct, through
15 his singing?

16 A. That's correct.

17 MRS. STEINER: I'd like this passed to the
18 jury.

19 (THE BAILIFF PASSED THE EXHIBIT TO THE JURY.)

20 Q. Reverend Little, I am going to ask you in addition
21 to the choir, is there a special group called the Spiritual
22 Four that you supervise?

23 A. Yes, ma'am.

24 Q. What is the Spiritual Four? And what is it that
25 they do in addition to being in the choir?

26 A. Their name is Spiritual Four. As you mentioned,
27 sometimes there may be five of them. But they -- they are
28 kind of a quartet group or a group singing. That -- that's in
29 addition to the choir that participate in the services. They

1 practice and then participate in the services singing special
2 song.

3 Q. And this is -- spiritually you are talking about
4 access to their own spiritual connection.

5 A. That, that's the name that they chose to apply to
6 their group.

7 Q. I see.

8 A. That's what that means.

9 Q. So you -- that's what they call themselves.

10 A. That's what they call themselves.

11 Q. After -- to, to demonstrate their connection and
12 their desire to sing the praises of the Lord in particular
13 ways, in addition to simply in the choir. Is that -- I'm
14 sorry. I have asked a confusing question.

15 A. All right. They among themselves chose that name to
16 apply to their group.

17 Q. I see.

18 A. As to what all that conveys, I'll leave that part
19 unanswered if I may, ma'am.

20 Q. That's fine. That's fine. You probably don't know.
21 They, they selected it.

22 I am going to hand you what has been marked Exhibit D-E,
23 which is three pages. And it appears to be memorandums from
24 you to Warden Arthur L. Smith concerning Spiritual Four. And
25 could you tell the jury what those pages show?

26 A. These pages are an update of those that participate
27 in the Spiritual Four. All this is Spiritual Four; right?

28 Q. Yes. Yes.

29 A. And periodically I have to update that, any time

1 there is a change of another person participating or someone
2 who has had a move or a change or wishes to be removed from
3 the list.

4 Q. Okay. And they perform also at the services you --

5 A. That's correct. Yes, ma'am.

6 Q. -- give further inmates. So they further enrich the
7 lives of other inmates with their performance; is that safe to
8 say?

9 A. That's, that's true. Yes, ma'am.

10 Q. And they help you in your mission, in your ministry
11 in taking lives of people who have done terrible things and
12 bringing them closer to God. Is that a fair thing to say?

13 A. I think that is fair. I would always think that any
14 of the singing or the teaching or the preaching or the prayers
15 or the testimony of whoever may be in the congregation
16 gathered together of inmates at that time is, is a value to
17 those who are present.

18 Q. And does Curtis have a beautiful voice?

19 A. Curtis has a good singing voice. He does have.

20 Q. Does he move people in the congregation of prisoners
21 to -- when you look at them? Are, are they moved by his
22 singing and the singing of the choir and of the Spiritual Four
23 in which he participates?

24 A. You know, I don't know if I can answer that.

25 Q. That will be fine.

26 A. I don't know if I can answer that. I would hope so.

27 Q. You would hope so. And you believe it assists you
28 in your mission to these other inmates --

29 A. Yes, ma'am.

1 Q. -- to have that sort of voice raised.

2 A. That's right.

3 Q. And he stands here today convicted of four capital
4 murders, the most serious crimes available for -- under
5 Mississippi law. But if he were permitted to stay in your
6 facility, would he be still -- if he were put back in your
7 facility today, even convicted of these four terrible murders,
8 if the prison authorities did not put him on lock down, would
9 he be welcome to rejoin the choir that you direct?

10 A. He, he would, because all inmates have that
11 potential, that possibility, that opportunity regardless of
12 the crime they have committed.

13 Q. And if he also sought to rejoin the Spiritual Four
14 would you welcome him into that brotherhood as well?

15 A. He would also have that privilege. Yes, ma'am.

16 Q. Thank you.

17 I'd like this D-E circulated to the jury.

18 A. And that, ma'am, that is M.D.O.C. policy that all
19 can participate.

20 Q. Right.

21 A. I wish all did participate but all don't.

22 Q. And you certainly welcome any soul, even the most --
23 the souls convicted of the worst crimes imaginable to come
24 participate in your ministries. Is that true?

25 A. That's correct. Yes, ma'am.

26 Q. And if they wish to sing the praises of the Lord in
27 support of your ministry, they are welcome to join you for
28 that as well.

29 A. That's correct.

Bench Conference

1 MRS. STEINER: Your Honor, we have nothing
2 further from Reverend Little.

3 MR. EVANS: I have no questions, Your Honor.

4 THE COURT: Okay. Mr. Little, you may step
5 down.

6 MRS. STEINER: Your Honor, I have -- I need to
7 check on whether one of my witnesses has arrived.

8 Your Honor, may we approach?

9 (MR. EVANS, MR. HILL, MR. WHITFIELD, MRS. STEINER AND MR.
10 CARTER APPROACHED THE BENCH FOR THE FOLLOWING BENCH CONFERENCE
11 HAD OUTSIDE THE HEARING OF THE JURY.)

12 MRS. STEINER: Your Honor, we would have to ask
13 for approximately ten-minute recess to prepare this
14 witness. This is James Aiken. He is an expert in prison
15 classification and future dangerousness and such things.
16 He testified in the last trial in which a verdict was
17 reached. One of the things to which he -- that was in
18 2003.

19 THE COURT: I think the jury is probably ready
20 for a brief recess anyway.

21 MRS. STEINER: He needs to actually make sure
22 that his impressions from a personal interview with the
23 defendant continue as they were several years ago. And I
24 would like him to be admitted during the break to have a
25 brief conversation with the defendant so that he may
26 testify.

27 THE COURT: Well, that is fine.

28 (THE BENCH CONFERENCE WAS CONCLUDED.)

29 THE COURT: Ladies and gentlemen, we will take

Jury Out

1 a ten-minute recess to allow stretching and moving.

2 (A BREAK WAS TAKEN.)

3 (MR. EVANS, MR. HILL, MR. WHITFIELD, MRS. STEINER, MR.

4 CARTER AND THE DEFENDANT WERE PRESENT IN OPEN COURT.

5 PROCEEDINGS WERE AS FOLLOWS:)

6 THE COURT: You can bring the jury in.

7 MR. EVANS: Your Honor, just one minute before
8 we do. I would like to bring up two cases to the Court
9 before we go forward, and they are both *Wilcher versus*
10 *State* and *Ross versus State*, which both specifically say
11 that trial court did not err in excluding testimony from
12 Wilcher's family that they wished for his life to be
13 spared, because such testimony is not relevant to the
14 defendant's character, record or circumstances of the
15 offense.

16 That was what we had objected to earlier, but I
17 couldn't name the cases at that time. And this is both
18 *Wilcher* and the *Ross* case, 954 So.2d 968, 2007.

19 THE COURT: Response.

20 MRS. STEINER: Your Honor, I think it's
21 discretionary with, with the Court, particularly with
22 family members. I mean whatever the Court directs with
23 respect to whether we can make a direct inquiry. I can't
24 say the family members might not simply blurt out
25 something with respect to the penalty. But I think we
26 are entitled to ask it if the Court has permitted it
27 heretofore. If the Court wishes to revisit that decision
28 and direct us with respect to inquiry, I will, of course,
29 be bound by what the Court directs.

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 3298-3447

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

1 MR. EVANS: Your Honor, we have tried not to
2 object to anything in this phase, but I do think that
3 that is objectionable, and I would request that.

4 THE COURT: Well, we have allowed it for some.
5 So I think we have heard that enough. So it would be
6 cumulative anyway. So I will ask that you refrain from
7 questioning any future witnesses as to that issue.

8 You can bring the jury in.

9 (THE JURY RETURNED TO THE COURTROOM.)

10 THE COURT: Who would be the next witness for
11 the defense?

12 MR. CARTER: Crystal Ghoston.

13 THE COURT: If you will come forward, please.

14 (THE WITNESS APPROACHED THE BENCH.)

15 If you will raise your right hand.

16 Do you solemnly swear or affirm the testimony you
17 give in this case will be the truth, the whole truth and
18 nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE COURT: Have a seat, please.

21 THE WITNESS: (Complied.)

22 THE COURT: State your name, please.

23 THE WITNESS: Crystal Ghoston.

24 THE COURT: Would you spell that last name for
25 the court reporter's benefit?

26 THE WITNESS: G-h-o-s-t-o-n.

27 THE COURT: Okay. Thank you. You may proceed.

28 CRYSTAL GHOSTON, Called on behalf of the Defendant,
29 having been duly sworn, was examined and testified as follows:

1 DIRECT EXAMINATION BY MR. CARTER:

2 Q. Okay. How old are you, Crystal?

3 A. Sixteen.

4 Q. What school do you go to?

5 A. J.Z. George High School.

6 Q. Are you in any activities at school?

7 A. In the band.

8 Q. What do you play?

9 A. Clarinet.

10 Q. What chair?

11 MR. EVANS: Your Honor, I -- never mind.

12 A. First.

13 Q. First. Do you know Curtis Flowers?

14 A. Yes.

15 THE COURT: You need to speak up, ma'am.

16 A. Yes.

17 Q. When did you meet him? When did -- how is he
18 related to you?

19 A. He is my father.

20 Q. And at what point did you learn that? How old were
21 you?

22 A. Fourteen, I think.

23 THE COURT: Miss Ghoston, if you can speak up a
24 little louder. I want everybody to hear you. And your
25 voice is kind of soft, and you need to kind of just speak
26 like everybody in here is hard of hearing.

27 A. I said I think I was 14.

28 Q. Okay. And, and where was Mr. Flowers at the time
29 you found out?

1 A. In jail.

2 Q. Okay. Once you found out he was your father, did
3 y'all begin any kind of relationship?

4 A. Yes.

5 Q. And tell us what, what happened. Did you visit him?

6 A. Yes.

7 Q. And did y'all write each other?

8 A. Yes.

9 Q. Do you love your father?

10 A. Yes.

11 Q. How has his being in this situation affected you?

12 MR. EVANS: Your Honor, that is not relevant
13 and Ross specifically says that it is not.

14 THE COURT: Sustained.

15 Q. Anything happen between y'all on a birthday or
16 special occasions or anything like that?

17 A. Yes. He sent me cards and letters.

18 Q. You have any other musical talent other than playing
19 an instrument?

20 A. I can sing a little.

21 Q. Well, you -- Mr. Flowers -- does Mr. Flowers have
22 any other children you know of?

23 A. No.

24 Q. You the only child?

25 A. Yes, sir.

26 MR. CARTER: One moment.

27 Q. Is there anything you want to tell us about your
28 father?

29 A. He is a nice person, fun to be around. He is fun to

1 get a long with. Got a great personality.

2 THE COURT: I didn't hear that, ma'am.

3 THE WITNESS: He got a great personality.

4 THE COURT: Okay.

5 Q. So when y'all see each other, y'all have fun.

6 A. Yes, sir.

7 MR. CARTER: We tender, Your Honor.

8 MR. EVANS: No questions.

9 THE COURT: Miss Ghoston, you may step down.

10 MR. CARTER: Thank you, Crystal.

11 THE COURT: Who would you have next?

12 MR. CARTER: Let me make sure she is here, Your
13 Honor, right quick.

14 She is coming around, Your Honor.

15 Kenya.

16 MRS. STEINER: Kenya Knight.

17 MR. CARTER: Kenya Knight.

18 (THE WITNESS APPROACHED THE BENCH.)

19 THE COURT: If you will raise your right hand,
20 take the oath.

21 Do you solemnly swear or affirm the testimony you
22 give in this case will be the truth, the whole truth and
23 nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE COURT: Have a seat, please.

26 THE WITNESS: (Complied.)

27 THE COURT: For the record, tell us your name
28 please.

29 THE WITNESS: Kenya Knight.

1 THE COURT: You can proceed.

2 KENYATTA KNIGHT, Called on behalf of the Defendant,
3 having been duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION BY MRS. STEINER:

5 Q. Good afternoon, Miss Knight.

6 A. Hi.

7 Q. Can you tell the jury what your relationship is to
8 Crystal Ghoston?

9 A. I'm her mother.

10 Q. Now, she told us that she was 16 years old. Now, 16
11 years ago how did you and Curtis know each other?

12 A. We went to high school together.

13 Q. All right. Now, did you have a intimate
14 relationship with him --

15 A. Yes, ma'am.

16 Q. -- while you were in high school?

17 A. Yes, ma'am.

18 Q. And during that time that you were having a
19 relationship with him, did you become pregnant with Crystal?

20 A. Yes, ma'am.

21 Q. Now, he was arrested approximately 13 years ago for
22 the crimes for which he has been convicted. You know that.

23 A. Yes, ma'am.

24 Q. Did you make a decision because he was in jail at
25 first not to have Crystal not to find out Crystal was his
26 child and subject her to knowing he was his father?

27 MR. EVANS: Your Honor, those questions are not
28 relevant. This has to do with the character of the
29 defendant, not her.

1 THE COURT: I sustain the objection.

2 MRS. STEINER: Strike that.

3 Q. Now, at the point at which you -- was, was Curtis
4 actually incarcerated at the point at which you decided to
5 identify him as Crystal's father? Is that correct?

6 A. Yes, ma'am.

7 Q. All right. And at that time did you introduce your
8 daughter to her father?

9 A. I told her about him.

10 Q. All right.

11 A. And what the situation was.

12 Q. And what --

13 A. And --

14 Q. And did she -- did she decide to start a
15 relationship with him?

16 A. Yes, ma'am.

17 Q. Now, he was in prison at the time that that started;
18 is that correct?

19 A. Yes ma'am.

20 Q. Did that make her ashamed?

21 A. No, ma'am.

22 Q. Once she knew who he was, what did she do about
23 acknowledging him in the greater community?

24 A. She was happy to know he was her father.

25 Q. Did she -- I believe she testified she visited with
26 him.

27 A. Yes, ma'am.

28 Q. Did that -- you are her mom. You can tell -- a mom
29 can tell if a child is nervous, happy, unhappy. What effect

1 does having -- even through prison windows, what effect does
2 that have on your daughter?

3 MR. EVANS: Your Honor, that is not relevant.

4 THE COURT: Sustained.

5 Q. Well, all right. Let me say, does Curtis Flowers,
6 because of who he is as a person, does that bring something
7 into the world for your daughter?

8 A. Yes, ma'am.

9 Q. Is it a good thing, even though he now stands --
10 again stands convicted of four murders? As a mother, are you
11 ashamed to have her be his daughter?

12 MR. EVANS: Objection, Your Honor.

13 A. No, ma'am.

14 THE COURT: Sustained.

15 Q. Does -- do you intend if he -- you understand he
16 will never walk out of prison walls again.

17 A. Yes, ma'am.

18 Q. And does he bring, even behind prison walls,
19 something to your daughter that you want her to have?

20 A. Yes, ma'am.

21 Q. She said she loved him. Do you agree --

22 A. Yes ma'am. She do. She do.

23 Q. -- with her?

24 A. Yes ma'am.

25 MRS. STEINER: One moment, Your Honor.

26 I have nothing further of this witness, Your Honor.

27 MR. EVANS: No questions.

28 THE COURT: Miss Knight, you may step down now.

29 And who would you have next?

1 MRS. STEINER: Your Honor, I am just
2 ascertaining that.

3 MR. CARTER: One moment.

4 MRS. STEINER: We would have Mr. James Akin.
5 Mr. Akin, if you will, please come forward, raise
6 your right hand.

7 (THE WITNESS APPROACHED THE BENCH.)

8 Do you solemnly swear or affirm that the testimony
9 you give in this case will be the truth, the whole truth
10 and nothing but the truth, so help you God?

11 THE WITNESS: So help me God.

12 THE COURT: If you will have a seat, please.

13 THE WITNESS: Thank you, sir.

14 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

15 THE COURT: Would you tell us your name for the
16 record?

17 THE WITNESS: My name is James Evans Aiken.
18 A-i-k-e-n.

19 THE COURT: You may proceed.

20 MRS. STEINER: Thank you.

21 JAMES EVANS AIKEN, Called on behalf of the Defendant,
22 having been duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION BY MRS. STEINER:

24 Q. Mr. Aiken, would you tell the ladies and gentlemen
25 of the jury your current employment?

26 A. I'm president of James E. Aiken and Associates, Inc.

27 Q. And what does James E. Aiken and Associates do?

28 A. It is a correctional, prison-related consulting
29 concern, as well as to provide expert testimony in cases such

1 as this.

2 Q. Now, could you share with us your educational and
3 employment background relating to corrections? Let's start
4 with your educational background.

5 A. Yes. I have a undergraduate degree from Benedict
6 College, Columbia, South Carolina. And I hold a master's
7 degree in criminal justice from the University of South
8 Carolina. And that is also in Columbia.

9 Q. And what is your background? You do corrections
10 consulting. Now, how long have you been working in
11 corrections? And possibly start with where you started and
12 how you started.

13 A. And I'll be as brief as possible, ma'am. I started
14 working in prisons in 1971. I started off in the capacity of
15 a substance abuse counselor in social environment in a medium
16 security prison in South Carolina.

17 Q. What does medium security mean?

18 A. Medium security means that a inmate can move from
19 Point A to Point B within a prison with -- without restraints
20 and things of that nature. But the perimeter, the fence, has
21 gun towers, has razor risen, has security devices that I don't
22 want to get too much in details about to detect, respond and
23 contain inmate population.

24 Q. Okay.

25 A. And these gun towers are armed.

26 Q. All right. Now, you began in that prison. Where
27 did you go from being a social worker at that prison?

28 A. Well, a social worker, a counselor was about the
29 same back in those days. From there I was promoted to the

1 rank of administrative assistant to the warden. In that
2 position -- and I think if my memory serves me correct, I was
3 the first one. So nobody really knew what a administrative
4 assistant does to the warden.

5 So I was just a extra correctional officer, basically. I
6 helped with the keys. I helped fight contraband control,
7 disciplining of inmates, classification of inmates, as well as
8 other security functions with -- within the facility. And
9 after all of that was done, I got to write letters for the
10 warden.

11 From there I was promoted to the rank of deputy warden of
12 that same facility. I was number two in charge of that
13 prison. I was in charge of classification. I was in charge
14 of security force. I was in charge of inmate management, as
15 well as administrative matters, to include support matters,
16 such as medical care, food service, etc. I was a policy
17 interpreter, as well as keeping the number one focus for
18 prisons is protection of the public. And so you had to make
19 sure that every aspect of the security delivery system was
20 focused towards protection of the public.

21 Q. So you were at this point -- had become an
22 administrator of a prison whose job it was to keep inmates in
23 and protect the public to make sure that the public is
24 protected and the inmates are secured; is that correct?

25 A. That's correct, ma'am. But only back -- as well as,
26 I've only held one position that was in the treatment area.

27 Q. Um-hum.

28 A. The other areas that I was involved in was totally
29 security.

1 Q. All right. Now, did you move from the medium
2 security prison to another prison at any point?

3 A. Yes. I was promoted to deputy warden of the state
4 penitentiary in Columbia, South Carolina. This was a prison
5 that housed 2,000 of the most dangerous predator, disruptive
6 inmate population within the South Carolina penal system, as
7 well as the criminal justice system. Because we took inmates
8 that were so disruptive and so dangerous that county jails
9 couldn't manage them. They ended up at that particular
10 prison.

11 We had inmates that committed some of the worst crimes
12 that any human being can imagine, as well as those inmates
13 that have gone into a prison system and continued to be so
14 disruptive, involved with -- I'm not talking about disrespect.
15 But I'm talking about stabbing and killing other inmates,
16 forming and -- what we call S.T.G., security threat groups,
17 and things of that nature. The most dangerous predator inmate
18 population within not only the correctional system, but within
19 the criminal justice system in South Carolina.

20 Q. Thank you. And you supervised that facility. Did
21 you become familiar there with dealing with such prisoners --

22 A. Yes, ma'am.

23 Q. -- as well?

24 A. Day-to-day activities of the use of force on
25 inmates, disciplining of inmates, classification of inmate
26 population, investigations, riot control, hostage situation
27 control, preparing staff how to deal with these. This type of
28 very dangerous inmate population.

29 Q. All right. So you've been exposed -- now, do you

1 have any particular -- in addition to your education in
2 criminal justice and your -- oh, I believe you became the
3 warden of a prison subsequently; is that correct?

4 A. Yes. And I will go through them very quickly.

5 Q. Yes.

6 A. I was then appointed warden of the women's prison in
7 South Carolina. This is all within the South Carolina
8 correctional system. I was the chief policy maker. I was in
9 charge of all security activities within that prison, to
10 include classification of inmate population, control of the
11 inmates, managing difficult inmates, etc.

12 From there I was promoted back to the state penitentiary
13 as the warden. I was chief executive officer of that
14 particular prison that I just explained to you a few moments
15 ago. Also, this prison held death row population. And under
16 the statutes of South Carolina, it was my responsibility to
17 carry out executions. I put two inmates to death personally
18 in that capacity.

19 And from there I was promoted to the rank of deputy
20 regional administrator where I managed 16 prisons ranging from
21 minimum security, that is inmates that are the least harm to
22 the public, to maximum, super maximum security inmate
23 population, which I described to you.

24 From there I was appointed commissioner of corrections
25 for the Indiana Department of Corrections. It housed inmate
26 population of adult, male, juvenile, female, as well as male
27 inmates, ranging from minimum security to maximum, super
28 maximum security population. I was involved, of course, with
29 classification. I was the chief policy maker in the

1 management of the prisons, as well as the management of
2 dangerous population all the way down to the least dangerous
3 population that was incarcerated.

4 Q. All right. Now, you clearly in all these prisons
5 where you were director, you learned and had experience in all
6 of these things. Have you been invited because of your
7 abilities and experience to serve on any national boards or
8 investigative groups for the United States government?

9 A. Yes, ma'am. I also -- when I was commissioner of
10 corrections, the warden of corrections, I was approached by
11 the U.S. Justice Department and bureau -- not bureau but
12 National Academy of Correction, where I was given a
13 opportunity to teach wardens how to be wardens, teach existing
14 wardens how to be better wardens, to teach wardens of super
15 maximum security prisons. And that was held at a place called
16 ADX.

17 ADX is the most secure prison in the United States, as
18 well as the world. We house international terrorists, those
19 individuals that a lot of people read about in the newspaper
20 today are housed at this particular prison. And that was our
21 classroom, or part of our classroom in teaching wardens how to
22 manage this type of population.

23 I forgot to mention to you that when I left the Indiana
24 system, I was asked to go and take over the Virgin Islands
25 system. My interest at that particular time is because I saw
26 terrorism coming in the United States, and I knew the prison
27 systems had to get ready to deal with international
28 terrorists, as well as international drug cartels. And that
29 was the open door through the Virgin Islands to get my hand

1 other places. So I got firsthand knowledge of taking over a
2 system that was corrupt and not managed well and turning
3 systems around.

4 Q. All right.

5 A. While I was also working with the Justice Department
6 as a consultant, I also taught people about classification,
7 riot control, hostage situation control, gang management,
8 managing the hard to manage violent inmate, as well as to look
9 at teaching people new ways of managing this population that
10 would save money also.

11 And I've also, not in the classroom, but I've actually
12 been to the Mississippi Department of Corrections and actually
13 delivered firsthand knowledge, as well as instruction on
14 managing high security prisons, as blends classification in
15 your work force and how to use weapons in every aspect of a
16 security delivery system.

17 I was also appointed by congress in 2004 to the prison
18 rape elimination commission. Thus is a statute, believe it or
19 not, as I understand it, that was passed almost unanimously by
20 the house and senate in congress and signed by President
21 George Bush to eliminate prison rape in prisons, jails,
22 correctional facilities throughout the United States in
23 federal, state, local levels, as well as county levels and to
24 come up with a set of standards that all of these facilities
25 throughout the United States must adhere to.

26 So I got to look at Mississippi. In all other
27 jurisdictions we had subpoena power. And these standards have
28 been completed, and they are on the attorney general's desk.
29 We have had several meetings with the attorney general

1 personally, as well as his staff to, to, to explain what we
2 were doing. It is headed up by a federal district judge. And
3 hopefully, we'll be able to see these standards in the near
4 future.

5 Q. And have you also --

6 MR. EVANS: Your Honor, I, I hate to object but
7 at this point I haven't heard anything that relates to
8 why we are here.

9 MRS. STEINER: If the Court please, the
10 classification is why we are here. I was just qualifying
11 him as an expert. I haven't tendered him yet.

12 Q. Can you briefly state for His Honor and the jury
13 what inmate classification is and -- well, does classification
14 have to do with whether or not inmate if consigned to a prison
15 would be dangerous either to inmates or the public, other
16 inmates, the guards or the public in general?

17 A. Well, in laymen's terms, and I'll speak in laymen's
18 terms, classification is putting the right inmate in the
19 proper level of security and the proper structure in
20 supervision to protect the public. It looks at a person's
21 ability to adjust to a prison environment, as well as
22 assessing future dangerousness, not only within a prison
23 setting but also in the community.

24 And these transactions take place on a continual basis
25 and are continuously updated. I've classified thousands and
26 thousands of inmates, as well as to develop, implement, assess
27 and monitor classification systems throughout the systems that
28 I've worked in, as well as other systems that I have provided
29 expert assistance to.

1 Q. Does that include the Mississippi corrections system
2 into which Mr. Flowers will, by virtue of this verdict, be
3 confined at least for the rest -- well, will be confined for
4 the rest of his life?

5 A. Yes. On two points. Not only does the
6 classification system in Mississippi is much like
7 classification systems throughout the United States. Their
8 consultant, one of their consultants that they use on
9 classifications is Dr. James Austin. And Dr. Austin also
10 worked with my classification systems in Indiana, as well as
11 the Virgin Islands. So we are well aware of him. And he has
12 also helped us with the Prison Rape Elimination Commission.

13 On the other hand, actually being here in Mississippi and
14 talking about managing prison security systems classification
15 was a integral part of that. You know, we don't have crystal
16 balls, but what we are saying is that we look at certain
17 information. And we can better predict future behavior, as
18 well as prepare for managing that behavior over an extreme
19 long period of time.

20 Q. And in your 30-plus years of doing what you've
21 described to the jury, have you ever been qualified as an
22 expert in a court of law in corrections classification and
23 security and management of inmates and prisons?

24 A. Yes, ma'am. Not only on the state level, but also
25 on a federal level.

26 Q. And can you tell us at this point approximately how
27 many times?

28 A. Well over 100 times, I would guess.

29 Q. All right. And you have said both in the states and

1 the federal courts.

2 A. Yes, ma'am.

3 MRS. STEINER: Your Honor, we would tender Mr.
4 Aiken as an expert in corrections security and
5 corrections and inmate classification with respect to
6 future dangerousness assessment of inmate behavior and
7 tender him as an expert relevant under *Skipper* versus -
8 excuse me, Your Honor. I am having a senior moment
9 here - *skipper versus North Carolina*, I believe. We have
10 cited it in our -- in our brief. I can turn back and
11 find the exact -- *Skipper versus South Carolina*, Your
12 Honor, and also the Mississippi courts have been
13 recognized and, I believe, in the law of the case in this
14 case he has been previously recognized in prior
15 proceeding.

16 And we tender him as that expert with respect to the
17 matters concerning Mr. Flowers' behavior in prison and,
18 and predictive ability and his future dangerousness, even
19 if he were confined to prison on -- for the rest of his
20 life at a location other than on death row.

21 THE COURT: State wish to voir dire him on his
22 qualifications?

23 MR. EVANS: No, sir.

24 THE COURT: I'll allow him to testify as an
25 expert in the areas you've requested.

26 MRS. STEINER: Thank you.

27 THE WITNESS: Thank you, Your Honor.

28 MRS. STEINER: Your Honor, I --

29 Q. Mr. Aiken, you have talked about classification a

1 little abstractly when were establishing that you knew your
2 business. If now you would share with this jury, first of
3 all, you said making classification decision involves making
4 decisions on how dangerous that inmate could be within the
5 walls of the prison and, and his likelihood of being a danger
6 in the community as a whole; is that correct?

7 A. That's correct, ma'am.

8 Q. And in determining classifications, what do you
9 assess to determine and why do you do that assessment? If you
10 could, explain that for the jury.

11 A. And I'll give you examples. Number one thing is his
12 conviction and what he was convicted of and sentence, of
13 course. That is a driving force. And what we mean by driving
14 force is I don't care how good he is or how bad he is, the
15 purpose is protection of the public and that is the driver.
16 That sentence and that conviction will be number one in making
17 every classification system about his security and custody as
18 long as he is breathing.

19 Q. And in custody on four counts of capital murder is
20 there also a punitive aspect, a restriction of the inmate that
21 is imposed on him in addition to never leaving the prison so
22 long as he lives?

23 A. Yes, ma'am. And in very simple terms, we are not
24 talking about rehabilitation here. Yes, a inmate can receive
25 things to better stabilize him during his incarceration. But
26 that's no longer the priority. The priority is
27 incapacitation.

28 As long as you live, you are going to be here. Now, you
29 can be good or you can be bad. Because either way, we can

1 manage it. Because we have the training, the staff, the
2 policies, the procedures, the physical structures, the
3 statutes, the guns, the ammunition, everything that we need to
4 manage your behavior.

5 Q. All right. Now, let's talk about what you look at
6 specifically with respect to classification. So with respect
7 to a particular inmate, you know where he or she, in this case
8 it's he, fits in the correctional system.

9 A. Yeah. That being said about the crime and
10 conviction, we also look at previous criminal history. We
11 also look at institutional adjustment, whether it's in a jail
12 or whether it's in a prison environment. How well did that
13 person adjust in those environments? And what I mean are
14 adapt and adjust and obeying the rules and regulations as set
15 forth by staff. And you have to understand that in a prison
16 setting, you are in confinement status 24 hours a day, seven
17 days a week, whether it is Christmas or the 31 of July. You
18 are being assessed continuously.

19 And everything that you do, wrong especially, is
20 well-documented. And that we have a disciplining process. We
21 have a process to control your movements. If we need to gas
22 you to control your behavior, we will. If we have to tie you
23 to a bed to control your behavior, we will. If we have to
24 send you up to the feds to their supermax to control your
25 behavior, we will. If we have to kill you to control your
26 behavior, we will.

27 Q. Now, in making the classification, are you trying to
28 predict how the inmate is likely to adjust and conform within
29 the prison system?

1 A. Yes, ma'am. And that's being said, no, we don't
2 have crystal balls. But what we have been able to do,
3 especially within the last 20 to 30 years, is to compile a lot
4 of information, such as age is a major factor. Medical
5 condition is another factor. Mental health status is another
6 factor. Gang involvement is another factor. All of those
7 things are put into a pot, so to speak, and it ends up in a
8 classification document.

9 And the warden is the signal. He or she is that
10 individual that signs off on it and makes the decision as to
11 the proper level. Now, that being said, there is certain
12 things wardens can't change, such as the conviction and the
13 sentence. That will remain constant. Wardens cannot overrule
14 that.

15 Q. And a warden, if he is told by a jury to lock
16 someone up for the rest of their life and never admit them to
17 parole or probation, that warden, he or she, has no discretion
18 to let them go; is that correct?

19 MR. EVANS: That not relevant.

20 THE COURT: At this point I don't see any
21 relevance.

22 MRS. STEINER: Thank you.

23 Q. Now, Mr. Aiken, have you had the opportunity to
24 review the actual prison and jail records of Curtis Flowers in
25 the last 13 years during which he has been residing in various
26 correctional facilities?

27 A. Yes, ma'am. I've had a opportunity to review
28 records as provided by you, prison and jail records pertaining
29 to his adjustment to prison and the regiment that he has been

1 under.

2 Q. Okay. And have you reviewed his records from the
3 Mississippi state penitentiary during the years he was
4 incarcerated there?

5 A. Yes, sir. Yes, ma'am. I think it was about 10
6 years.

7 Q. Yeah. And have you reviewed the records from the
8 Carroll Montgomery County jail where he has resided for
9 several years of the last 13 while waiting to come to court
10 for this particular trial?

11 A. Yes, ma'am. I think you forwarded all those records
12 to me.

13 Q. And did we also provide you some records when he has
14 been incarcerated in the Leflore County Correctional Facility
15 located in Greenwood, Mississippi?

16 A. If I remember, correctly, yes, ma'am.

17 Q. All right. And have you made any actual visits to
18 either of -- any of these facilities? I believe you stated
19 you are familiar with the Mississippi state penitentiary.
20 Have you made actual visits to both the Greenwood and
21 Montgomery Carroll facilities?

22 A. If my memory serves me correct, yes, I have been to
23 two jails in this vicinity.

24 Q. All right.

25 A. Both of them housing him prior to my testimony.
26 Yes, ma'am.

27 Q. And you have reviewed those records. What, if
28 anything -- have you also conducted face-to-face interviews
29 with Mr. Flowers?

1 A. Yes, ma'am. I have conducted at least two
2 face-to-face interviews with him.

3 Q. All right. Now, are these things you normally do if
4 you were -- if he is being classified, is getting this kind of
5 record and having some sort of interview part of the normal
6 classification process?

7 A. No, ma'am. I have classified thousands and
8 thousands of inmates. And many of them I did not have a
9 face-to-face interview, unless there was something that
10 triggered me to have that interview with the individual. For
11 example, in this particular case, I thought it was appropriate
12 to have a sit down face-to-face with him.

13 Q. All right. And why is that? Because you would have
14 to testify to these ladies and gentlemen?

15 A. No, ma'am. The purpose of a face-to-face interview
16 with a person like him is, because I need to further validate
17 what I see in the record.

18 Q. All, right.

19 A. You have a individual who has been here 13 years
20 incarcerated and no violations. You don't see that as a
21 warden. You don't see that in a prison that's high security
22 or even low security for that matter. You can get written up
23 for not making up your bed. But this person has been
24 incarcerated for 13 years, and I needed to have a discussion
25 with him in order to further validate what was in the record.

26 Q. All right. And if you would, and, and I believe he
27 has actually been classified at each time he enters a new
28 facility. Are there not records where they have undergone
29 this classification process?

1 A. Yes. In jail you have a intake, booking, where they
2 know what his charges are and things of that nature. Yes,
3 ma'am.

4 Q. And looking at the data collected by these various
5 institutions -- let's set aside for now what you consider his
6 remarkable -- remarkably clean prison record. And does that
7 -- what does -- what does a clean record with respect to
8 discipline mean about the inmate? Let's start with that.

9 A. Like I said, I mean I've classified thousands of
10 inmates, plus there is empirical data to prove this, that a
11 inmate when he comes in, like, 20 years old or whatever, they
12 tend to be disruptive, disrespectful, getting in fights,
13 contraband, contraband weapons, gang involvement, being
14 involved in disturbances, some even try take hostages and
15 things of this nature, and they have had to have use of force
16 against them of gas, pinning them against the wall, a number
17 of other things that we use to control behavior.

18 Q. Has --

19 A. And then -- I'm sorry.

20 Q. I was going to say, you reviewed carefully when Mr.
21 Flowers first went to the penitentiary at age 27, 13 years
22 ago.

23 A. That's correct, ma'am.

24 Q. Have you reviewed the penitentiary records even as a
25 relatively youthful 27? Did you find any of these kinds of
26 disruptive or dangerous behavior within the environment?

27 A. No, ma'am. And I might add, you can't fake it. You
28 know, you may try to fake it, but you are around very
29 dangerous, disruptive people. You are being watched 24 hours

1 a day. And we have a adage in the prison. If you can't write
2 anything bad about somebody, you don't write nothing at all.
3 And to have 13 years of that, I find to be very remarkable.

4 Q. Now, he is convicted -- this jury has found him
5 guilty beyond a reasonable doubt of having murdered, killed
6 four people out here in the community. He has been found
7 guilty by these ladies and gentlemen of having killed, used
8 violence against four people, capitally murdered them in the
9 course of an armed robbery of those people. That's a serious
10 crime.

11 Can you enlighten them on why, on how that relates -- you
12 know, how his behavior in the community and his adjustment in
13 prison relate to each other and how you can tell them you
14 don't think he is dangerous in prison when he has done this
15 horrible thing here in the community?

16 A. Yes, ma'am. And it's more like Alice in Wonderland.
17 Prisons are abnormal environments. I have seen inmates. I
18 have seen people maladjusted in the community who commit some
19 of the most heinous crimes that you couldn't even imagine.
20 And then they come to prison, you don't hear a peep out of
21 them. Or most of them -- some of them are so scared they --
22 you have to drag them out of a cell to take a shower, because
23 they are scared of other inmates. I have had inmates steal
24 cars and come to the prison to just about try to burn it down.

25 So what am I saying? The crime in the community is that
26 driving force. But it's not the very best predictor of how a
27 person will adjust to prison.

28 Q. And how has, in your opinion, on the basis of the 13
29 years of records you have reviewed in Mr. Flowers' case, how

1 has he adjusted in the prison environment with respect to
2 posing a danger to either other people in the environment or
3 to somehow getting to where he could get back into the
4 community and behave the way he did on the morning of July 16,
5 1996?

6 A. With that particular sentence -- not sentence but
7 conviction, that would preclude him from community
8 integration. And anyone that, that tried to reintegrate him
9 through the community, you know, is just -- uncalled for and
10 it wouldn't happen. Period. That door is closed, slammed
11 shut. But you have to understand his adjustment to prison has
12 been remarkable and exceptional. And I don't say that very
13 often.

14 Q. Okay. So for what -- can you tell these ladies and
15 gentlemen without a crystal ball, on the basis of the criteria
16 for classification, if he, with these four convictions, were
17 to go in -- first of all, would he be put in some sort of low
18 security country club camp?

19 A. No, ma'am. There will always be a gun between him
20 and the public, as far as I'm concerned.

21 Q. And when he initially goes there, am I correct, he
22 will have to be classified in a maximum security --

23 A. Without --

24 Q. -- classification?

25 A. Without a doubt, ma'am.

26 Q. And if that -- if the warden felt that was
27 warranted, he could spend the rest of his natural life on
28 maximum security with not only a gun between him and the
29 public but some substantial restrictions on his movements

1 within the prison; is that correct?

2 A. Yes, ma'am. We have the authority and the
3 flexibility to control him in any way that we deem
4 appropriate, other than violation of his constitutional
5 rights.

6 Q. Is there any way, given the crimes of conviction, no
7 matter how good of an inmate he is, no matter how many
8 programs or choirs or anything he sings in, that he will ever
9 be eligible to a minimum security classification given your
10 knowledge of the Mississippi state penitentiary's practices
11 with respect to inmates whose crimes of conviction is capital
12 murder and sentences of life in prison without parole?

13 A. That's correct, ma'am. He will always be in a
14 higher security environment for the protection of the public.

15 Q. Thank you. Thank you. If you would, like, could
16 you describe what the inmate's life on maximum security is
17 like?

18 A. Well, you know, we -- it's very difficult in a way
19 to explain it to lay people, because they look at prison with
20 community eyes. Can you look at a television, or can you go
21 to recreation? Well, you know, you think that those things
22 are in the same context as community, and that's not the case.
23 You are around the most dangerous, predator people that God
24 has ever allowed to live. You are constantly involved with
25 looking at people that are disruptive and constantly trying to
26 be extremely manipulative. Contraband, weapons, everything of
27 that nature. Then on top of that, we don't realize that this
28 does not end tomorrow. This goes day after day, week after
29 week, year after year, decade after decade.

1 And a lot of old convicts call it being on the shelf.
2 What do you mean by being on the shelf? It's like when I was
3 growing up in South Carolina and going to my grand momma's
4 house and looking up on, on the shelf on the mantel piece and
5 there was little figurine there.

6 Q. All right.

7 A. Then you come back many years later and that
8 figurine is sitting right there. Everything that you done in
9 life, but that figurine has been on the shelf. That's why old
10 convicts call it being on the shelf.

11 Q. And --

12 A. Every day. Whether it's Christmas or whether it is
13 Tuesday, January 14. Same thing.

14 Q. And while they are sitting on that shelf, do they
15 get to pick when they eat or what they eat?

16 A. Well, that's the next thing about it.

17 MR. EVANS: Your Honor, none of that is
18 relevant.

19 THE COURT: I, I sustain about what the food is
20 in prison.

21 Q. Is -- in order to maintain security at the prison,
22 are the prison -- do the prison authorities have to regulate
23 how the inmate conducts himself 24 hours a day, seven days a
24 week?

25 A. Yes, ma'am. We have control and authority and
26 flexibility to insure a safe and secure environment. We can
27 tell people what to wear, what not to wear, where they can go,
28 where they can't go. If I tell you to strip naked so I can
29 search you, you are going to have to strip naked.

1 MR. EVANS: And none of that is relevant, Your
2 Honor. Wilcher specifically says that the harshness or
3 whatever of Parchman or things like that has nothing to
4 do with any testimony in this phase.

5 THE COURT: I sustain the objection.

6 THE WITNESS: Excuse me, Your Honor. I'm
7 sorry.

8 THE COURT: You owe me no apology, because you
9 are answering questions until they are objected to.

10 THE WITNESS: Yes, sir.

11 Q. Well, let me put it this way. If you were the
12 warden or the commissioner of corrections or whoever is in
13 control of the Mississippi state correctional system, would
14 you have discretion to put him at any facility that you wish
15 to put him at?

16 MR. EVANS: I object to that, Your Honor.

17 MRS. STEINER: I'm sorry. That's right. Let
18 me withdraw that.

19 MR. EVANS: In fact, Your Honor, he does not
20 work in Mississippi.

21 Q. If Mr. Flowers, knowing what you know about his age,
22 his history in incarceration to date, the 13 years, if you
23 were the warden supervising Curtis Flowers in prison under a
24 sentence of life without parole, would Curtis be a person that
25 you would have concerns for your staff, for the -- for the
26 safety of your staff?

27 A. Well, ma'am, he is at the lowest level probability
28 to cause any dangerment to staff, other inmates, as well as
29 the public, as long as he is in a high security environment.

1 That being said is that he is at the lowest that you can
2 possibly go. And what I mean by that is that crimes -- the
3 crimes that he has committed is the driving force, and it
4 doesn't change. He will always be in high security to protect
5 the public.

6 Q. Now, I believe that -- have you found in your review
7 of his records, and I believe you were present in the
8 courtroom when you heard the testimony of the chaplain at one
9 of his local prisons. Have you found anything in his records
10 to indicate whether or not his -- the behaviors that he is
11 engaging in are informed in any way by any kind of religious
12 faith?

13 A. Yes. His faith is a driving force. And I know. I
14 have heard so many inmates when they go to jail, they found
15 religion. But usually they find that religion for about two
16 weeks or until somebody says something to them and they go off
17 on them, usually it's a officer. But for a person to take the
18 religious faith and the dictates of that and demonstrate it in
19 behavior such as the records that I have had on opportunity to
20 review is very remarkable.

21 Number two is that we, looking at the history of prisons,
22 religion has been that driving force that has remained
23 constant throughout the ages, not psychotherapy, not chemical
24 therapy, not group therapy, not all of these other things.
25 Religion has been the oldest and the most important tool for
26 management of inmate population. And we have other tools now.
27 Don't get me wrong. But it's the oldest and tried and true.

28 Q. And you said earlier, you know, inmates try and fake
29 it all the time. As part of the classification process that

1 you would -- that will be gone through. If this -- if you had
2 this record in front of you classifying this inmate, would you
3 have doubts? Would you say this inmate is just shamming this
4 at this point?

5 A. There, there is no way you can fake it for 13 years.
6 And that's based on thousands and thousands of inmates that
7 are very manipulative and very sharp, so to speak, that I've
8 had to deal with in my 38, 39 years in this business. But you
9 can't fake it for that long.

10 Q. And is there anything in his prison record that
11 indicates he has these characteristics of manipulativenness,
12 violence, faking it, anything like that?

13 A. No, sir. No, ma'am. He is not in gangs. He is not
14 causing disruption within the prisons. And he has had all the
15 opportunities to demonstrate that behavior.

16 Q. Thank you.

17 A. Thank you, ma'am.

18 MRS. STEINER: One moment.

19 I have nothing further.

20 THE COURT: Mr. Evans.

21 MR. EVANS: Thank you, Your Honor.

22 CROSS-EXAMINATION BY MR. EVANS:

23 Q. Mr. Aiken, you don't work in Mississippi, do you?

24 A. No, sir, I don't.

25 Q. I may have misunderstood you. I thought you kept
26 saying awhile ago we don't do this and we don't do that and we
27 have guns and we have guards at the penitentiary over there.
28 But you don't work over there.

29 A. No, sir. I don't draw a paycheck. That's correct.

1 Q. Now, you've talked about how violent the
2 penitentiaries are - the gangs, the rapes, the stabbings, the
3 things like that. But in your opinion this defendant's not a
4 violent person.

5 A. In my opinion, he's not demonstrated violent
6 behavior while incarcerated.

7 Q. Are you aware of the violent nature of the murders
8 he committed?

9 A. Yes, sir.

10 Q. Wouldn't you consider that pretty violent?

11 A. Yes, sir.

12 Q. Now, it's also possible for inmates to try to do
13 things, because they enjoy being able to do things in prison,
14 isn't it? Isn't that also an incentive?

15 A. Enjoy? I'm lost.

16 Q. Well, you heard the testimony about him getting to
17 sing in the choir --

18 A. Oh.

19 Q. -- and doing things like that. He may actually be
20 enjoying that part, couldn't he?

21 A. Yes, sir. I was on a different wavelength. I guess
22 I have been in prison too long. I know inmates that enjoy
23 killing other inmates.

24 Q. Yes, sir.

25 A. That is where my, my mind frame was. I'm sorry.

26 Q. A lot of inmates are violent, aren't they?

27 A. Yes, sir.

28 Q. Now, back to my question, if you don't mind.

29 A. Yes, sir.

1 Q. A lot of inmates enjoy doing different things in
2 jail, don't they?

3 A. Yes, sir. And we use that as a security tool just
4 like a fence.

5 Q. And you are here on the sentencing part of what
6 sentence would be appropriate. If he were in prison and
7 enjoyed it, he would be able to serve out his life enjoying
8 singing, wouldn't he?

9 A. He would get gratification out of singing, yes, sir.

10 Q. Now, where are inmates housed in the state
11 penitentiary that have life sentences?

12 A. They are -- I don't know the exact institution, such
13 as Parchman, where he would be assigned. But I do know it
14 will be a security fence in a secured perimeter within the
15 classification system, sir.

16 Q. So you don't even know where he would be housed.

17 A. I don't have his institutional assignment, nor his
18 bed assignment. I just know the classification.

19 Q. Where would he be housed on a death penalty?

20 A. He would be housed at Parchman, even though they are
21 moving some population possibly out, yes, sir.

22 Q. As far as housing, what is the difference in a life
23 sentence and the death penalty?

24 A. Well, the death penalty is that you are just waiting
25 to be executed. You are still in a high security environment
26 and that -- you know, a lot of people make the mistake of
27 thinking that death row is the highest level security in a
28 prison. That's not the case. You can demonstrate behavior
29 that will put you in another security category, if necessary,

1 other than death row.

2 Q. All right. Regular folks serving life sentence have
3 a lot more freedom than people on death row, don't they?

4 A. That's relative.

5 Q. I'm not asking about relative. I'm just asking --

6 MR. CARTER: Your Honor, may he be able to
7 ask -- answer his question --

8 MR. EVANS: And I am asking --

9 MR. CARTER: -- without.

10 MR. EVANS: -- for him to answer it, Judge.

11 THE COURT: Only one at a time. And Mr. Evans
12 is cross-examining Mr. Aiken. And I think he is fully
13 capable of answering that question.

14 A. And what I'm talking about relative, freedom.
15 Freedom is different to people.

16 Q. All right. Let me explain to you what I'm asking.
17 When they are serving a life sentence, they get to go out a
18 lot more, don't they?

19 A. Depending on their behavior, yes, sir.

20 Q. They get to have more association with other people,
21 don't they?

22 A. Yes, sir. As long as it is within the security
23 perimeter of that prison, yes.

24 Q. They get to participate in singing, don't they?

25 A. If their behavior inside the prison demonstrates
26 that and authorities deem that appropriate, yes, sir.

27 Q. If they are on death row, they get out one hour a
28 day, don't they?

29 A. Not necessarily so, sir.

1 Q. Oh, really. When did they change that?

2 A. No, I'm not say they changed it. What I'm saying is
3 that it could be 24 hours a day on death row or it could be 24
4 hours a day if he had life without parole depending on his
5 behavior.

6 Q. But I'm not asking about behavior. I'm asking about
7 the straight differences between them.

8 A. People on death row are confined, yes, sir. Not as
9 for 24 hours a day or 21 hours or 23 hours, I don't have that
10 before me, no, sir.

11 Q. You don't know a whole lot about how things are run
12 at the state penitentiary, do you?

13 A. Sir, I spent 39 years not only running institutions
14 and prison systems but tracking in and out of prison systems,
15 not only in this nation but internationally, as well as
16 spending the last five years looking at policy, rules,
17 regulations and procedures in just about every jurisdiction
18 for this congressional commission.

19 Q. All right. Now, that you have said that, how much
20 have you -- how long have you worked at the state penitentiary
21 in Mississippi?

22 A. I have never worked there as a correctional
23 employee, sir. I was --

24 Q. Have you ever worked there in any capacity?

25 A. -- as consultant.

26 Q. Have you ever worked there in any capacity?

27 MR. CARTER: Your Honor, I object. He didn't
28 let him finish his question -- his answer.

29 THE COURT: If you were not finished with your

1 answer, you may complete it, Mr. Aiken.

2 A. Do you mind repeating the question, sir?

3 Q. Have you ever worked there in any capacity?

4 A. As I stated before, I have not drawn a paycheck
5 there. You are correct.

6 Q. Now, you say that one of your jobs is testifying in
7 cases like this one.

8 A. Yes. Providing expert testimony and giving
9 analysis, security analysis of individuals, such as this.
10 Yes, sir.

11 Q. And about how often do you testify for the defense
12 in death penalty cases?

13 A. I've not been offered as an expert on the -- you
14 said defense or prosecution?

15 Q. The defense.

16 A. Over 100 times.

17 Q. How many times have you testified for the
18 prosecution?

19 A. Never been asked.

20 MR. EVANS: Nothing further, Your Honor.

21 THE COURT: Any redirect?

22 REDIRECT EXAMINATION BY MRS. STEINER:

23 Q. I believe you testified -- and I don't know if the
24 jury heard you when you were cut off by Mr. Evans. Have you
25 personally performed consulting and advising services to the
26 people who do run and administer the Mississippi Department of
27 Corrections?

28 A. That is correct, ma'am.

29 Q. And do you know -- is the Mississippi Department of

1 Corrections, is it -- is it required to maintain certain
2 standards in order to get federal funding?

3 A. Not only federal funding but mandates as set forth
4 by the constitution, as well as sound correctional practice.

5 Q. And to your knowledge, is what you've testified to,
6 in terms of classification and security and restrictions, is
7 that part and parcel of what any correctional system must have
8 in order to continue to operate properly?

9 A. Yes. And to protect the public.

10 Q. And based on your consulting with the Mississippi
11 Department of Corrections, does the Mississippi Department of
12 Corrections use the kinds of means and standards for
13 classification, security and control of inmates that you have
14 testified to here today?

15 A. Yes ma'am. That as well as serving on the
16 congressional commission, presidential commission, as well as
17 you get a lot -- you learn a lot about the prison system by
18 looking at the inmate records.

19 Q. All right. And you have reviewed at least seven to
20 ten years of inmate records from the Mississippi Department of
21 Corrections with respect to this inmate; is that correct?

22 A. Yes, ma'am. I reviewed the records that you
23 provided me. Yes, ma'am.

24 Q. Thank you.

25 Your Honor, we have nothing further.

26 THE COURT: Mr. Aiken, you may step down, and
27 you are excused as a witness.

28 THE WITNESS: Thank you very much, Your Honor.

29 THE COURT: Yes, sir.

1 Who would you have next?

2 MR. CARTER: Archie Flowers, Jr., Your Honor.

3 THE COURT: If Mr. Archie Flowers, Jr., would
4 come forward, please.

5 MRS. STEINER: Your Honor, one moment, Your
6 Honor.

7 MR. CARTER: Call Miss Lola Flowers.

8 THE COURT: If you will come forward, please.

9 (THE WITNESS APPROACHED THE BENCH.)

10 Will you raise your right hand and take the oath?

11 Do you solemnly swear or affirm that the testimony
12 you give in this case will be the truth, the whole truth
13 and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE COURT: Please have a seat.

16 THE WITNESS: (Complied.)

17 THE COURT: State your name, please.

18 THE WITNESS: Lola Flowers.

19 LOLA FLOWERS, Called on behalf of the Defendant, having
20 been duly sworn, was examined and testified as follows:

21 DIRECT EXAMINATION BY MR. CARTER:

22 Q. Miss Flowers, do you have any children?

23 A. Yes, I do.

24 Q. How many have you got?

25 A. Six.

26 Q. What are their names?

27 A. Archie Renardo, Cora Felicia, Angela, Priscilla,
28 Curtis and Sherita.

29 Q. And Curtis is the baby boy. I think it is just two

1 boys; is that right?

2 A. Yeah. He is.

3 Q. How was Curtis as a little boy?

4 A. He was a good boy. You know, liked laughing and
5 joking around, life of the family, kept things going.

6 Q. Okay.

7 A. He was.

8 Q. How was he in school?

9 A. He was all right. Joking around, playing too. But
10 he was fine.

11 Q. Okay.

12 A. He finished school and everything.

13 Q. How did he get along with his brother, Archie, Jr.?

14 A. Wonderfully. Never -- if they ever got to fighting,
15 I didn't know anything about it.

16 Q. Was he close with his dad?

17 A. Yes. Um-hum.

18 Q. Okay. Did he have any pets?

19 A. Yeah. He had a dog.

20 Q. What happened to him, the dog?

21 A. I don't know, because I don't like animals anyway.
22 So I really don't know.

23 Q. All right. But he did, didn't he?

24 A. He did.

25 Q. Okay. What kind of hobbies did he have?

26 A. Fishing and singing.

27 Q. Okay. Was he any good at fishing?

28 A. A little bit.

29 Q. All right. What about singing?

1 A. Yeah. Now, he can sing. I have to give that to
2 him.

3 Q. Who taught him to do that?

4 A. I reckon he got it from his daddy.

5 Q. Got it from his dad.

6 A. Majority of the family can sing.

7 Q. Okay. What about Miss Lola?

8 A. No, I can't.

9 Q. Okay. Did Curtis acquire any skills while he was at
10 school? Do you remember? Was he...

11 A. Was he like -- what skills? Which one?

12 Q. How was he -- did he have any preference for
13 academics or shop?

14 A. Working in shop. Auto mechanic and stuff like that.
15 He liked that.

16 Q. Did he ever become any good at that?

17 A. Oh, he's always out there working on cars and
18 things. He was.

19 Q. Now, did Curtis know somebody named Mr. Lonnie
20 Fullilove?

21 A. Yeah. The old man that lived next door.

22 Q. What did he use to do for him?

23 A. Bathe him. Carried him to the store. Shopping for
24 him. He just basically took care of him like he was his
25 granddaddy.

26 Q. Were they any kin?

27 A. No.

28 Q. What about a Miss Mattie Hall?

29 A. Miss Mattie Hall and Miss Ola Mae Tolliver

1 (phonetic) and them. He even tried to get me to move Miss Ola
2 Mae in with us, because she didn't have any children, so we
3 could take care of her.

4 Q. What did he used to do for Miss Hall?

5 A. Carry her shopping and go shopping for her and
6 everything.

7 Q. Okay.

8 A. Cut her lawn and everything.

9 Q. Are these people still living?

10 A. No, they are dead.

11 Q. How was Curtis with his nieces and nephews?

12 A. They love him just like he was their dad, I think.
13 Everybody loved Curtis.

14 Before we get too much further, I want to say this to the
15 family of the victims. I want to say that I'm sorry for what
16 happened to y'all. I know the feeling. I know how you feel.
17 I lost my momma and daddy both like that. They died all of a
18 sudden, overnight. Not overnight, just all of a sudden. So I
19 know how you feel. And I just want to tell y'all I'm sorry
20 about y'all's hurt.

21 Q. Okay.

22 A. And --

23 Q. I'm sorry. Go ahead.

24 A. You ask me your question. Then I'll say mine last.

25 Q. No, you can say it now. Go ahead while you are
26 thinking about it.

27 A. I want to ask the jury to think about if that was
28 your son sitting over there --

29 MR. EVANS: Your Honor, I object. That is not

1 relevant.

2 Q. You can't --

3 THE COURT: Miss Flowers, you can't say that.

4 Q. You can't say that, Miss Lola.

5 A. I'm sorry.

6 Q. How, how, how did you and Curtis get along?

7 A. Fine. Well.

8 Q. Well.

9 A. Um-hum.

10 Q. Now, did you ever have to discipline, discipline --

11 A. Oh, yes, I have. Um-hum.

12 Q. Now, did he attend church when he grew up as a
13 child?

14 A. Yes. We all went to church. Mount Vernon in
15 Colombia.

16 Q. Okay. Did he go regularly, regular?

17 A. Um-hum. He did. When we wasn't in regular church,
18 he was at church singing.

19 Q. Okay.

20 One moment, Your Honor. Let me just be sure I can ask
21 something before I -- I'm trying to follow the rules, trying
22 to follow the law.

23 May I approach the witness, Your Honor?

24 THE COURT: Well, if you are going to approach,
25 why don't you just go ahead and have them marked, if you
26 are going to ask her?

27 MR. EVANS: Your Honor, I don't object to them
28 being introduced.

29 THE COURT: I will just go ahead and allow them

1 to be marked into evidence, and that will save you the
2 time of having to show them each individually to her.

3 MR. CARTER: Yes, sir.

4 THE COURT: So you may take a minute now and
5 have the court reporter do that.

6 (A PHOTOGRAPH WAS MARKED DEFENDANT'S EXHIBIT G AND
7 ADMITTED INTO EVIDENCE.)

8 (A PHOTOGRAPH WAS MARKED DEFENDANT'S EXHIBIT H AND
9 ADMITTED INTO EVIDENCE.)

10 (A PHOTOGRAPH WAS MARKED DEFENDANT'S EXHIBIT I AND
11 ADMITTED INTO EVIDENCE.)

12 (A PHOTOGRAPH WAS MARKED DEFENDANT'S EXHIBIT J AND
13 ADMITTED INTO EVIDENCE.)

14 (A PHOTOGRAPH WAS MARKED DEFENDANT'S EXHIBIT K AND
15 ADMITTED INTO EVIDENCE.)

16 (A PHOTOGRAPH WAS MARKED DEFENDANT'S EXHIBIT L AND
17 ADMITTED INTO EVIDENCE.)

18 Q. Miss Lola, I pass you some documents and ask you can
19 you tell the ladies and gentlemen of the jury what they are?

20 A. Pictures of the children when we was in Florida.
21 One of Curtis' school day pictures. Another one of his school
22 pictures when he was small. Another one of Curtis' school
23 pictures. One of his senior pictures. And a picture of he
24 and Priscilla.

25 Q. Thank you. Does this represent the extent of the
26 pictures that you have of him?

27 A. Yes. The house burned and all the other pictures
28 burned.

29 Q. Now, Mr. Flowers has been in jail since 1997. How

1 often have you visited him?

2 A. Every visit day. Never missed a visit.

3 Q. And you visit -- how often do they allow it? Once a
4 week or every two weeks?

5 A. When he was in Parchman it was like every two weeks.
6 Then when he came to Vaiden, it was every week, every Friday.
7 In Greenwood it's every Wednesday.

8 Q. Wednesday.

9 A. You asked everybody else what the impact that --

10 MR. EVANS: Your Honor, I object to victim
11 impact.

12 A. -- it had.

13 THE COURT: Sustained.

14 You are only to respond to the questions being
15 asked, Miss Flowers.

16 Q. Miss Flowers, there are rules and laws that control
17 what I can ask you.

18 A. Um-hum.

19 Q. So I know you want to answer that, but I can't --

20 A. I do.

21 Q. -- let you answer it.

22 Now, on these visitation nights, are you the only one
23 that go -- goes or others -- who else goes?

24 A. Archie Renardo, my son goes. Priscilla goes.
25 Archie goes. The others live out of town. Whenever they are
26 home, you know, they try to go see him.

27 Q. So I get the impression y'all love Curtis deeply.

28 A. Yes, we do.

29 Q. And always have. Always will. Is that fair to say?

1 A. Yes.

2 MR. CARTER: One moment. I think I'm finished.
3 Tender, your Honor.

4 MR. EVANS: No questions.

5 THE COURT: Ladies and gentlemen of the jury,
6 we will take a ten-minute recess. I want to tell you
7 during this recess, at this time I am considering that
8 y'all are setting the schedule.

9 If you want to recess for the evening, if you will
10 talk among yourselves, we will do that. If you want to
11 keep staying, we will do that. If you want food brought
12 in and stay here for awhile, we can order pizza for you.
13 And it does not have to be unanimous. If any one of you
14 want to recess for the evening, then let me know. If all
15 of you -- you know, so I am leaving things totally up to
16 you at this point. So if you will step back in the jury
17 room and, and if you have got some request of the Court
18 about how long to stay, what time you want to recess,
19 whether you want food or anything, please make that
20 known.

21 (THE JURY LEFT THE COURTROOM.)

22 Miss Flowers, you may step down.

23 MRS. STEINER: If the Court please, if the
24 Court please, allow me at this point, I, I have to
25 object.

26 THE BAILIFF: Let's have order in the court.

27 MRS. STEINER: Your Honor, I, I appreciate the
28 consideration that is being shown the jury. But in fact,
29 as we have previously moved for time for cooling off, not

1 merely for us to prepare, although as I have advised the
2 Court, we, we have many things that we need to prepare
3 for in order to adequately provide the constitutionally
4 necessary defense and representation to this client just
5 with respect to the law, with respect to the jury
6 instructions. We --

7 THE COURT: Are you saying that after about
8 nine months you are not prepared?

9 MRS. STEINER: No. Your --

10 THE COURT: I mean this case has been set for
11 trial for, for numerous months. And you know, the 14th
12 day of proceedings is not exactly a time when you should
13 still be preparing.

14 MRS. STEINER: Your Honor, in order to be able
15 to request proper instructions from this Court, with
16 respect particularly to mitigation, that awaits what was
17 shown here in this courtroom. We simply have jury
18 instructions that have to be reviewed. There have been
19 important updates in the law with respect to those
20 instructions. We need the time before this jury is
21 instructed and before we argue to change directions here.

22 This is a man's life on the line. This jury, we
23 respect them. We do not want to detain them. We do not
24 want to hold them. But we do urge that this jury be
25 excused for the night, and we have at least a recess for
26 the night, with them to be instructed not to begin
27 deliberating, to return in the morning.

28 Plus, this jury has been here since -- its been here
29 for ten hours today. The people, they are sitting there,

Jury Out

1 talking, looking away. There is simply no way that we
2 can have a jury that can bring to considering sentence in
3 this case the moral gravitas that Your Honor instructed
4 them they must have during -- have during voir dire, at
5 the end of this day, at the end of this long day, after
6 what they have been through.

7 You know, we will do as the Court directs. And if
8 the Court does not wish to bring them back to hear
9 testimony tomorrow, we can conclude that. But we would
10 urge that this jury not be sent out to deliberate after
11 it has already sat for ten hours hearing evidence, making
12 its deliberations and otherwise having to deal with this
13 case.

14 It is not -- it is not conducive to having a fair
15 jury. It is not conducive to having fair opportunity for
16 Mr. Flowers to either present the law to the jury that he
17 is -- that should be presented or to argue to this jury
18 on a basis of what has happened in this courtroom over
19 the last almost 14 days, and we would -- or 10 days.

20 And we would therefore, Your Honor, again renew our
21 motion that as respectful as we wish to be of the jury
22 that the Court agree to recess this case either now or as
23 soon as the evidence is --

24 (THE JURY KNOCKED ON THE DOOR.)

25 -- completed before the parties are required to
26 instruct the jury or otherwise to argue the case.

27 THE COURT: Well, at this point, the jury is
28 knocking with some instructions. Again, if they want to
29 continue, we are going to continue. Counsel has had

Jury Out

1 countless months, I mean, to prepare.

2 There hadn't been any new developments in the past
3 two weeks since we started in the realm of capital murder
4 cases that have been handed down by the Supreme Court.
5 So there has not been any changes in the law in that time
6 period.

7 So, you know, I don't know what you are talking
8 about on recent updates or changes in the law because
9 there haven't been any.

10 MRS. STEINER: Well, Your Honor, we haven't
11 even had the opportunity to get to the computer to print
12 out the jury instructions on the sentence that have been
13 prepared because of how precipitously this did. And that
14 frankly, our word processing program doesn't print out on
15 the clerk's computers. She uses Word Perfect. All of
16 our stuff is in Word. We have the prior jury
17 instructions, which we can modify for the conference but
18 we haven't even had a chance to sit --

19 (THE JURY KNOCKED ON THE DOOR.)

20 -- down and read them and review them and assemble
21 them.

22 We have been working as diligently as we can, but we
23 have almost two weeks of jury selection and testimony on
24 the guilt phase. As the -- as the *Wiggins* and other
25 cases say, the penalty phase, death is different. The
26 penalty phase requires special kinds of preparation with
27 respect to the presentation of evidence we are putting
28 on.

29 THE COURT: And that is why we have had eight

Jury Out

1 months since this case was set for trial for that
2 preparation to be taking place.

3 MRS. STEINER: But, Your Honor --

4 (THE JURY KNOCKED ON THE DOOR.)

5 MRS. STEINER: -- you can't instantly change
6 directions.

7 THE COURT: Let me hear what the jury -- I
8 assume they have got some kind of note of some kind. So
9 if you will open the door and receive that note.

10 THE BAILIFF: Do you have a note?

11 (THE BAILIFF HANDED THE NOTE TO THE COURT.)

12 THE COURT: Judge, we would like to stay and
13 finish up tonight if possible. Pizza as soon as possible
14 would be great. They give us the type pizza they want.

15 At this point we are going to have pizza ordered and
16 we are going to continue. And we will stand in recess
17 for five minutes, long enough for the clerk to order
18 the pizza.

19 (MR. EVANS, MR. HILL, MR. WHITFIELD, MRS. STEINER, MR.

20 CARTER AND THE DEFENDANT WERE PRESENT IN OPEN COURT.

21 PROCEEDINGS CONTINUED AS FOLLOWS:)

22 THE COURT: Are we ready to proceed?

23 MRS. STEINER: Yes, Your Honor. Before the
24 jury is brought out, our last witness is going to be Mr.
25 Archie Lee Flowers, and he will testify briefly. He will
26 then -- I believe the State has agreed to enter into
27 evidence the contents of the video, which Mr. Archie will
28 describe as, as Curtis performing with Archie's gospel
29 singing group. It is 16 minutes long. I think that we

Jury Out

1 are entitled to put on mitigation we want. We would like
2 it to play for 16 full -- length of the tape.

3 The State seems not to have 16 minutes or seems to
4 not want that. I very frankly would prefer, given that
5 this video is the last thing that they are going to see,
6 that the jury be allowed to have their pizza, come back
7 in, hear the testimony, be sent back in while we do the
8 instruction conference and come out and be argued to if
9 they really want to proceed.

10 Our first choice, of course, Your Honor, has again
11 been denied is that we allow them to complete the
12 evidence. They be instructed as they have every day
13 during the guilt phase of this trial to go back, to not
14 discuss the sentence. And that we then come back when
15 the jury and we are all fresh in the morning. And
16 instruct them.

17 We will stay as late as it takes to get a package of
18 instructions that the Court can hit the ground running
19 with in the morning. I don't believe it's unreasonable
20 very frankly. I am going to be arguing this case. And I
21 have both high blood pressure and diabetes, and I simply
22 do not believe that in my condition presently that I can
23 start at 8:00, 8:30, 9:00 tonight and do an adequate job
24 of arguing and pleading for my client's life to this
25 jury.

26 And I am telling the Court that I can -- that I --
27 the team has determined I am to argue it. That is our
28 judgment. That is our strategy. I am the person who has
29 prepared for this as Your Honor noted over the last seven

1 months. This jury is hungry. It's tired. Let's let
2 them eat. Let's let them see the last witness, and then
3 allow me. I will do it regardless --

4 THE COURT: Let's watch the video and then the
5 pizzas can be given to them, because it's not even here
6 yet.

7 MRS. STEINER: All right. All right. And the
8 testimony.

9 MR. EVANS: Your Honor, if I may, I almost
10 forgot where we were on this. I think it is appropriate
11 for them to show some of a video with him singing with
12 his family. That, I don't object to. I think it is --
13 there is no need in showing 16 minutes of the same thing.
14 I think that that is just completely --

15 THE COURT: I hadn't seen it. But I would
16 rather see 16 minutes of it than argue for eight over
17 whether to see 16. So, you know, if they want to show
18 the entire 16, then we will watch 16 minutes.

19 You can bring the jury in.

20 (THE JURY ENTERED THE COURTROOM.)

21 Court will come back to order. Ladies and
22 gentlemen, we do have pizza that has been ordered. It
23 isn't here yet. So when it is we will recess.

24 Who would your next witness be?

25 MRS. STEINER: Mr. Archie Lee Flowers.

26 THE COURT: Mr. Flowers, if you will come
27 around please and raise your right hand and take the
28 oath.

29 MRS. STEINER: You need to take the oath, Mr.

1 Archie.

2 THE COURT: He can do it right here. That is
3 where most people are being sworn. Right here.

4 If you will raise your right hand, please.

5 Do you solemnly swear or affirm the testimony you
6 give in this case will be the truth, the whole truth and
7 nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE COURT: Please have a seat.

10 THE WITNESS: (Complied.)

11 THE COURT: State your name, please.

12 THE WITNESS: Archie Lee Flowers.

13 THE COURT: Mr. Flowers, you might need to
14 speak a little louder. These ladies and gentlemen have
15 to hear you.

16 THE WITNESS: Archie Lee Flowers.

17 ARCHIE LEE FLOWERS, Called on behalf of the Defendant,
18 having been duly sworn, was examined and testified as follows:

19 DIRECT EXAMINATION BY MRS. STEINER:

20 Q. Mr. Flowers, if you could, that microphone does not
21 amplify. If you will, speak loud. Maybe direct your voice
22 towards the jury. They are the ones who have to hear you.

23 Mr. Flowers, would you state your name and your
24 relationship to Curtis Flowers?

25 A. My name is Archie Lee Flowers, and I -- Curtis is my
26 son.

27 Q. And are you feeling okay? Do you need a glass of
28 water or anything like that before you talk to the jurors?

29 A. I guess I'll be all right.

1 Q. All right. Now, do you love your son?

2 A. Yes, ma'am.

3 Q. For these 13 years he has been in prison, do you
4 love your son?

5 A. I love him.

6 Q. These ladies and gentlemen have determined that he
7 is guilty of four murders. Even with that determination, do
8 you love your son?

9 A. I love him.

10 Q. Do you -- I believe you have five other children.

11 A. Right.

12 Q. And is this a family that has hung together for
13 these 13 years?

14 A. Yes, ma'am.

15 Q. And do they love him?

16 A. They love him too.

17 Q. And well, how old are you, Mr. Archie?

18 A. I'm 68.

19 Q. So Curtis has been in your life. He is 40, is that
20 right, now?

21 A. Right.

22 Q. He has been in your life for the last 40 years; is
23 that --

24 A. He has.

25 Q. Why don't you tell the jury a little bit about your
26 background and how you tried to bring that to your son?

27 A. I'm, I'm from Kilmichael. My daddy, we, we was from
28 Kilmichael. We moved to Winona.

29 Q. What, what, what did -- what did you do when you

1 were coming up in Kilmichael?

2 A. Oh, we farmed.

3 Q. Sharecropped farmed.

4 A. Right.

5 Q. Now, did you -- were you able to provide a
6 different, slightly different kind of life for Curtis as he
7 was growing up? Did he have to sharecrop?

8 A. No, ma'am.

9 Q. What did you do after you got big enough to leave
10 the farm?

11 A. I went -- I started setting out pine trees for the
12 forestry service.

13 Q. And how long did you do that?

14 A. For about maybe ten years or more.

15 Q. Was that while Curtis was a little boy?

16 A. Right.

17 Q. Did he -- did you teach him anything about working
18 with his hands while he was little?

19 A. We talked about it.

20 Q. A little boy.

21 A. He could do anything.

22 Q. Now, tell the jury what sorts of things.

23 A. He like to fix on lawn mowers, cars and stuff like
24 that.

25 Q. Did he like to paint houses? Did he --

26 A. I had him paint. I used to paint houses a little
27 bit too.

28 Q. All right. So you worked for the forestry service.

29 Did you also have your own house painting business?

1 A. Right.

2 Q. Did your boys work with you in that?

3 A. Right. Both of the boys.

4 Q. And did Curtis help, help his family? How old was
5 he when he started working with you in your painting business?

6 A. I believe he was about 12 or 13.

7 Q. All right. Were you and Miss Lola able to make a
8 living with your various jobs and the help of Curtis and your
9 other sons too?

10 A. Yes, ma'am.

11 Q. Were you able to buy a home? Or I believe you
12 were -- Miss Lola owned a home, is that correct, had a family
13 property?

14 A. Right.

15 Q. Were you able to take what you had earned and make
16 that into as good a home as you could afford for y'all's kids?

17 A. Yes, ma'am.

18 Q. And in that home would you say -- you had six kids.
19 Were they all -- were they ever all home at once or did some
20 of them grow up before the younger two came along?

21 A. They was all at home at once.

22 Q. All right.

23 A. Same time.

24 Q. And Curtis, how did he get along with his brothers
25 and sisters?

26 A. Yeah. He always crack jokes, keep them laughing.

27 Q. All right. Did he have a sister he was particularly
28 close to? Where was he in the birth order of the family? Was
29 he the baby?

1 A. The baby boy.

2 Q. The baby boy. And how many younger sisters did he
3 have?

4 A. My mind rough about children, you know.

5 Q. All right. Did he have little sisters?

6 A. He had a little sister, Sherita.

7 Q. Was Priscilla his little sister?

8 A. Her. And Sherita. Priscilla.

9 Q. And there are some pictures Miss Lola put in. Now,
10 you don't have all the family pictures that you once had; is
11 that correct?

12 A. No.

13 Q. That house burned down; is that right?

14 A. That's right.

15 Q. And that has been since Curtis has gone to prison;
16 is that right?

17 A. That's right.

18 Q. Why don't you tell the jury a little bit about --
19 well, in addition to working with you, helping you make a
20 better life for himself and his sisters, did you find any
21 particular talent Curtis had?

22 A. Yeah, he can sing.

23 Q. All right. Now, tell me this Mr. Archie. Are you a
24 singer?

25 A. I am.

26 Q. Do you have -- what kind of music do you perform?

27 A. Gospel music.

28 Q. Gospel.

29 A. We sing gospel.

1 Q. All right. Do you have a group that at least before
2 Curtis went to jail --

3 A. Yes, ma'am.

4 Q. -- he was -- he participated with you in?

5 A. Right. He sung with me a while.

6 Q. All right. Now, before we start talking about that,
7 I think you said you want to say something to the families who
8 lost their loved ones in this tragedy.

9 A. Yeah.

10 Q. You may say what you care to.

11 A. I feel bad about it.

12 Q. All right. Have you prayed for them?

13 A. I really have.

14 Q. Have you raised gospel song for them in these last
15 13 years?

16 A. I really have.

17 Q. Have you prayed with Curtis for them?

18 A. I have.

19 Q. You go see him when --

20 A. Every visit day.

21 Q. All right. When he was in Parchman, how often were
22 you able to?

23 A. Every -- you know, every time we had visit.

24 Q. All right. And then when he was down here in, in
25 Carroll Montgomery would you go every week?

26 A. Every Friday.

27 Q. All right. Were you able to spend -- was it ever
28 just you or just Miss Lola or were there lots of people came
29 to visit?

1 A. It would be both of us if I didn't have nowhere to
2 sing. Sometimes she go by herself.

3 Q. All right. And did his daughter -- once the family
4 learned he had this daughter, did she come --

5 A. Yes.

6 Q. -- and spend time?

7 A. She was there.

8 Q. But still you had -- you had guards watching you the
9 whole time.

10 A. Right.

11 Q. It's not like having him at home.

12 A. No, it's not.

13 Q. Do you miss him?

14 MR. EVANS: Your Honor, I object. That is not
15 relevant.

16 THE COURT: I sustain as to that.

17 Q. All right. Well, why don't you tell the jury a
18 little bit about Curtis's singing? How old was he when you
19 first discovered his talent?

20 A. I think he was probably about nine or ten.

21 Q. And how did you discover it?

22 A. He used to get back in the back room and he'd sing.
23 Sometimes I go back there boy, when you going to start
24 singing. He said I will let you know.

25 Q. All right. Now, the gospel songs you sing, do you
26 sing the old time songs?

27 A. We, we go back to some of them sometimes.

28 Q. All right. Do you also write your own songs?

29 A. Well, we have started.

1 Q. All right. And Curtis --

2 A. Got some to put on C.D.

3 Q. All right. Did Curtis ever write a song for the
4 Unionaires to sing?

5 A. Right. He have.

6 Q. And are there other people in your family who Curtis
7 has sung for or with?

8 A. Um-hum. He have.

9 Q. You have other, other family --

10 A. Cousins.

11 Q. All right. Now, the singing, the gospel group, do
12 you -- do you perform publicly? What -- when did Curtis
13 finally say he was ready to start going out and performing
14 with you and Unionaires?

15 A. He was -- I, I don't recall how old he was. But it
16 was -- like I say, he told me he was ready. He went on and
17 start singing. He wasn't ashamed of the crowd.

18 Q. Was he shy at first?

19 A. He was shy.

20 Q. Why did you want him -- did you want him to sing
21 with you?

22 A. I did, because he had the voice to do it.

23 Q. Was it -- how would you describe his voice, his
24 calling?

25 A. It, it was clear. Sort of like mine.

26 Q. And what did he sing when he sang? Did he sing
27 blues or rock and roll? What did he sing?

28 A. Well, he used -- when, when I listened at him sing?

29 Q. Yeah.

1 A. Oh, he would sing gospel --

2 Q. Is that what he --

3 A. -- when he started.

4 Q. While he was free, would he still perform in public?

5 A. Oh, yeah.

6 Q. Now, have you in the prison -- the testimony from

7 Reverend Little was that he continued to sing in the choir.

8 Have the Unionaires or any group of people with whom you sing

9 gospel, have you ever come to perform in the prison?

10 A. Talking about down in Vaiden?

11 Q. Yes.

12 A. We have. We been down there a few times.

13 Q. All right. Is that the only time in the last 13
14 years or the only time you expect for the rest of his life he
15 will ever raise his voice in song, in harmony with yours?

16 A. Do --

17 Q. If he goes to prison for rest of his life in
18 Parchman --

19 MR. EVANS: Your Honor, that is not relevant.

20 Q. Were you ever allowed to companion him and raise
21 your voice in song in public with him when he was in Parchman?

22 A. You mean --

23 Q. Did you ever -- did you ever perform with him when
24 he lived in Parchman?

25 A. No, ma'am. While he was over there?

26 Q. Um-hum.

27 A. No.

28 Q. And that you don't expect ever to be able to raise
29 your voice in song --

1 MR. EVANS: Again, Your Honor, that is not
2 relevant.

3 THE COURT: I sustain. That is not relevant.

4 MRS. STEINER: Your Honor, he was -- when he
5 was examining Mr. Aiken and talking about the pleasure,
6 this is Mr. Flowers' pleasure. He will be deprived of
7 trying to establish the joy of raising his voice in
8 harmony with --

9 MR. EVANS: It is not relevant whether he can
10 sing with his father in prison, Your Honor.

11 THE COURT: Well, I mean, I think Mr. Flowers
12 has already indicated he can't. So I think you can move
13 on.

14 Q. Okay. Now, what -- tell the Court, Curtis sang with
15 the group. When Curtis had to leave the group, did, did that
16 affect the group's ability to perform?

17 MR. EVANS: Object, Your Honor. That is not
18 relevant.

19 THE COURT: I sustain.

20 Q. Would you -- now, the Unionaires with Curtis, when
21 he got grown, did they perform around the state?

22 A. Right.

23 Q. The neighborhood?

24 A. Out of state too.

25 Q. And did from time to time people in the family make
26 video of those, those performance or parts of them?

27 A. Somebody did. Somebody always making video.

28 Q. Now, you had a house fire so some of your tapes got
29 lost; is that right?

1 A. Right.

2 Q. But --

3 A. Most of them did.

4 Q. Most of them. Have we found one where Curtis was
5 performing with the Unionaires?

6 A. I think so.

7 Q. Would you like this jury to see that video of Curtis
8 performing with your group?

9 A. Yes, ma'am. If the judge would allow it.

10 Q. Do you think -- do you think that might explain what
11 you -- what you have been telling them here today?

12 A. Yes, ma'am.

13 MRS. STEINER: Your Honor, I believe the -- a
14 video disk has been marked D-F for identification. The
15 State agrees it may be offered into evidence. The video
16 itself is presently in the player, but the case has been
17 marked. We would like to mark the contents of the video
18 into evidence.

19 MR. EVANS: State has no objection.

20 (THE VIDEO PREVIOUSLY MARKED DEFENDANT'S EXHIBIT F WAS
21 ADMITTED INTO EVIDENCE.)

22 MRS. STEINER: I need technical assistance.

23 (MR. HILL AND MS. BRANDIS APPROACHED TO HELP WITH THE
24 DISK.)

25 MRS. STEINER: Just a moment, Your Honor. May
26 I leave the courtroom, get our --

27 THE COURT: Sure.

28 (MRS. STEINER LEFT THE COURTROOM AND RETURNED.)

29 (THE VIDEO WAS PLAYED.)

Archie Flowers - Direct

1 THE COURT: You can take them into the
2 boardroom like I'm saying, and they will set the food up.
3 We will be in recess.

4 (A RECESS WAS TAKEN.)

5 (MR. EVANS, MR. HILL, MR. WHITFIELD, MRS. STEINER, MR.
6 CARTER AND THE DEFENDANT WERE PRESENT IN OPEN COURT.
7 PROCEEDINGS WERE AS FOLLOWS:)

8 THE COURT: Let Mr. Flowers get up here before
9 the jury is brought in.

10 (THE WITNESS WAS SEATED ON THE WITNESS STAND.)

11 THE COURT: Okay. You can bring the jury in.

12 (THE JURY RETURNED TO THE COURTROOM.)

13 THE COURT: Court will come back to order.

14 We will continue with the presentation that was
15 being presented.

16 MRS. STEINER: Thank you, Your Honor.

17 CONTINUED DIRECT EXAMINATION BY MRS. STEINER:

18 Q. Mr. Flowers, it's late. Do you think that's given
19 these ladies and gentlemen a picture of the Curtis Flowers who
20 loved God enough to raise a beautiful voice in praise to him?

21 A. Yes, ma'am.

22 Q. All right. And I believe both before Curtis went to
23 jail and since then, although you have now retired, you stood
24 proudly at the door at Wal-Mart and greeted the community.

25 MR. EVANS: Your Honor, that has no relevance
26 to this case.

27 THE COURT: I sustain.

28 Q. All right. Is this -- you love -- you told the jury
29 earlier, this is your son whom you love; is that right?

1 A. Right.

2 Q. And you know he now stands convicted of a terrible
3 crime. Does that change your love for him?

4 A. No, it don't change my love for him.

5 Q. Do you have anything you want to tell this jury
6 about Curtis that you want them to take with them when they
7 consider the sentence that they and they alone have the power
8 to impose upon him?

9 A. I'm hurt.

10 Q. I understand. You want to tell them anything more
11 about Curtis?

12 A. No, I don't believe I could.

13 Q. All right. Would you like to be able to step down
14 and rest and just go home and pray?

15 MR. EVANS: Your Honor, I object. That is not
16 appropriate.

17 THE COURT: I sustain that. I mean if he is
18 ready.

19 MRS. STEINER: That's fine. That's all I have
20 from this witness.

21 THE COURT: You may step down, Mr. Flowers.
22 Are you going to keep playing the tape?

23 MRS. STEINER: No, Your Honor. The jury is
24 tired. Mr. Flowers has told them what he needs to tell
25 them.

26 THE COURT: Who would be the next witness?

27 MRS. STEINER: Your Honor, the defendant would
28 rest his penalty phase case at this time.

29 THE COURT: Ladies and gentlemen of the jury,

Jury Dismissed

1 as much as I want to accommodate you, because I know you
2 are ready to go home. But it's going to take a long time
3 to go over jury instructions, much longer than it took
4 earlier in the day for the previous instructions.

5 There is no, no task a jury is called upon to
6 consider that is more important than what you are being
7 called upon to consider. I don't want to keep you up
8 here, you know, close to midnight and have any kind of
9 rush decision, because it's got to be made with great
10 deliberation. And so by the time we heard -- had the
11 instructions done and heard closing arguments, I just
12 feel like it would be too late in the evening to
13 continue.

14 So again, I do understand your desire to finish
15 tonight, but I think it's best to come back in the
16 morning with a fresh start when everybody has had a night
17 of rest. And so if you will step in the jury room until
18 your transportation can be brought to you.

19 I will tell you that I do anticipate that we will
20 conclude tomorrow. So you can pack your belongings and
21 bring them on back to the courthouse with you in the
22 morning.

23 And I'll ask that during this recess you do not
24 discuss among yourselves what you think the appropriate
25 sentence would be or anything connected with the case. I
26 will ask that you not discuss the case at all again until
27 you receive further instructions from the Court.

28 And with that ladies and gentlemen, if you will step
29 in the jury room for a few minutes.

1 (THE JURY LEFT THE COURTROOM.)

2 THE COURT: I want to advise Mr. Flowers again.

3 Mr. Flowers, I advised you during the first phase of
4 the trial that you had a constitutional right to testify
5 or not testify. After consulting with your attorneys,
6 obviously you chose not to testify.

7 THE DEFENDANT: That's right.

8 THE COURT: But I want you to understand you
9 have got a right testify at this phase, as well, if you
10 wanted to do so. Do you understand that?

11 THE DEFENDANT: Okay.

12 THE COURT: And do you understand whether you
13 chose to testify in this phase or not is your decision
14 and yours alone?

15 THE DEFENDANT: Okay.

16 THE COURT: If you wanted to testify and your
17 lawyers didn't, you could override their judgment and
18 testify.

19 THE DEFENDANT: Okay.

20 THE COURT: Do you understand further that if
21 they thought they wanted you to testify and you didn't
22 want to, they couldn't force you to?

23 THE DEFENDANT: (Nodded.)

24 THE COURT: So at all times whether you testify
25 or not is your decision, yours alone. Do you understand
26 that?

27 THE DEFENDANT: Okay.

28 THE COURT: I just wanted to make that clear.
29 I assume based on the counsel resting that you have

1 discussed with them and are exercising your right not to
2 testify; is that correct?

3 THE DEFENDANT: That's correct.

4 THE COURT: Okay. I want to -- Counsel, in a
5 minute, when everybody clears out, I want to discuss jury
6 instructions with you. As far as -- the proceedings are
7 recessed for the day, but I am going to talk to counsel
8 just a minute about instructions.

9 I know that I've had cases where I've had death
10 penalty in the past, the State and the defense can get
11 together and prepare the instructions that lays out the
12 State's aggravating factors and the mitigating factors.

13 And so if y'all will just maybe get together about
14 8:30 in the morning and try to get those instructions,
15 because I think it's probably going to be obvious what
16 both of you are requesting. And then I'll --

17 MR. EVANS: We have got everything --

18 We have got everything ready except the mitigators,
19 and we are going to get together on that and try to
20 figure out which ones need to be inserted.

21 THE COURT: If y'all will do that. Then I'll
22 just convene with you at 9:00 in the morning and go over
23 these instructions. And then after instructions are
24 ready to be presented, we'll proceed then with closing
25 argument.

26 MRS. STEINER: Your Honor, we will have printed
27 out in clean copy. We will try and have any additional
28 defense -- if we will have any additional defense
29 instructions that we wish the Court to consider available

Mr. Flowers Advised of Right to Testify/Not Testify

1 tomorrow morning. If you would like them prior to 9:00
2 a.m., I can have. If you want to give me a deadline --

3 THE COURT: Well, I don't see any point. I
4 mean we, we can start going over instructions at 9:00. I
5 don't need to have them any earlier than that.

6 MRS. STEINER: Thank you.

7 THE COURT: We will recess until in the
8 morning.

9 (THE PROCEEDINGS ON THIS DATE WAS CONCLUDED.)
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CONSIDERATION OF INSTRUCTIONS - JURY OUT

1 (THE FOLLOWING PROCEEDINGS WERE HAD IN
2 OPEN COURT ON JUNE 19, 2010, WITH THE
3 COURT, THE COURT REPORTER, ALL COUNSEL FOR
4 BOTH SIDE, THE DEFENDANT, AND THE CIRCUIT
5 CLERK PRESENT, OUTSIDE THE HEARING AND
6 PRESENCE OF THE JURY, TO-WIT:)

7 **BY THE COURT:** We'll start going over
8 sentencing instructions at this time. I'll
9 take up the State ones first.

10 **BY MR. HILL:** Your Honor, have you got a
11 copy of your proposed S-1?

12 **BY MS. STEINER:** I don't, either.

13 **BY THE COURT:** I've got everything except
14 for the S-1.

15 **BY MR. HILL:** Okay. Your Honor, the only
16 thing I think that there's going to be any
17 disagreement about are the list of mitigators,
18 mitigating circum- -- factors that should be
19 typed into the sentencing instructions. And
20 counsel and I have discussed those, and we have
21 some issues as to what should be in there. And
22 if we can resolve that first, then S-1 will be
23 ready in its final form.

24 **BY MRS. STEINER:** Let me agree that, Your
25 Honor, we are going to propose D-5A, D-5B, D-5C
26 and D-5D as alternative language to S-1. We
27 believe S-1 to be incomplete. However, should
28 the State -- should -- since the Court takes up
29 the State's instructions first, we have -- we

CONSIDERATION OF INSTRUCTIONS - JURY OUT

1 would like to perfect, as it were, the State's
2 instructions with all the mitigators we need in
3 it in the event that the Court elects to grant
4 S-1 in lieu of D-5.

5 **BY THE COURT:** Okay. What mitigators are
6 there disagreements on?

7 **BY MRS. STEINER:** All right. Your Honor,
8 the State has advised me -- and this may even
9 be contrary to law of the case. The State has
10 advised me that the only mitigators on which
11 it -- if you turn to D-5A, you have a list of
12 the -- on page two of D-5A, there is a list of
13 the mitigators that Mr. Flowers proposes.
14 Subparagraph A, he has no history of prior
15 criminal activity.

16 **BY THE COURT:** I've read them. I'm just
17 wondering which one it is the State disagrees
18 with.

19 **BY MRS. STEINER:** The State disagrees with
20 granting B, C, D, E and I believe F.

21 **BY MR. HILL:** Your Honor, that's not quite
22 correct. We do not object to A that Curtis
23 Flowers has no history of prior criminal
24 acts --

25 **BY THE COURT:** I can read it. Y'all just
26 give me the numerical on it.

27 **BY MR. HILL:** Okay. The number -- we do
28 not object to B.

29 **BY MRS. STEINER:** Oh, okay.

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1 **BY MR. HILL:** We do not object to C. We
2 do object to D. We do not object to E. And we
3 do object to F and G in those present -- the
4 way it's typed, that language. We would
5 suggest to the Court that the statutory
6 catch-all be used in place of F and G. Those
7 are just different -- that's two catch-alls in
8 different language and different forms, and we
9 feel like the Supreme Court has approved the
10 statutory catch-all, and it should be used in
11 place of those two.

12 **BY MRS. STEINER:** May I be heard, Your
13 Honor?

14 **BY THE COURT:** I'm listening.

15 **BY MRS. STEINER:** All right. Your Honor,
16 we -- I believe there are -- may I argue from a
17 seated position?

18 **BY THE COURT:** Certainly. Have a seat.

19 **BY MRS. STEINER:** Thank you. First of
20 all, the law of the case -- in this case, the
21 last time what was determined to be the
22 mitigators on which could be advised -- excuse
23 me -- the law of the case is that in this case,
24 based on Judge Morgan's ruling, nonstatutory
25 mitigators of which there is evidence to
26 support the finding may be in- -- will be
27 included in whatever omnibus instruction is
28 given, whether it's called S-1 or D-5, so the
29 law of the case is the nonstatutory and

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1 statutory mitigators will be given.

2 Further, in the interim period since the
3 last time a jury had to be instructed with
4 respect to sentencing in this matter, the
5 United States Supreme Court has decided
6 Abdul-Kabir v. Quarterman, which is cited in
7 the jury instructions elabor- -- and Smith v.
8 Texas, which is a companion case in which, very
9 frankly, Your Honor, I did not have either a
10 hard copy or a pullup electronic copy. It is
11 cited in the memorandum we submitted during
12 voir dire concerning voir dire and mitigation
13 for the citation on that.

14 And those make it clear, not only does the
15 Defendant have the right to argue and the jury
16 to consider a -- you know, any nonstatutory
17 mitigating circumstance, but that the
18 instructions from the Court must facilitate
19 that. And that it is a violation of the Sixth
20 and Eighth Amendment if those -- and the
21 Fourteenth Amendment if all the mitigation
22 which the -- there is evidence to sustain and
23 which is sought and in the instruction is not
24 directed. And that would take care of -- in
25 D-5A at page two, that would take care of B, C
26 and E, which we are asking to be instructed in.

27 Paragraph D, which is required by the
28 Mississippi Supreme Court in the case of
29 Rubenstein vs. State where Mr. Rubenstein had

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1 been sentenced to death without an instruction
2 explaining that life without parole means life
3 without parole, without release. And although
4 his conviction was upheld and the -- if you
5 read the final Rubenstein decision, it's an
6 affirmed decision, but the sentence was vacated
7 and sent back because of the failure to give
8 this instruction D. And, in fact, it -- he was
9 ultimately sentenced to death. I believe the
10 State elected not to proceed.

11 F and G are -- F is a very specific
12 listing of the standards set by Tennard vs.
13 Dretke by the United States Supreme Court of
14 the very broad scope of mitigating
15 circumstances which the Court can -- which the
16 jury is entitled to consider is the virt- -- as
17 I believe the term in Tennard vs. Dretke is the
18 virtually unlimited circumstances. That's the
19 Court saying what they are.

20 This is -- F is a summary in somewhat less
21 forward and less specific terms of what Tennard
22 vs. Dretke says is mitigation and that
23 Abdul-Kabir says we are entitled to have the
24 jury instructed on it.

25 G is a paraphrase of the Mississippi
26 statute catch-all, and I think it's a fair
27 paraphrase. There's nothing that requires an
28 instruction to craft statutory language. And I
29 believe that in the interest of clarity, this

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1 paraphrase does not add to or subtract anything
2 from the statutory language, that it is meant
3 to instruct about and is simply a clear
4 rendition of that. We do have other aspects
5 such as a reasonable doubt and other
6 instructions which I have because there is not
7 such clear law. I have not asked to be
8 included in whatever -- I call this the omnibus
9 instruction, with respect to aggravation and
10 mitigation --

11 **BY THE COURT:** And now let the State
12 respond to --

13 **BY MRS. STEINER:** -- that we'll take up
14 later, Your Honor.

15 **BY MR. EVANS:** Your Honor, we'll withdraw
16 our objection to D. I don't -- I'm not
17 familiar with Rubenstein. And I'm not -- but
18 as far as that, I don't really have a problem
19 with that. As far as catch-all, I think
20 there's only one catch-all appropriate. You
21 can't just continue to give repetitive
22 instructions. And, you know, I think the
23 state-approved catch-all that's in the statute
24 covers it.

25 **BY THE COURT:** What is number five on
26 S-1A? I mean, why is --

27 **BY MRS. STEINER:** On 1A, paragraph five
28 fails to specify the -- and give the jury
29 guidance that the aspects of the Defendant's

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1 record that Tennard vs. Dretke specifically
2 itemizes: Background, life, environment,
3 emotional make up and that can include a
4 psychological make up. And -- and that
5 Tennard, I think goes -- even as a
6 constitutional matter, permits consideration of
7 and requires, if sought, instruction concerning
8 more specific things than the general any other
9 matter, any other aspect of the Defendant's
10 character record.

11 **BY THE COURT:** And I've got a question. I
12 mean, in a previous trial, these two things
13 that y'all are now objecting to were contained
14 in the instructions and that were submitted by
15 you. So I'm kind of confused now about why
16 they wouldn't be appropriate when they were in
17 the last case.

18 **BY MR. EVANS:** I think we objected to them
19 in the last case, Your Honor.

20 **BY THE COURT:** Well, I think I'm going to
21 put them back in. So y'all -- and so somebody
22 can retype your S-1A, 1B, 2B on the -- 1-A, B,
23 C and D. And add those two factors and then
24 put in factor D which you did not object to.

25 **BY MR. EVANS:** Yes, sir.

26 **BY MRS. STEINER:** Your Honor, are you
27 ruling that B and C and E will or will not be
28 included?

29 **BY THE COURT:** Well, they don't object to

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1 those.

2 BY MRS. STEINER: Oh, I thought they --

3 BY MR. HILL: There's only one thing I
4 think I'd like to get the Court's specific
5 direction on, and that is the state catch-all
6 as -- or a version of it, is their letter G,
7 not the same exact words in G as, "Any other
8 circumstance or combination of circumstances."
9 That's not exactly what the state statute says,
10 and I think that we should follow the state
11 statute when we type paragraph G or our number
12 five, you know, our statutory catch-all.

13 BY THE COURT: Again, that's the exact
14 language from the previous trial, and I
15 don't -- I mean, it doesn't have to be
16 verbatim.

17 BY MR. HILL: If the Defendant requests it
18 and waives any --

19 BY THE COURT: It does not have to be
20 verbatim what the statute says, but it is
21 clearly a representation of what the statute
22 says. And so if y'all will....

23 I'm going to take up SS-2.

24 BY MRS. STEINER: No objection.

25 BY THE COURT: I think SS-3 needs to be
26 amended to say sentence instructions 1A, 2A, 3A
27 and 4A because --

28 BY MR. HILL: 1A, 2A -- what are those
29 again?

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1 **BY THE COURT:** Or actually I --

2 **BY MR. HILL:** This sentencing instruction?

3 **BY THE COURT:** Well, I guess when I
4 renumber them probably 1A will be number 1, 2A
5 will be -- I mean, 1B will be Instruction 2, so
6 I need to just say Sentence Instructions 1, 2, 3
7 and 4.

8 **BY MR. HILL:** Got it. You want that to
9 read --

10 **BY THE COURT:** Because, you know, when I
11 renumber them at the very top of each page,
12 it's going to be they're numbered in numerical
13 order from one to however many we end up with.

14 **BY MRS. STEINER:** Your Honor, I think that
15 to some extent this is also inconsistent with
16 the proposed verdict form. If you reach a
17 verdict as to sentence and then a verdict form
18 is proposed, unable to agree unanimously if the
19 -- one or the other has to be altered.

20 **BY THE COURT:** Okay. Explain.

21 **BY MRS. STEINER:** Well, this says, "If you
22 unanimously reach a verdict as to sentence, the
23 foreman shall cause the verdict to be written
24 on the form and manner prescribed in Sentencing
25 Instruction I. And the foreman shall
26 thereafter affix his or her signature to the
27 verdict." That's fine, except for that it
28 doesn't tell them what to do if they are unable
29 to agree unanimously on punishment. The

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1 verdict form the State approves -- the State
2 has proposed and which, subject only to our
3 continuing objection to even having them
4 consider the death penalty and any other
5 objections that may be made in the course of
6 our presentation of other jury instructions, we
7 do not find objectionable --

8 **BY THE COURT:** So what basically you're
9 saying it needs also, "If you are unable to
10 unanimously reach a verdict as to sentence,
11 write that in the form prescribed?"

12 **BY MRS. STEINER:** Well, I think it --

13 **BY MR. HILL:** Wouldn't it be simpler, Your
14 Honor, if we just said that, "The foreman shall
15 cause the verdict to be written in the form
16 prescribed in the verdict form" -- which
17 there's only one verdict form in all the
18 instructions -- "the matter prescribed in the
19 verdict form."

20 **BY MRS. STEINER:** But, again, this --
21 the -- this begins with "If you unanimously
22 reach a verdict as to sentence" and the verdict
23 form has two options for unanimous verdicts and
24 one option for nonunanimous. And I just -- I
25 think this sentence -- actually, I think that
26 this instruction is --

27 **BY MR. HILL:** We don't have to -- if they
28 don't want it, we can withdraw it.

29 **BY MRS. STEINER:** I mean, I think that

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1 that whole second section is -- I think they do
2 have to be instructed to select a foreperson or
3 foreman, and it probably should track the
4 original language in the -- at the guilt phase
5 so that -- I think the one that His Honor gave
6 at the guilt phase where you can select it, you
7 know, he or she.

8 **BY THE COURT:** Well, I can just get
9 Patrick --

10 **BY MRS. STEINER:** But I think this one
11 should either be withdrawn or refused.

12 **BY THE COURT:** We'll just get the --
13 Patrick.

14 (Off Record.)

15 **BY THE COURT:** I'm just going to give that
16 one that I gave, so I'll just mark SS-3
17 withdrawn, and I'll -- I'll just have that
18 one -- I'll give that one again that I have
19 gave at the -- at the guilt phase.

20 **BY MRS. STEINER:** And I think just a
21 general -- it shall be in the form -- in the
22 verdict form I will provide you rather than
23 very specific. But we can -- but when the
24 language is here we can discuss it.

25 **BY THE COURT:** I'm -- I think I'll just go
26 back there in a couple of minutes and type what
27 I think needs to be said and I think you with
28 can both agree to it. SS-4.

29 **BY MRS. STEINER:** We have no objection to

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1 SS-4. We do propose jury instructions and
2 Defendant's instructions that we think are
3 clearer and elaborate more fully on the subject
4 matter.

5 **BY THE COURT:** We'll take those up when we
6 --

7 **BY MRS. STEINER:** And we have no objection
8 subject to supplementation which we propose
9 should be given.

10 **BY THE COURT:** Okay. SS-4 is given.

11 **BY MRS. STEINER:** SS-5. Assuming however
12 many that the Court grants, subject to the
13 supplementation we proposed in our jury
14 instructions, we have no objections.

15 **BY THE COURT:** SS-5 will be given.

16 **BY MRS. STEINER:** Forgive me. I -- let me
17 step back. You must first -- I think the word
18 between first and find -- unanimously find or
19 find unanimously.

20 **BY MR. HILL:** There is a -- unanimously is
21 given in S-1.

22 **BY MRS. STEINER:** But I think this would
23 be confusing if it is not also here.

24 **BY THE COURT:** So I will just insert on
25 the next to the last line, "You must first
26 unanimously find."

27 **BY MRS. STEINER:** Yes, Your Honor, that --
28 if that were inserted, subject only to the
29 supplementation we would propose in our other

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1 instructions, we have no objection.

2 BY THE COURT: And then SS-6.

3 BY MRS. STEINER: Oh, I'm sorry, Your
4 Honor. No objection.

5 BY THE COURT: SS-6, I think you got a
6 similar one to that.

7 BY MRS. STEINER: No objection, Your
8 Honor.

9 BY THE COURT: And now I'm going to take a
10 five-minute recess, and I think I will very
11 quickly have an instruction about the form.

12 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
13 PROCEEDED IN OPEN COURT OUTSIDE THE
14 HEARING AND PRESENCE OF THE JURY, TO-WIT:)

15 BY THE COURT: Okay. I just had handed to
16 me CS-1, and see if y'all can agree on that.

17 BY MR. EVANS: State agrees.

18 BY MRS. STEINER: Defendant agrees.

19 BY THE COURT: And I have now received the
20 copies of the State's sentencing instructions
21 that include the language that I wanted in
22 S-1A -- SS-1A, SS-1B, 1C and 1D. And have
23 y'all had a chance to look?

24 BY MRS. STEINER: I have, Your Honor. We
25 have proposed by way of D-5 A through D,
26 alternative and language to -- with respect to
27 all of the, you know, preliminaries on all
28 sections of this which we would find
29 preferable. However, on the substance, we have

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1 reviewed the mitigating circumstances
2 instructed and find that it now contains
3 mitigating circumstances that we requested
4 instruction on pursuant to Your Honor's order.

5 We do object to, in subparagraph B on
6 aggravat- -- I believe there is a typographical
7 error in paragraph B. It says, "You must still
8 find the mitigating circumstances" -- oh, I'm
9 sorry -- "do not outweigh the aggravating
10 circumstances." I'm sorry. Never mind. I
11 thought they reversed that.

12 Anyway, on page two, we would object to
13 aggravating circumstance number two on the
14 basis of our pretrial motion that it
15 effectively is a restatement of the
16 capitalizing factor that made this capital
17 murder in the first place, and for the reasons
18 stated in our pretrial motion to not have
19 duplicative aggravators of the -- of the
20 capitalizing circumstances.

21 We believe that that violates the Eighth,
22 Sixth and Fourteenth Amendment of the United
23 States Constitutions as interpreted by the
24 Supreme Court of the United States. The
25 Mississippi Supreme Court has thus far not
26 agreed with my position in this; I'll represent
27 that to Your Honor.

28 **BY THE COURT:** At this point, I'm sworn to
29 uphold the laws of the State of Mississippi,

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1 and I'm following the decision of the Supreme
2 Court vigorously on everything I do, and I'm
3 going to add 1 -- SS-1A, SS-1B, SS-1C and
4 SS-1D --

5 **BY MRS. STEINER:** Your Honor, I had some
6 other objections to the aggravators.

7 **BY THE COURT:** What would they be?

8 **BY MRS. STEINER:** I don't believe that one
9 is warranted by the facts, the Defendant
10 created a great risk of death to each of the
11 people which he killed, which was four persons.
12 But, again, that is what these crimes of
13 conviction are. There is nothing to indicate
14 that persons other than those actually killed
15 were either present or available, so I don't
16 believe the facts warrant one.

17 Paragraph three, I don't believe that
18 there's any evidence whatsoever introduced that
19 the capital offense was committed other than
20 for the purpose of effectuating the robbery,
21 which is what made it a capital offense in the
22 first place. So we would object to number
23 three on that ground.

24 **BY MR. EVANS:** To number three or to
25 number one?

26 **BY MRS. STEINER:** I'm objecting to number
27 one and number three. I'd interpose both
28 objections.

29 **BY MR. EVANS:** Your Honor, as far as No.

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1 1, the law is clear in Mississippi that the --
2 creating a great risk of death to many people
3 or persons is appropriate. Jackson v. State,
4 684 So. 2nd 1213 and Wheeler v. State, 536 So.
5 2nd 1341 both state that use of that as an
6 aggravator is appropriate where there are
7 multiple victims.

8 Also, Porter v. State, 732 So. 2nd 899
9 clearly states that there must be evidence that
10 the Defendant knew that he was creating danger
11 to several persons. And I think that's very
12 clear. Not only did he know he was doing it;
13 he did, in fact, kill four people.

14 And as far as three, the avoiding
15 apprehension or arrest, the fact that he killed
16 all the possible witnesses by himself is ample
17 evidence to support that aggravator.

18 **BY THE COURT:** I think both of those, one
19 and three, are appropriate aggravators and
20 supported by the case law. And, you know,
21 there has been some issue about how somebody
22 killed four people at one time. And I think a
23 reasonable inference would be that they were
24 killed one at a time as they were coming in the
25 store.

26 Certainly the evidence was that Ms. Rigby
27 had been at the post office and had just -- I
28 mean, at the bank and still had her keys and
29 her purse with her, so I think the sentence

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1 could be something the jury could find that she
2 was killed because she hadn't come into the
3 store as he was committing the crimes against
4 the others. So I think there's plenty of
5 evidence to support aggravators one and three.

6 So I'm going to give those aggravators and
7 will grant the instructions.

8 **BY MRS. STEINER:** Thank you, Your Honor.
9 The Defendant has proposed several instructions
10 and supplementations to these, which I believe
11 both the State and the Court have before them.
12 Whenever you're ready to proceed, I'll be happy
13 to begin with D-1. Can I approach and show you
14 what the page looks like or do you have the
15 originals that have been filed with the clerk,
16 Your Honor?

17 **BY THE COURT:** Well, why don't you give me
18 the originals then because those are the --
19 actually the ones that I'll be taking up. What
20 I had was original copies so I'll just look at
21 the originals.

22 **BY MRS. STEINER:** I'm afraid the copy
23 machine was misbehaving this morning, Your
24 Honor, and some may have gotten eaten.

25 **BY THE COURT:** Of course, D-1 is a
26 peremptory instruction, and I'll refuse D-1.

27 **BY MRS. STEINER:** D-2, Your Honor, again,
28 especially in light of decisions of the United
29 States Supreme Court in Abdul-Kabir and Smith

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1 v. Texas, I believe that it is appropriate to
2 have this kind of specific focusing
3 instruction, and we are proposing it under the
4 authority of Boyd as cited, and also under the
5 Court's obligations identified in Abdul-Kabir,
6 Smith to adequately instruct on mitigation.

7 And very frankly, Your Honor, I would also
8 move for this instruction because I think at
9 the end of the day yesterday, people were
10 tired. The jury was impatient. And the jury
11 was, over our objection, allowed to decide
12 on -- seemed to take control over the timing.

13 **BY THE COURT:** Well, the Court reversed
14 that, and I allowed the jury to go home and
15 granted your motion to continue today.

16 **BY MRS. STEINER:** Thank you. But I'm
17 saying I think that this sort of refocusing the
18 jury to the seriousness of their task and an
19 explanation by the Court that it is instructing
20 them as particularly indicated here.

21 When you sent them home, you did tell them
22 that -- that it was an important and
23 deliberative process that they needed to be
24 fresh to take seriously. But I think this is
25 necessary to undo at least some of the harm
26 that was caused by failing -- by failing to
27 grant our objections to the --

28 **BY THE COURT:** I don't see any harm. But
29 I think D-2 is an appropriate instruction to

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1 grant.

2 BY MRS. STEINER: Thank you, Your Honor.

3 BY MR. HILL: Your Honor, before we
4 finalize on that, we are having trouble finding
5 our copy of D-2.

6 BY MR. EVANS: We've got the sentencing,
7 and then our next one is D-6.

8 BY THE COURT: This starts off by, "I
9 instructed you on the specific matters
10 regarding this case. I'll instruct you on the
11 general principles that will govern your
12 deliberations during this phase and explain
13 your duties. I must refer to matters you may
14 need to reach --

15 BY MR. EVANS: All right. And that -- was
16 the Court giving that one or refusing it?

17 BY THE COURT: I think it's an appropriate
18 instruction.

19 BY MR. EVANS: What's the -- is the next
20 one D-6?

21 BY MRS. STEINER: No. The next is D-3.

22 BY MR. EVANS: I don't have it either. I
23 don't have 3. If I do, they're not numbered.

24 BY MRS. STEINER: We gave the original to
25 Mr. Blackmon to copy.

26 BY MR. EVANS: I've got a 5A, a one-page.
27 All I'm saying is I need to get a copy of those
28 if there's some I don't have. Wait a minute,
29 this may be it. There is two right there. We

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1 did find it. Let's see if there is a 3 in
2 there.

3 Okay. All right. Here's 3.

4 **BY THE COURT:** It seems to me D-3 is
5 pretty repetitive to D-2.

6 **BY MRS. STEINER:** Your Honor, I would
7 modify what I'm tendering. I would delete all
8 the proposed language in D-3. I agree it is
9 redundant of D-2. However, the last sentence,
10 punishment by death, last three -- that --
11 where it begins on the third line before the
12 end. "Punishment by death is a unique
13 punishment. It is final. It is irrevocable.
14 You must render a decision based on the
15 evidence free from anger and prejudice."

16 I think I am entitled to a specific
17 instruction to that effect. I agree that the
18 entire first sentence/paragraph and the
19 contents of the introduction to that second
20 paragraph are redundant of 2, and we would
21 strike that and request that the language
22 that's in D-3, "Punishment by death is a unique
23 punishment. It is final. It is irrevocable.
24 You must render a decision based on the
25 evidence free from anger and prejudice" be
26 given as a separate instruction.

27 **BY MR. EVANS:** We would object to that,
28 Your Honor. I just don't think it's
29 appropriate.

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1 **BY THE COURT:** I think it's appropriate to
2 tell the jury that they can't base their
3 decision on anger and, you know, it's got to be
4 based on those -- so I'm going to basically --

5 **BY MR. EVANS:** Your Honor, that part I
6 don't object to. The part about trying to tell
7 the jury that it's irrevocable I don't think is
8 appropriate.

9 **BY THE COURT:** I'll strike everything
10 except "Punishment by death is a unique
11 punishment. You must render a decision based
12 on evidence free from anger and prejudice."

13 **BY MR. EVANS:** All right.

14 **BY THE COURT:** I'll take a magic marker
15 and mark through everything else.

16 **BY MRS. STEINER:** Thank you, Your Honor.

17 **BY THE COURT:** I'm going to give D-3 as
18 it's been amended.

19 I'll take up D-4 now.

20 **BY MRS. STEINER:** Yes, Your Honor. I
21 believe that this is simply a mirror of what --
22 anytime the jury is required to reach a
23 conclusion unanimously, beyond a reasonable
24 doubt, this is the presumption. But it's
25 statutory here. It's -- the effective
26 presumption of innocence with respect to
27 aggravating factors. I think it's parallel to
28 the same reason you gave that about he stands
29 innocent and that -- the presumption of

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1 innocence. And this presumption of lack of
2 aggravation until they have, through the
3 evidence, determined unanimously, beyond a
4 reasonable doubt, that death is the only
5 appropriate sentence.

6 **BY MR. EVANS:** We object. That is
7 completely inappropriate. Edwards v. State,
8 737 So. 2d 275 and Davis v. State, 660 So. 2nd
9 1228 both say that the Defendant is not
10 entitled to a separate sentencing instruction
11 stating that the sentencing jury is to presume
12 no aggravating circumstance exists at the
13 beginning of the sentencing phase.

14 **BY THE COURT:** I'll refuse D-4, and I'll
15 say that SS-5 and SS-1A, B, C and D have
16 already instructed the jury.

17 **BY MRS. STEINER:** Your Honor, the next
18 four mentions D-5A, D-5B, D-5C and D-5D are, as
19 I referred to earlier, the proposed
20 sentencing -- I call them the catch-all or
21 omnibus sentencing instruction that we would --
22 we believe better states the law than S-1. I
23 believe you've already rendered S-1.

24 Let me also say that we had previously
25 preserved our objection to the char- -- the
26 Edmond factors, the four factors the Defend- --
27 that Defendant had actually intended that the
28 killings take place and the Defendant
29 contemplated that lethal force would be

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1 employed. By having included this in what we
2 tendered, we do not waive the
3 previously-ruled-on objection because that is
4 not a constitutionally sufficient --

5 **BY THE COURT:** Well, I --

6 **BY MRS. STEINER:** -- to the previous
7 rulings -- our objection to the previous
8 rulings that this is a constitutionally
9 sufficient instruction on the Edmond v. Florida
10 factor. But apart from that, we would prefer
11 this that we -- we had left spaces for the
12 aggravating factors, circumstances that the
13 State -- that have been granted to the State,
14 but we would prefer this in lieu of S-1.

15 **BY THE COURT:** All right. Since the
16 Court's already granted SS-1A, B, C and D, I
17 think those were appropriate instructions. I
18 think, based on those instructions, the jury
19 will and has been properly instructed. So
20 those four is S- -- S5 and 6A -- I mean 5A, 5B,
21 5C and 5D are refused.

22 **BY MRS. STEINER:** Thank you, Your Honor.

23 D-6 -- I believe you've already granted
24 S-5, and this is redundant of that. We'll
25 withdraw that.

26 I didn't have the State's instructions
27 before I moved on that -- produced that.

28 D-7, I believe we are entitled in -- to
29 have it explained to the jury that the mere

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1 conviction is not an aggravating circumstance,
2 particularly in light of the fact that some of
3 the aggravating circumstances -- this one of
4 them is redundant in many fashions with the
5 elements of the underlying offense. And I
6 would note that our authority was actually
7 given in the 16th Judicial District in State v.
8 Kentese Hodges. And, Your Honor, that case has
9 heretofore withstood appellate review with
10 respect to the jury instructions.

11 **BY THE COURT:** Any objection to D-7?

12 **BY MR. EVANS:** Yes, Your Honor. I think
13 that the instructions are already given telling
14 them the only aggravating circumstances they
15 can consider, and I think for the Court to try
16 to just state what they can't consider would be
17 inappropriate. They've already been given the
18 instruction of what they have to consider, so
19 it would not only be repetitive but I think it
20 would be confusing because it tries to start
21 setting out what they can't consider.

22 **BY THE COURT:** I actually agree with the
23 State on this. They've already been told in
24 S-1A, 1B, 1C and 1D what the aggravating
25 factors are, and I don't think we can go
26 through a laundry list of things that aren't
27 aggravators and instruct them on all of those.
28 I think they've already been properly
29 instructed.

CONSIDERATION OF INSTRUCTIONS - JURY OUT

1 **BY MRS. STEINER:** Thank you, Your Honor.

2 D-8, I agree that the last sentence of D-8
3 is redundant of instructions previously granted
4 but I would like to -- plurals also -- I would
5 like the first two sentences given. I believe
6 that, again, to make it clear that the Court is
7 not instructing that they do exist. It's a
8 complex omnibus instruction. I think this
9 clarifies the Court's intent in giving.

10 **BY MR. EVANS:** I don't think there is any
11 confusion. The Court has already told them in
12 other instructions that they must unanimously
13 find those. That instruction clearly tells
14 them what they must do. And if none of those
15 exist, the death penalty may not be imposed.

16 **BY THE COURT:** I'm going to refuse D-8 as
17 being repetitive as they have already been
18 instructed.

19 **BY MRS. STEINER:** Thank you, Your Honor.

20 D-9, for the same reason, I think that
21 telling them after a long -- that they will
22 have heard four times, a complex instruction,
23 simply having this sentence read, "The
24 improbabilities are not sufficient to warrant a
25 finding of an aggravating circumstance, is
26 warranted to be granted for the -- on the basis
27 of the authority cited."

28 **BY THE COURT:** Response?

29 **BY MR. HILL:** It's repetitive.

CONSIDERATION OF INSTRUCTIONS - JURY OUT

1 **BY THE COURT:** It's repetitive. I agree.

2

3 **BY MR. HILL:** Repetitive as they've
4 already been told what they've got to find and
5 how to find it.

6 **BY THE COURT:** In each of the four
7 separate instructions, SS-1A, B, C and D, all
8 tell them the same thing so they will have
9 heard me read it four different times. So I'm
10 going to refuse D-9.

11 **BY MRS. STEINER:** D-10, Your Honor, I
12 think is required by the Constitution. And if
13 I missed this in the omnibus instruction or one
14 of the Court's instructions, I believe that
15 this is -- contains the standard, you know, the
16 instruction with respect to deliberation and
17 forcing the change on the aggravating
18 circumstances.

19 **BY MR. EVANS:** And, again, it is four
20 different times they are told that you must
21 unanimously find beyond a reasonable doubt that
22 one or more of the preceding aggravating
23 circumstances exist to return a death penalty.
24 If none of these aggravating circumstances are
25 found to exist, the death penalty may not be
26 imposed.

27 **BY MRS. STEINER:** Your Honor, actually let
28 me withdraw that one in favor of D-11. They
29 are redundant of each other, and I prefer to

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1 have the Court consider D-11; it is more
2 complete. The facts and that -- fully and
3 general deliberate but don't be forced to
4 change your mind language that was given in the
5 guilt phase.

6 **BY MR. EVANS:** In addition to being
7 repetitive, it is an attempt to define
8 reasonable doubt, which is inappropriate.

9 **BY MRS. STEINER:** It is stating that all
10 reasonable doubt must be removed. It is not to
11 try and redefine that.

12 **BY THE COURT:** I'm satisfied in S-1A, B, C
13 and D series of instructions they've already
14 been told that they have to unanimously find
15 the aggravating factors exist. They have to
16 find that beyond a reasonable doubt. They've
17 been instructed on it so D-11 will be refused.

18 **BY MR. EVANS:** I've never seen a
19 circumstantial evidence instruction for a
20 sentencing phase. We would object to D-12 as
21 being improper. I don't know that there is any
22 such thing as a circumstantial evidence
23 instruction for the sentencing phase.

24 **BY MRS. STEINER:** Your Honor, the
25 aggravating circumstances have to be proved
26 beyond a reasonable doubt in this instance, so
27 it was completely circumstantial with respect
28 to -- at least to one and three. Two is the
29 same as the crime and I suppose Odell Hallmon's

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1 testimony takes that out of the circumstantial
2 realm, but I believe aggravators one and three
3 are ac- -- Your Honor, articulated in saying
4 why you felt they were warranted, you infer
5 from a set of circumstances. Very frankly, I
6 think the timing in the guilt phase of when
7 actually Ms. Rigby was seen entering in the
8 store may suggest an alternative time and such.

9 But in any event, I think both the danger
10 to many people and the -- and the escape from
11 pecuniary gain was done -- I mean, the
12 escape -- the murder for escape by killing all
13 the witnesses is circumstantial here. There
14 was no testimony as to motive or escape, no
15 direct evidence. Mr. Hallmon did not testify
16 about his motivations in doing this, simply
17 that he admitted to killing them.

18 **BY THE COURT:** Response?

19 **BY MR. EVANS:** It's just inappropriate.
20 It is not -- there is no such thing as a
21 circumstantial case on sentencing that I'm
22 aware of. And in this case, there is plenty of
23 direct proof of all of the elements.

24 **BY THE COURT:** I'm -- I've never seen a
25 circumstantial evidence instruction on a
26 sentencing phase. I do not think it's
27 appropriate, and it's refused.

28 **BY MRS. STEINER:** Your Honor, D-13 is not
29 redundant of the prior instructions. It

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1 specifically states that the remedy for failing
2 to agree unanimously is to cease deliberations,
3 which I believe is what the law is. If they
4 cannot find an aggravating circumstance
5 unanimously, they then have no basis to further
6 deliberate sentence. I think this states the
7 law, the Mississippi law. I also think that
8 the Ring v. Arizona line of cases requires this
9 instruction.

10 **BY MR. EVANS:** I don't think it's anywhere
11 close to the law. I think the Court has
12 properly instructed the jury on their duties as
13 far as attempting to discuss the case among
14 themselves, and this is confusing and
15 inappropriate.

16 **BY THE COURT:** Well, they've already been
17 instructed they unanimously must find beyond a
18 reasonable doubt one of these aggravating
19 factors, and so I think D-13 is redundant.
20 It's already been given in other instructions.

21 **BY MRS. STEINER:** Your Honor, D-14 -- D-14
22 I think is further explanatory of SS-6 and
23 SS-1A.

24 **BY MR. EVANS:** It is.

25 **BY MRS. STEINER:** I -- I won't withdraw
26 it. I do not say that there's not some
27 overlap, but I would like a ruling on it. I
28 think it goes further than those and includes
29 essential matters required by Abdul-Kabir and

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1 Smith and Tennard v. Dretke.

2 **BY MR. EVANS:** It is repetitive and has
3 already been covered.

4 **BY THE COURT:** I'm refusing it for
5 those -- I agree. And I think again defense
6 counsel is --

7 **BY MRS. STEINER:** I'm sorry. I didn't
8 hear you.

9 **BY THE COURT:** I said I think to some
10 extent you prefaced the submission of it by
11 admitting that part of it was already there.

12 **BY MRS. STEINER:** I'm reviewing D-15 to
13 see. I'll withdraw D-15 in light of the prior
14 instructions.

15 Let me come back. This was actually
16 granted in a Hinds County case but -- well, but
17 we don't know what the other instructions were
18 so I'll withdraw that.

19 We'll withdraw D-16. I believe that the
20 Court's rulings on the mitigating factors in
21 SS-1 covers this.

22 **BY MR. EVANS:** Are you withdrawing 16?

23 **BY MRS. STEINER:** I am withdrawing 16,
24 although I would state that the cases cited,
25 Abdul-Kabir and Tennard v. Dretke, as well as
26 others, are cited in support of this
27 instruction and really basically on any others
28 that have argued with respect to mitigation.

29 D-17 is not redundant; it simply again

CONSIDERATION OF INSTRUCTIONS - JURY OUT

1 instructs the jury in that void to understand
2 what isn't an aggravating circumstance,
3 including a lack of mitigating circumstances.

4 **BY MR. EVANS:** And, again, I think it
5 would be inappropriate for the Court to try to
6 list and explain to the jury what is not
7 aggravators. It would be an -- no way that
8 that Court could do that in a complete list,
9 and they have already been instructed to the
10 only things that can be aggravating factors.

11 **BY THE COURT:** I'm going to refuse D-17,
12 because they have been advised and instructed
13 on what are aggravators. You know, if they
14 don't find one of those aggravators, then it
15 stops. There can't be the fact that there's
16 not a mitigator as an aggravating factor.

17 **BY MRS. STEINER:** D-18, and it may be by
18 the time the copies got to the Court, that's
19 very faint on the bottom. It's the one that
20 begins, "Before you may consider imposing."

21 **BY THE COURT:** It's fine. It's dark for
22 me.

23 **BY MRS. STEINER:** I believe that the --
24 this gives -- takes away some of the confusion
25 of brevity in S-1A if I, a lawyer that's been
26 practicing death penalty law exclusively for
27 the past five years actually was misreading
28 some of this language I'm weighing, I think
29 this jury need needs further and clearer

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1 elaboration on what the weighing process is and
2 I think this instruction gives it and we
3 request it.

4 **BY MR. EVANS:** This is a completely
5 inappropriate and untrue statement of law. The
6 law is clear that the mitigating -- if the
7 mitigating circumstances do not outweigh the
8 aggravating circumstances, and this is trying
9 to put it in the reverse.

10 **BY THE COURT:** I agree. That's totally
11 opposite from what the statute reads and the
12 law says.

13 **BY MRS. STEINER:** I think that the United
14 States Supreme Court decision in Marsh v. Texas
15 says -- makes it unconstitutional to
16 essentially put the burden on the Defendant to
17 prove mitigating circumstances outweigh, I
18 believe, a Mississippi statute to the extent
19 that it is construed in these instructions as
20 doing that. It does violate Marsh v. Kansas,
21 which dealt with an equipoise situation that
22 presumed that the issue was equipoise as
23 opposed to aggravators outweighing, and
24 therefore to the extent the Court's is
25 construing the Mississippi statute to refuse
26 this instruction, we would object. We would
27 object to that instruction.

28 **BY THE COURT:** The statute as it's existed
29 has been held constitutional, I guess, every

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1 time the death sentence is challenged but the
2 statue of Mississippi is what it is right now,
3 and based on the current law, I can't speculate
4 as to what somebody might say about the law at
5 some point in the future. But right now, D-18
6 is an inappropriate statement of the law.

7 **BY MRS. STEINER:** D-19, again, I believe
8 it's necessary. This does not tell them how --
9 how they -- how it is relative to aggravation
10 but it does clear up some of the confusion in
11 S-1A through D regarding what are they weighing
12 within the mitigating situation.

13 **BY MR. EVANS:** And I think as far as the
14 appropriate parts of this they have already
15 been given. Part of this seems to be some
16 attempt to try to explain to the jury how they
17 are to weigh the mitigators, and I don't think
18 that would be appropriate. But it's repetitive
19 as far as the -- what is appropriate in telling
20 them that it's not a mere counting process.

21 **BY THE COURT:** They have already been
22 instructed on how to look at mitigating and
23 aggravating, so D-19 is refused.

24 **BY MRS. STEINER:** Your Honor, on D-20, I
25 agree that the first sentence is redundant as
26 to prior instruction. We would ask that the
27 second paragraph, "You are allowed to give full
28 consideration and full effect to the mitigating
29 circumstances. Please be sure that your

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1 sentencing decision is reliable and that you
2 treat Mr. Flowers as a uniquely individual
3 human being in arriving at your sentencing
4 decision.

5 I believe that's what the Tennard v.
6 Dretke line of cases ominating most recently in
7 Abdul-Kabir and State v. Texas, that's what
8 they say. I think the Defendant is entitled
9 under the Sixth, Eighth and Fourteenth
10 Amendment to have this instruction granted.

11 **BY MR. EVANS:** I think it's completely
12 inappropriate for the Court to tell the jury to
13 be sure that what they do is reliable. I think
14 the Court has already properly instructed the
15 jury on what -- how to proceed.

16 **BY THE COURT:** They've been instructed and
17 also it says something about treating
18 Mr. Flowers as an unique individual. Well,
19 we've laid out all these mitigating factors
20 that in and of themselves are unique to
21 Mr. Flowers. So I think we've already, you
22 know, told them that they have to consider
23 things unique to him, because nobody else
24 has -- I mean, I can't say nobody ever has but
25 certainly all these mitigators are strictly
26 unique as to him as was all the testimony put
27 on in mitigation about him. So I don't think
28 D-20 is appropriate, and it's refused.

29 **BY MRS. STEINER:** Thank you. Your Honor,

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1 D-21 has to do with distinguishing victim
2 impact evidence. There are no specific
3 instructions heretofore on victim impact
4 evidence. May I have a moment to review D-21,
5 22, 23, 24, 25 and see if I can withdraw some,
6 I guess through 26? If I may have a minute or
7 two just to look through those and see if we
8 want to offer them.

9 **BY THE COURT:** Yes, ma'am.

10 **BY MRS. STEINER:** In that sequence, let me
11 withdraw D-23 -- I would withdraw D-22. And
12 then I'd -- D-26 and D-27 appear to be entirely
13 redundant of each other so I will withdraw
14 D-27. I would tender D-21. I believe there is
15 as of yet no explanation to the jury about
16 victim impact evidence and what it is, and this
17 is something that they have a very specific --
18 they do need to know what it is and isn't. And
19 D-21, I think, does that and further ties up
20 their absence of emotionality to particularly
21 the victim impact testimony.

22 **BY MR. EVANS:** As to 21, it's another
23 attempt to try to spell out what are not
24 aggravators. The Court has already said what
25 the aggravators are. And as for the last part
26 of it, victim impact is limited to a rational
27 inquiry as to the culpability of the Defendant?
28 Culpability was decided in the first phase.
29 This is not appropriate.

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1 **BY MRS. STEINER:** Well, as to the moral
2 culpability, just finding death penalty as
3 opposed to a sentence of life without parole.

4 **BY MR. EVANS:** That's not appropriate. I
5 don't think D-21 is appropriate, Your Honor.

6 **BY THE COURT:** I -- again, they have been
7 told what are aggravating factors. Victim
8 impact is not listed among those, and so I'm
9 going to refuse D-21.

10 **BY MRS. STEINER:** Well, I -- then I do
11 tender D-24. It does not introduce that
12 confusion. It does allude to the fact of
13 victim impact evidence. The Court, during voir
14 dire, had specifically talked about it in these
15 terms, and I think the members of the jury,
16 that they separate that emotionality
17 specifically from the victim impact testimony
18 is required, not only by the cases cited but
19 D-25, Branch v. State. If this D-24 were
20 granted, I would withdraw D-25.

21 **BY MR. EVANS:** We object to 24 as to just
22 not being proper. The Court has already
23 instructed the jury appropriately on what they
24 must consider, what they can consider, and I
25 don't think it would be necessary for the Court
26 to tell the jury that they must be rational.

27 **BY MRS. STEINER:** Your Honor, I -- Payne
28 is very specific; Branch is very specific.
29 Victim impact evidence is a very specific kind

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1 of evidence that I suppose it could be
2 mitigation but it certainly is not aggravation,
3 and it is a separate category of evidence. It
4 is permitted for limited purposes and is
5 specifically, by the Mississippi Supreme Court
6 in Branch and Payne, recognized as having to be
7 carefully controlled by the Court as to what
8 use they can or cannot make of it.

9 **BY THE COURT:** I think an instruction on
10 the victim impact needs to be -- and this is
11 the one I have so I'm going to grant D-24. And
12 I assume you withdraw D-25?

13 **BY MRS. STEINER:** Yes, Your Honor. I'll
14 withdraw D-26 as well. I think as a matter of
15 law I'm entitled to D-28.

16 **BY THE COURT:** I'll grant D-28.

17 **BY MR. EVANS:** Wait just a second, Your
18 Honor. I'm not --

19 **BY THE COURT:** D-28 says --

20 **BY MR. EVANS:** What happened to 26? Was
21 26 withdrawn?

22 **BY MRS. STEINER:** 26 and 27 were redundant
23 of each other, and 26 was withdrawn, yes.

24 **BY MR. EVANS:** Okay. I didn't have it
25 down. Excuse me one second. And the Court has
26 given 28?

27 **BY THE COURT:** Yes. It says they can't
28 draw any inference from the fact that he didn't
29 testify.

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1 **BY MR. EVANS:** Yes, sir. No objection.

2 **BY MRS. STEINER:** Your Honor, D-29 is
3 simply telling the judge that -- I'm sorry,
4 Your Honor, the jury exactly what Mississippi
5 statute says. It's a statement of the law, and
6 I think we're entitled to it.

7 **BY THE COURT:** Response.

8 **BY MR. HILL:** Give me just one minute,
9 Your Honor. I believe that such an instruction
10 is nothing more than a mercy instruction
11 resulting in a verdict based on whim and
12 caprice, Edwards v. State, 737 So. 2nd 275 and
13 317.

14 **BY MRS. STEINER:** Your Honor, I have a
15 mercy instruction in the Kansas v. Marsh, which
16 I -- to which this objection might be
17 appropriate. This is not a mercy instruction.
18 This is simply stating that nothing in the law
19 requires them to return a death sentence no
20 matter how many aggravating circumstances or
21 how few mitigating circumstances they find.
22 It's black letter Mississippi law, and I think
23 we're entitled to it. And it is not said
24 elsewhere in any of these instructions.

25 **BY MR. EVANS:** That's pretty much what
26 Edwards says, that you are not entitled to.

27 **BY MR. HILL:** And a lot of other cases as
28 well. That's exactly what it says about the
29 title.

CONSIDERATION OF INSTRUCTIONS - JURY OUT

1 **BY THE COURT:** Well, SS-1A, B, C and D
2 have already instructed on how they're to
3 consider and weigh the aggravating and
4 mitigating circumstances. This is not an
5 appropriate instruction, and it will be
6 refused.

7 **BY MRS. STEINER:** Thank you, Your Honor.
8 In light of that being refused, I would then
9 propose D-30. Again, I think the jury needs to
10 know that the sentence -- a sentence less than
11 death is appropriate regarding -- regardless of
12 what its weight is. A simple "may" in a two,
13 three-page instruction is simply not enough to
14 articulate that for the jury.

15 **BY MR. EVANS:** I think this has already
16 been covered in the previous instructions and
17 more appropriately.

18 **BY THE COURT:** I agree, and there's -- I
19 mean, there's nothing to read -- S-1A, B, C and
20 D are instructions that would in any way
21 indicate that they were supposed to add these
22 things up and then decide in that fashion. And
23 the Court believes those instructions properly
24 instruct the jury, and I believe the jury has
25 the mental capacity to understand that. And I
26 don't see D-30 to be appropriate so it's
27 refused.

28 **BY MRS. STEINER:** I also then propose
29 D-31, though I have no arguments for it

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1 distinguishing it from D-30. I think that D-30
2 should have been granted. And since it hasn't,
3 I would propose D-31.

4 **BY THE COURT:** Well, it will be refused
5 for the same reasons stated.

6 **BY MRS. STEINER:** D-32 is my residual
7 doubt instruction. I do not think there is
8 anything that prevents this from happening.
9 The Hanson v. State allowed -- expressly allows
10 arguments based on residual doubt. The Supreme
11 Court has recently reiterated in limiting the
12 right to create residual doubt in sentencing
13 only preceding in some -- Gustav v. Oregon,
14 reiterated that, where as here, the
15 sentencing -- the culpability jury is
16 considering sentence with the entire record
17 from the first phase before it that the jury
18 may consider it. Mississippi Supreme Court has
19 not heretofore required an instruction but our
20 sister State of Tennessee, which as Mississippi
21 does recognize the right to argue residual
22 doubt, has recognized the right to such an
23 instruction, and I believe that that is
24 persuasive precedence that this Court can and
25 should follow in granting this instruction.

26 **BY MR. EVANS:** There's a big difference in
27 being allowed to argue it and the Court
28 instructing on it. The cases are clear all the
29 way from Holland v. State on up that it is not

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1 proper to instruct the jury on residual doubt.

2 BY THE COURT: I agree. I mean -- and
3 just to instruct them that they might, you
4 know, the kind of deliberation, they might
5 think about something that might come to light
6 in the future that might possibly be
7 discovered. That's just not an appropriate
8 instruction, and it's refused.

9 BY MRS. STEINER: Thank you, Your Honor.

10 BY MR. CARTER: We can still argue it
11 though, right?

12 BY THE COURT: You certainly may argue it.

13 BY MRS. STEINER: D-33, again, this is
14 basically under Hanson v. Montana. I believe
15 we are entitled to this instruction on that,
16 especially since the aggravating circumstances
17 in this case are two of the three are
18 completely circumstantial and one is ident- --
19 has the identical elements to the capitalizing
20 factor.

21 BY MR. EVANS: And they're just not
22 entitled to a circumstantial evidence
23 instruction. This is improper.

24 BY THE COURT: I agree. This is more than
25 a circumstantial instruction that I -- you
26 know, this just -- you don't grant a
27 circumstantial instruction on the sentencing
28 phase. So it's not appropriate. And it's
29 refused.

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1 **BY MRS. STEINER:** D-34 is simply a
2 statement of the black letter law of the
3 Mississippi code section what happens.

4 **BY MR. EVANS:** Which we object to. The
5 Court has already properly instructed the jury
6 on what they should do as far as deliberations.

7 **BY THE COURT:** I'm going to refuse. I
8 mean, you know, the Court's -- I mean, right
9 now this would just tell the jury that they
10 could deliberate for a while, and I could call
11 them out and dismiss them if I, you know, got
12 tired of waiting on their deliberation, and
13 that's certainly not an appropriate statement
14 of the law so it's refused.

15 **BY MRS. STEINER:** Your Honor, D-35 is
16 redundant of the Rubenstein instruction that
17 was not heretofore granted, and we'll withdraw
18 it.

19 **BY THE COURT:** And D-36, y'all offered
20 another instruction earlier that I refused.

21 **BY MRS. STEINER:** I think that -- I was
22 going to say I think that this may be redundant
23 of an instruction you went over actually.

24 **BY THE COURT:** Or maybe --

25 **BY MRS. STEINER:** Please don't take that
26 one away.

27 **BY MR. EVANS:** Are you withdrawing it?

28 **BY MRS. STEINER:** Well, let me double
29 check. Well, I prefer it to the language of

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1 SS-4, but it does cover the same territory. I
2 move that it be replaced, SS-4 be re- -- it be
3 added to the language of SS-4.

4 **BY MR. EVANS:** It has already been
5 covered, and we would object to it.

6 **BY THE COURT:** I actually think SS-4 is a
7 better instruction.

8 **BY MRS. STEINER:** It may be, Your Honor.
9 I'm --

10 **BY THE COURT:** I'm going to refuse D-36.
11 I'll grant D-37. This is one that I usually
12 grant at the sentencing phase -- I mean, at the
13 guilt phase of any trial I preside over. But I
14 think it's appropriate at the sentencing phase
15 as well.

16 **BY MRS. STEINER:** Your Honor, I freely
17 concede that D-38 is a mercy instruction. I
18 believe we're entitled to it under Kansas v.
19 Marsh, but the Mississippi State Court has not
20 yet come to agree with that the decision.

21 **BY THE COURT:** I'm going to read it, but
22 based on the decisions that have been rendered
23 and that is -- the opinion been brought out
24 numerous times by the Mississippi Supreme
25 Court.

26 **BY MR. EVANS:** I think 39 is also a mercy
27 instruction. We would object to --

28 **BY MRS. STEINER:** Your Honor, I think you
29 have heretofore refused on the grounds of

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1 confusion and repetitiveness. This
2 statement -- I think this is a black letter law
3 statement. The law of this -- the statute as
4 it's been interpreted by the Courts in the
5 State of Mississippi and, of course, the
6 circuit from reviewing the sentencing in this
7 State, and I think we're entitled to it.

8 **BY THE COURT:** I'm going to refuse D-39.
9 The jury's already been instructed on what they
10 must find before they could return the death
11 penalty. It would be repetitive to SS-1A, B, C
12 and D's instructions.

13 **BY MR. EVANS:** D-40 is also a sympathy
14 instruction.

15 **BY THE COURT:** I agree. I mean, it's
16 almost -- it's not exact language, but it's's
17 very close to the sympathy instruction --

18 **BY MRS. STEINER:** Thank you, Your Honor.

19 **BY THE COURT:** -- I refused a few minutes
20 ago.

21 **BY MRS. STEINER:** If the authority --
22 there is Mississippi authority cited for the
23 fact that the jury may consider that Jordan and
24 King, and we submit that under Abdul-Kabir and
25 Smith, there should be an instruction guiding
26 them on doing that. I know you'll be happy to
27 know that was all the instructions we've
28 proposed for the Defendant.

29 **BY THE COURT:** Okay. I'm now going to

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1 read in the record the order in which they are
2 going to be read and given. And I'm going to
3 renumber them at the top. D-2 will be read as
4 Instruction No. 1. SS-2 will be Instruction 2.
5 SS-1A will be Instruction 3. SS-1B will be
6 Instruction 4. SS-1C will be Instruction No.
7 5. SS-1B will be Instruction 6. SS-5 will be
8 Instruction 7. SS-4 will be Instruction No. 8.
9 D-3 will be Instruction 9. D-24 will be
10 Instruction No. 10. D-37 will be Instruction
11 No. 11. D-28 will be Instruction 12. CS-1
12 will be instruction -- I'm sorry. SS-6 will be
13 Instruction No. 13. And CS-1 will be
14 Instruction No. 14.

15 **BY MRS. STEINER:** Your Honor, what is the
16 number for instruction nine? I didn't hear it.

17 **BY THE COURT:** What did I renumber it to?

18 **BY MRS. STEINER:** Yeah. What was it
19 before you numbered it No. 9?

20 **BY THE COURT:** D-3, that was -- I amended
21 it. That said, "Punishment by death is a
22 unique punishment, and you must render a
23 verdict on the --

24 **BY MRS. STEINER:** Yeah. I just didn't
25 know what number it was before you renumbered
26 it.

27 **BY THE COURT:** Well, that's it.

28 **BY MRS. STEINER:** I'm just trying to be
29 thorough.

CONSIDERATION OF INSTRUCTIONS - JURY OUT

1 **BY THE COURT:** What was your original
2 number?

3 **BY MRS. STEINER:** That was the original
4 number before I tendered it.

5 **BY THE COURT:** Your original, I believe,
6 was D-3.

7 **BY MRS. STEINER:** That's D-3. Okay. I
8 thought it was mine, but I didn't know if it
9 was. Or one of the Court's instructions.

10 **BY THE COURT:** Of course, a lot of it was
11 actually repetitive and --

12 **BY MRS. STEINER:** Your Honor, are we going
13 to take up the verdict form --

14 **BY THE COURT:** We can while she's doing
15 that. Is there any objection to the verdict
16 form?

17 **BY MRS. STEINER:** Subject to reserved
18 objection on anything preceding to the penalty
19 phase, this appears to be formally appropriate
20 given the Court's rulings.

21 **BY THE COURT:** The Court will attach these
22 verdict forms.

23 How do y'all want to argue?

24 **BY MR. CARTER:** Your Honor, with so much
25 hanging in the balance, about an hour.

26 **BY THE COURT:** I thought Mrs. Steiner was
27 doing all the argument based on what I was told
28 last night.

29 **BY MR. CARTER:** Well, that was the plan,

CONSIDERATION OF INSTRUCTIONS - JURY OUT

1 but I changed it last night. I'm the lead
2 attorney; I changed it.

3 BY THE COURT: I'll give each side an hour
4 if you want an hour.

5 BY MR. EVANS: If that's what they want.
6 I don't think we need that long to argue, but
7 if that's what they want, it'll be all right.

8 BY THE COURT: Are y'all breaking it up?

9 BY MR. CARTER: Yes, sir. We're going to
10 split it. I think I only need about 20
11 minutes. I'll try to be finished in 20
12 minutes.

13 BY MRS. STEINER: I'm still doing the
14 clinical part of the argument so I would have
15 40.

16 BY THE COURT: Which one you of -- I mean,
17 it doesn't matter but which is of you is
18 actually --

19 BY MRS. STEINER: I'm going to finally
20 close.

21 BY MR. CARTER: I'll go first.

22 BY THE COURT: And do you want me to warn
23 you after 20 minutes?

24 BY MR. CARTER: Yes, sir.

25 BY MRS. STEINER: At 20 minutes.

26 BY MR. CARTER: Well, do it like 17
27 minutes or whatever's easiest for you, 15 or
28 whatever.

29 BY THE COURT: Well, whatever you want is

CONSIDERATION OF INSTRUCTIONS - JURY OUT

1 what I'll do.

2 **BY MR. CARTER:** Well, do it after like 18.

3 **BY THE COURT:** Okay. So I'll just say
4 you've got two minutes.

5 **BY MR. CARTER:** Okay.

6 **BY MRS. STEINER:** I'll take what's left if
7 he finishes, and would like a five-minute
8 warning prior to that, whatever that winds up
9 being.

10 **BY THE COURT:** And I assume y'all are
11 splitting? I assume you would split the time?

12 **BY MR. EVANS:** Yeah, half and half will be
13 fine.

14 **BY THE COURT:** Do y'all want any warning?

15 **BY MR. HILL:** Ten for me, please.

16 **BY MR. EVANS:** Five if I get that far.
17 Okay.

18 **BY MRS. STEINER:** Your Honor, before we
19 bring the jury out, I would like to renew my
20 motion made for a mistrial with respect to the
21 testimony from the bailiff concerning how --
22 concerning, a, the specific juror who he did
23 acknowledge was at least allowed to attempt to
24 initiate a conversation with someone other than
25 himself or a fellow juror, regardless of
26 content. That would be a mistrial as to the
27 entire trial to set aside the verdict.

28 We would also renew, if that were not
29 granted, to quash and have a mistrial with

RENEWED MOTION FOR MISTRIAL - JURY OUT

1 respect to sentencing in this matter in light,
2 not only of those revelations but also, very
3 frankly, Your Honor, yesterday evening this
4 jury was permitted to take control of the
5 courtroom. As we were attempting to put
6 evidence, the jury was chattering among
7 themselves, laughing.

8 They have the right to their opinions if
9 they don't like what they're hearing, that
10 they're free to dislike it. But the jury was
11 not attentive. I think the late hour, I think
12 the fact that they knew supper was coming and
13 that the Court, despite our explaining that we
14 thought our witness would take longer than for
15 the pizzas to arrive, failing to simply seizing
16 that in the middle because the -- as it had to
17 do, having ruled that we had to start
18 proceeding while the jury knew they were
19 waiting for some food to arrive, that has
20 simply rendered this jury incapable of fairly
21 and maturely following the instructions of the
22 Court, and we would move for a mistrial.

23 **BY THE COURT:** The only thing I recall,
24 you were showing a videotape that I said we can
25 pause to allow them to eat. But you were bound
26 to show the rest of them when we came back so I
27 had to let them come back. But I don't see how
28 that's any grounds for a mistrial, and I do not
29 see any evidence of any jurors talking among

RENEWED MOTION FOR MISTRIAL - JURY OUT

1 themselves or visiting with each other during
2 the presentation of any evidence. And if you
3 had any problem with that, you should have
4 approached the Court and made that aware.

5 So I certainly do not think that to be
6 grounds, and the Court -- the jury did not take
7 control of the courtroom. If they did, they
8 probably would have been up here til two or
9 three o'clock this morning to be finished. But
10 after you addressed the problems that you were
11 having with blood pressure and diabetes and the
12 length of time I knew that it would take to go
13 through the instructions, the Court recessed
14 until today to have a fresh start for
15 everybody. So that's certainly -- the lateness
16 of the hour last night has nothing to do with
17 having arguments today and is not a ground for
18 mistrial.

19 The Court does not find that any member of
20 jury had any improper conduct with anyone. We
21 had state troopers up here the entire two weeks
22 we've been here that have been providing extra
23 security, that have been guarding the jury to
24 make sure that nobody was trying to approach
25 them. We -- a couple of -- we've had several
26 jurors who are smokers. The only statement I
27 heard was one juror said, "Maybe when this is
28 over, you can call and let my boyfriend know"
29 or something. But there was not even any

RENEWED MOTION FOR MISTRIAL - JURY OUT

1 response from the trooper, so there's been no
2 violation of sequestration rules that require
3 the jury to be sequestered and there's been no
4 prop -- improper influencing of any kind.
5 There's no indication that the jury has heard
6 anybody say a word or if they read a paper that
7 they've seen anything at all relating to this
8 case, so I don't think that's appropriate so
9 mistrial is denied.

10 **BY MRS. STEINER:** Thank you, Your Honor.

11 **BY THE COURT:** I have been told that the
12 jury is fed lunch every day, and they will
13 probably be here about 11:30 to 11:45. I think
14 it will take me 20 minutes to read these
15 instructions so my proposal is to read
16 instructions, let the jury recess and then
17 begin arguments immediately thereafter, after
18 they have eaten.

19 **BY MR. EVANS:** Yes, sir.

20 **BY MRS. STEINER:** I have no objections to
21 that.

22 (THE FOLLOWING PROCEEDINGS WERE HAD IN
23 OPEN COURT WITH THE JURY PRESENT, TO-WIT:)

24 **BY THE COURT:** The Court will come to
25 order.

26 Before I instruct you on specific matters
27 regarding this case, I will instruct you on the
28 general principals that will govern your
29 deliberations during this phase.

JURY INSTRUCTIONS GIVEN BY THE COURT

1 In explaining your duties, I must refer to
2 matters that you may never need to reach. This
3 is because there are four steps to the
4 consideration of appropriate punishment. Each
5 step is dependent upon the step that precedes
6 it. You may not reach one step unless you
7 reach a particular decision as to the prior
8 step. By explaining all four potential steps,
9 I do not want to imply or suggest that I
10 believe it is necessary or in any way proper
11 for you to reach any particular or final step
12 in the deliberative process in this case.

13 My instructions are not intended as an
14 express- -- as an expression of any opinion or
15 desire concerning the result you should reach.
16 It is my duty to offer as complete an
17 explanation as is possible concerning the legal
18 matters that must govern your deliberations.

19 Therefore, it is necessary for me to
20 instruct you on the entire process even though,
21 based on your consideration of the evidence and
22 considered deliberation, it may only be
23 necessary to go through one step in order to
24 resolve this case.

25 The Court instructs the jury that at this
26 phrase of the trial, conducted for the purpose
27 of determining the sentence to be imposed upon
28 the Defendant, the State and the Defendant may
29 elect to stand on the testimony and evidence

JURY INSTRUCTIONS GIVEN BY THE COURT

1 introduced in the first or guilt phase of this
2 trial or the parties may elect to introduce
3 additional testimony and evidence as to matters
4 relating to any of the aggravating or
5 mitigating circumstances.

6 In reaching your verdict, you may consider
7 the testimony and evidence presented during the
8 first phase of the trial together with the
9 testimony and evidence, if any, relating to any
10 of the aggravating or mitigating circumstances
11 presented for your consideration during the
12 second or sentencing phase of the trial.

13 You have found the Defendant guilty of the
14 crime of capital murder of Bertha Tardy. You
15 must now decide whether the Defendant will be
16 sentenced to death or life imprisonment without
17 parole.

18 In reaching your decision, you may
19 objectively consider the details and
20 circumstances for the offense for which the
21 Defendant was convicted and the character and
22 record of the Defendant himself. You should
23 consider and weigh any aggravating and
24 mitigating circumstances set forth later in
25 these instructions, but you are cautioned not
26 to be swayed by mere sentiment, conjecture,
27 sympathy, passion, prejudice, public opinion or
28 public feelings.

29 To return the death penalty in this case,

JURY INSTRUCTIONS GIVEN BY THE COURT

1 you must find -- first find -- first and
2 unanimously find from the evidence beyond a
3 reasonable doubt that one or more of the
4 following facts existed: One, that the
5 Defendant actually killed Bertha Tardy. Two,
6 that the Defendant attempted to kill Bertha
7 Tardy. Three, that the Defendant intended the
8 killing of Bertha Tardy take place; or, four,
9 that the Defendant contemplated that lethal
10 force would be employed.

11 Next, to return the death penalty, you
12 must find the mitigating circumstances, those
13 which tend to warrant the less-severe penalty
14 of life imprisonment without parole, do not
15 outweigh the aggravating circumstances which
16 tend to warrant the death penalty. Consider
17 only the following elements of aggravation in
18 determining whether the death penalty should be
19 imposed: One, the Defendant knowingly created
20 a great risk of death to many persons. Two,
21 that a capital offense was committed while the
22 Defendant was engaged in the commission of the
23 crime of armed robbery for pecuniary gain.
24 Three, the capital offense was committed for
25 the purpose of avoiding or preventing lawful
26 arrest or effectuating an escape from custody.

27 You must unanimously find beyond a
28 reasonable doubt that one or more of the
29 preceding aggravating circumstances exist in

JURY INSTRUCTIONS GIVEN BY THE COURT

1 this case to return the death penalty. If none
2 of these aggravating circumstances are found to
3 exist, the death penalty may not be imposed,
4 and you shall write the following verdict on
5 the sheet of paper or on the form provided:
6 We, the jury, find that the Defendant should be
7 sentenced to life in prison without parole. If
8 any one or more of the above aggravating
9 circumstances are found to exist beyond a
10 reasonable doubt, then you must consider
11 whether there are mitigating circumstances
12 which outweigh the aggravating circumstances.

13 Consider the following elements of
14 mitigation to determine whether the death
15 penalty should not be imposed. One, Curtis
16 Flowers has no history of prior criminal
17 activity. Two, Mr. Flowers has an excellent
18 prison record. Three, Mr. Flowers follows the
19 rules and regulations of the prison and is
20 willing to work and does as he is told. He
21 helps others in the prison and outside, and he
22 does not cause trouble for guards.

23 Four, if you sentence Mr. Flowers to life
24 in prison without parole, he will never be
25 released from the penitentiary. Five,
26 Mr. Flowers has a loving, supportive family and
27 many friends. Six, any and all factors
28 relative to background, life, environment and
29 emotional makeup of Curtis Flowers, which would

JURY INSTRUCTIONS GIVEN BY THE COURT

1 be mitigating circumstances or should be
2 considered mitigating circumstances. Any other
3 -- and, seven, any other circumstance or
4 commendations, circumstances of the crime or
5 the life and character of Mr. Flowers which you
6 believe should mitigate in favor of a sentence
7 of life in prison.

8 If you find from the evidence that one or
9 more of the preceding elements of mitigation
10 exists, you must consider whether it or they
11 outweigh or outweighs or overcome or overcomes
12 any aggravating circumstances you previously
13 found.

14 In the event that you find that the
15 mitigating circumstances do not outweigh or
16 overcome the aggravating circumstances, you may
17 impose the death sentence. Should you find the
18 mitigating circumstances outweigh or overcome
19 the aggravating circumstances, you shall not
20 impose this death sentence.

21 The verdict, you -- the verdict you return
22 must be written on a separate sheet of paper
23 signed by the foreman. Your verdict shall be
24 written in one of following forms on the forms
25 provided by the Court: One, we the jury,
26 unanimously find from the evidence beyond a
27 reasonable doubt the following facts existed at
28 the time of the commission of the capital
29 murder of Bertha Tardy, and then you write in

JURY INSTRUCTIONS GIVEN BY THE COURT

1 those facts that you find from section eight.

2 Next, you would write we, the jury,
3 unanimously find that the aggravating
4 circumstances are, and you list or itemize
5 those from the section in section B. And then
6 you say that exists beyond a reasonable doubt
7 and is sufficient to impose the death penalty.
8 If there is insufficient mitigating
9 circumstances to outweigh the aggravating
10 circumstances, we further find unanimously that
11 the Defendant should suffer death and that
12 would then need to be signed by the foreman of
13 the jury.

14 However, secondly, you could return a
15 verdict saying, We, the jury, find the
16 Defendant should be sentenced to life in prison
17 without parole. Or third -- and that would be
18 sign by the foreman. Or three, We, the jury,
19 are unable to agree unanimously on punishment,
20 and that would be signed by the foreman of the
21 jury.

22 You have found the Defendant guilty of the
23 crime of the capital murder of Robert Golden.
24 You must now decide whether the Defendant is to
25 be sentenced to death or life in prison without
26 parole. In reaching your decision, you may
27 objectively consider the detailed circumstances
28 of the offense for which the Defendant was
29 convicted and the character and record of the

JURY INSTRUCTIONS GIVEN BY THE COURT

1 Defendant himself. You should consider and
2 weigh any aggravating or mitigating
3 circumstances as set forth later in these --
4 this instruction, but you're cautioned not to
5 be swayed by mere sentiment, conjecture,
6 sympathy, passion, prejudice, public opinion or
7 public feelings.

8 To return the death penalty in this case,
9 you must first unanimously find from the
10 evidence beyond a reasonable doubt that one or
11 more of the following facts existed: That the
12 Defendant actually killed Robert Golden, that
13 the Defendant attempted to kill Robert Golden,
14 that the Defendant intended the killing of
15 Robert Golden take place or that the Defendant
16 contemplated that lethal force would be
17 employed.

18 Next, to return the death penalty, you
19 must find the mitigating circumstances, those
20 which tend to warrant the less-severe penalty
21 of life in prison without parole, do not
22 outweigh the aggravating circumstances which
23 tend to warrant the death penalty.

24 Consider only the following elements of
25 aggravation in determining whether the death
26 penalty should be imposed: One, the Defendant
27 knowingly created a great risk of death to many
28 persons. Two, the capital offenses
29 were committed while the Defendant was engaged

JURY INSTRUCTIONS GIVEN BY THE COURT

1 in the commission of the crime of armed robbery
2 for pecuniary gain. Three, the capital
3 offenses were committed for the purpose of
4 avoiding or preventing lawful arrest or
5 effectuation an escape from custody.

6 You must unanimously find beyond a
7 reasonable doubt that one or more of the
8 preceding aggravating circumstances exist in
9 this case to return the death penalty. If none
10 of these aggravating circumstances are found to
11 exist, the death penalty may not be imposed,
12 and you shall write the following verdict on
13 the sheet of paper: We, the jury, find the
14 Defendant should be sentenced to life in prison
15 without parole.

16 If any one or more of the above
17 aggravating circumstances are found to exist
18 beyond a reasonable doubt, then you must
19 consider whether there are mitigating
20 circumstances which outweigh the aggravating
21 circumstances. Consider the following elements
22 of mitigation in determining whether the
23 Defendant -- whether the death penalty should
24 be imposed: One, Curtis Flowers has no history
25 of prior criminal activity. Two, Mr. Flowers
26 has an excellent prison record. Three,
27 Mr. Flowers follows the rules and regulations
28 of the prison. He is willing to work and does
29 as he is told. He helps others in the prison

JURY INSTRUCTIONS GIVEN BY THE COURT

1 and outside. He does not cause trouble for
2 guards. If you sentence Mr. Flowers to life in
3 prison without parole, he will never be
4 released from the penitentiary. That's number
5 four.

6 Number five, Mr. Flowers has a loving,
7 supportive family and many friends. Number
8 six, any and all factors relative to
9 background, life, environment and emotional
10 makeup of Curtis Flowers, which would be
11 mitigating circumstances or could be considered
12 mitigating circumstances.

13 Seven, any other circumstance or
14 combination of circumstances of the crime or
15 the life and character of Mr. Flowers which you
16 believe should mitigate in favor of the
17 sentence of life in prison.

18 If you find from the evidence that one or
19 more of the preceding elements of mitigation
20 exists, then you must consider whether it or
21 they outweigh or outweighs or overcome or
22 overcomes any aggravating circumstances you
23 previously found. In the event that you find
24 that the mitigating circumstances do not
25 outweigh or overcome the aggravating
26 circumstances, you may impose the death
27 penalty.

28 Should you find that the mitigating
29 circumstances outweigh or overcome the

JURY INSTRUCTIONS GIVEN BY THE COURT

1 aggravating circumstances, you shall not impose
2 the death sentence.

3 The verdict should be written on a
4 separate sheet of paper, signed by the foreman.
5 Your verdict should be written in one of the
6 following forms: We, the jury, unanimously
7 find from the evidence beyond a reasonable
8 doubt the following facts existed at the time
9 of the commission of the capital murder of
10 Robert Golden, and then you list or itemize all
11 facts found, if any, from the list under
12 section A of this instruction which you
13 unanimously agree exist in this case beyond a
14 reasonable doubt.

15 And then the next would read, We, the
16 jury, unanimously find that the aggravating
17 circumstances are, and then you list or itemize
18 all of the aggravating circumstances presented
19 in Section B of this instruction, which you
20 unanimously agree exist in this case as to
21 Robert Golden beyond a reasonable doubt.

22 If you find that it exists beyond a
23 reasonable doubt and it is sufficient to impose
24 the death penalty and there are insufficient
25 mitigating circumstances to outweigh the
26 aggravating circumstances and would further
27 find unanimously that the Defendant should
28 suffer death, then that would be signed by the
29 foreman of the jury.

JURY INSTRUCTIONS GIVEN BY THE COURT

1 Number two, We, the jury, find the
2 Defendant should be sentenced to life in prison
3 without parole and that would need to be signed
4 by the foreman. Or, number three, We, the
5 jury, are unable to unanimously -- to agree
6 unanimously on punishment and that would be
7 signed by the foreman.

8 You have found the Defendant guilty of the
9 crime of capital murder of Carmen Rigby. You
10 must now consider whether the Defendant will be
11 sentenced to death or life in prison without
12 parole. In reaching your decision, you may
13 objectively consider the detailed circumstances
14 of the offense for which the Defendant was
15 convicted and the character and record of the
16 Defendant himself. You should consider and
17 weigh any aggravating and mitigating
18 circumstances as set forth later in the
19 instructions but you're cautioned not to be
20 swayed by mere sentiment, conjecture, sympathy,
21 passion, prejudice, public opinion or public
22 feelings.

23 To return the death penalty in this case,
24 you must first unanimously find from the
25 evidence beyond a reasonable doubt that one or
26 more of the following facts existed: That the
27 Defendant actually killed Carmen Rigby. That
28 the Defendant attempted to kill Carmen Rigby.
29 That the Defendant intended the killing of

JURY INSTRUCTIONS GIVEN BY THE COURT

1 Carmen Rigby take place or that the Defendant
2 contemplated that lethal force would be
3 employed.

4 Next, to return the death penalty, you
5 must find mitigating circumstances, those which
6 tend to warrant the less-severe penalty of life
7 in prison without parole, do not outweigh the
8 aggravating circumstances which tend to warrant
9 the death penalty. Consider only the following
10 elements of aggravation in determining whether
11 the death penalty should be imposed: The death
12 penalty (sic) knowingly created a great risk of
13 death to many persons. The capital offenses
14 were committed while the Defendant was engaged
15 in the commission of the crime of armed robbery
16 for pecuniary gain. The capital offenses were
17 committed for the purpose of avoiding or
18 preventing lawful arrest or effectuating an
19 escape from custody.

20 You must unanimously find beyond a
21 reasonable doubt that one or more of the
22 preceding aggravating circumstances exist in
23 this case to return the death penalty. If none
24 of these aggravating circumstances are found to
25 exist, the death penalty may not be imposed,
26 and you shall write the following verdict on
27 the sheet of paper: We, the jury, find the
28 Defendant should be sentenced to life
29 imprisonment without parole.

JURY INSTRUCTIONS GIVEN BY THE COURT

1 If any one or more of the above
2 aggravating circumstances are found to exist
3 beyond a reasonable doubt, then you must
4 consider whether there are mitigating
5 circumstances which outweigh the aggravating
6 circumstances.

7 Consider the following elements of
8 mitigation in determining whether the death
9 penalty should not be imposed: Curtis Flowers
10 has no history of prior criminal activity.
11 Mr. Flowers has an excellent prison record.
12 Mr. Flowers follows the rules and regulations
13 of the prison, is willing to work and does as
14 he is told. He helps others in prison and
15 outside, and he does not cause trouble for
16 guards.

17 If you sentence Mr. Flowers to life in
18 prison without parole, he will never be
19 released from the penitentiary. Mr. Flowers
20 has a loving, supportive family and many
21 friends. Any and all factors relative to the
22 background, life, environment and emotional
23 makeup of Curtis Flowers which would be
24 mitigating circumstances or could be considered
25 mitigating circumstances and any other
26 circumstances or combination of circumstances
27 of the crime or the life and character of
28 Mr. Flowers which you believe should mitigate
29 in the favor of the sentence of life

JURY INSTRUCTIONS GIVEN BY THE COURT

1 imprisonment.

2 If you find from the evidence that one or
3 more of the preceding elements of mitigation
4 exist, then you must consider whether it or the
5 value outweighs or overcomes any aggravating
6 circumstances you previously found. In the
7 event that you find that the mitigating
8 circumstances do not outweigh or overcome the
9 aggravating circumstances, you may impose the
10 death sentence. Should you find that the
11 mitigating circumstances outweigh or overcome
12 the aggravating circumstances, you shall not
13 impose the death sentence.

14 The verdict should -- must be written on a
15 separate sheet of paper and signed by the
16 foreman. Your verdict should be written in one
17 of the following forms: We, the jury,
18 unanimously find from the evidence beyond a
19 reasonable doubt that the following facts
20 existed at the time of the commission of
21 capital murder of Carmen Rigby, and you list or
22 itemize all facts found, if any, from the list
23 under Section A of this instruction which you
24 unanimously agree exist in this case beyond a
25 reasonable doubt.

26 And then it would read next, We, the jury,
27 unanimously find that the aggravating
28 circumstances are, and then you list or itemize
29 all of the aggravating circumstances presented

JURY INSTRUCTIONS GIVEN BY THE COURT

1 in Section B of this instruction, which you
2 unanimously agree exist in this case as to
3 Carmen Rigby beyond a reasonable doubt.

4 And then it would continue to read,
5 "Exists beyond a reasonable doubt and it is
6 sufficient to impose the death penalty and
7 there are insufficient mitigating circumstances
8 to outweigh the aggravating circumstances, and
9 we further find unanimously that the Defendant
10 should suffer death," and then that would be
11 signed by the foreman of the jury.

12 Next, the verdict would be, We, the jury,
13 find the Defendant should be sentenced to life
14 in prison without parole, and that would be
15 signed by the foreman. Or it could read, We,
16 the jury, are unable to agree unanimously on
17 punishment and that would be signed by the
18 foreman.

19 You have found the Defendant guilty of the
20 crime of capital murder of Derrick Stewart.
21 You must now decide whether the Defendant will
22 be sentenced to death or life imprisonment
23 without parole. In reaching your decision, you
24 may objectively consider the detailed
25 circumstances of the offense for which the
26 Defendant was convicted and the character and
27 record of the Defendant himself.

28 You must consider and weigh any
29 aggravating and mitigating circumstances as set

JURY INSTRUCTIONS GIVEN BY THE COURT

1 forth later in these instructions, but you're
2 cautioned not to be swayed by mere sentiment,
3 conjecture, sympathy, passion, prejudice,
4 public opinion or public feelings.

5 To return the death penalty in this case,
6 you must first unanimously find from the
7 evidence beyond a reasonable doubt that one of
8 more of the following facts exist: One, that
9 the Defendant actually killed Derrick Stewart.
10 Two, that the Defendant attempted to kill
11 Derrick Stewart. Three, that the Defendant
12 intended the killing of Derrick Stewart take
13 place. Or, four, that the Defendant
14 contemplated that lethal force would be
15 employed.

16 Next, to return the death penalty, you
17 must find the mitigating circumstances, those
18 which tend to warrant the less severe penalty
19 of life imprisonment without parole, do not
20 outweigh the aggravating circumstances which
21 tend to warrant the death penalty.

22 Consider only the following elements of
23 aggravation to determine whether the death
24 penalty should be imposed: One, the Defendant
25 knowingly created a great risk of death to many
26 persons. Two, the capital offenses were
27 committed while the Defendant was engaged in
28 the commission of the crime of armed robbery
29 for pecuniary gain. Three, the capital

JURY INSTRUCTIONS GIVEN BY THE COURT

1 offenses were committed for the purpose of
2 avoiding or preventing a lawful arrest or
3 effectuating an escape from custody. You must
4 unanimously find beyond a reasonable doubt that
5 one or more of the preceding aggravating
6 circumstances exist in this case to return the
7 death penalty.

8 If none of these aggravating circumstances
9 are found to exist, the death penalty may not
10 be imposed, and you shall write the following
11 verdict on a sheet of paper: We, the jury,
12 find the Defendant should be sentenced to life
13 in prison without parole. If any one or more
14 of the above aggravating circumstances are
15 found to exist beyond a reasonable doubt, then
16 you must consider whether there are mitigating
17 circumstances which outweigh the aggravating
18 circumstances.

19 Consider the following elements of
20 mitigation in determining whether the death
21 penalty should not be imposed: One, Curtis
22 Flowers has no history of prior criminal
23 activity. Two, Mr. Flowers has an excellent
24 prison record. Three, Mr. Flowers follows the
25 rules and regulations of the prison, is willing
26 to work and does as he is told, and he helps
27 others in the prison and outside, and he has
28 not caused trouble for guards. Four, if you
29 sentence Mr. Flowers to life in prison without

JURY INSTRUCTIONS GIVEN BY THE COURT

1 parole, he will never be released from the
2 penitentiary. Five, Mr. Flowers has a loving,
3 supportive family and many friends. Six, any
4 and all factors relative to the background,
5 life, environment and emotional makeup of
6 Curtis Flowers which would be mitigating
7 circumstances or could be considered mitigating
8 circumstances. Any other circumstance or
9 combination of circumstances of the crime or
10 life and character of Mr. Flowers which you
11 believe should mitigate in favor of a sentence
12 of life in prison.

13 If you find from the evidence that one or
14 more of the preceding elements of mitigation
15 exist, then you must consider whether it or
16 they outweigh or overcome any mitigating
17 circumstances you previously found. In the
18 event that you find that the mitigating
19 circumstances do not outweigh or overcome the
20 aggravating circumstances, you may impose the
21 death sentence. Should you find that the
22 mitigating circumstances outweigh or overcome
23 the aggravating circumstances, you shall not
24 impose the death penalty.

25 The verdict you return must be written on
26 a separate sheet of paper signed by the
27 foreman. Your verdict should be in one --
28 written in one of the following forms: One,
29 We, the jury, unanimously find from the

JURY INSTRUCTIONS GIVEN BY THE COURT

1 evidence beyond a reasonable doubt that the
2 following facts existed at the time of the
3 commission of the capital murder of Derrick
4 Stewart, and then you list or itemize all facts
5 found, if any, in the list under Section A of
6 this instruction which you unanimously agree
7 exist in this case beyond a reasonable doubt.

8 And then you would go on, Next, We, the
9 jury, unanimously find that the aggravating
10 circumstances of, and list or itemize all the
11 aggravating circumstances presented in Section
12 B of this instruction which you unanimously
13 agree exist in this case as to Derrick Stewart
14 beyond a reasonable doubt and is sufficient to
15 overcome -- and is sufficient to impose the
16 death penalty, and there are insufficient
17 mitigating circumstances to outweigh the
18 aggravating circumstances, and we further find
19 unanimously that the Defendant should suffer
20 death. And that would be signed by the
21 foreman.

22 Or, two, you could return this as a
23 verdict: We, the jury, find the Defendant
24 should be sentenced to life in prison without
25 parole, that to be signed by the foreman of the
26 jury. Or, three, We, the jury, are unable to
27 agree unanimously on punishment, and that would
28 be signed by the foreman of the jury.

29 The Court instructs the jury that I

JURY INSTRUCTIONS GIVEN BY THE COURT

1 previously read to you the three aggravating
2 circumstances which the law permits you to
3 consider in this case. These are the only the
4 aggravating circumstances you may consider.
5 However, before you may consider these factors
6 or any one or more of them, you must first
7 unanimously find that the fact or factors you
8 consider are established by the evidence beyond
9 a reasonable doubt.

10 The Court instructs the jury that it must
11 be emphasized the procedures that you must
12 follow is not a mere accounting process of a
13 certain number of aggravating circumstances
14 versus the number of mitigating circumstances.
15 Rather, you must apply your reason and judgment
16 as to whether this situation calls for life in
17 prison or whether it requires the imposition of
18 death in light of the totality of the
19 circumstances present.

20 Punishment by death is a unique
21 punishment. You must render a decision based
22 on the evidence free from anger and prejudice.
23 Even though the victim impact evidence has been
24 allowed, you must face your obligations soberly
25 and rationally, and you may not impose the
26 ultimate sanction as a result of an irrational,
27 purely subjective response to emotional
28 evidence and argument.

29 Each of you must decide the sentence for

JURY INSTRUCTIONS GIVEN BY THE COURT

1 yourself. In the course of your deliberations,
2 do not hesitate to examine your own views and
3 change your opinion if you're convinced it is
4 wrong, but do not surrender your honest
5 convictions as to what you feel the sentence in
6 this case should be just because of the opinion
7 of your fellow jurors or just so that you can
8 all agree on a verdict.

9 The law does not compel Mr. Flowers to
10 testify at the penalty phase. No adverse
11 inference of any kind may be drawn from this
12 decision.

13 The Court instructs the jury that you, as
14 individual jurors, must consider mitigating
15 circumstances. Therefore, even if all 11
16 jurors find that a certain mitigating
17 circumstance does not exist, if you believe it
18 does exist, you must find that mitigating
19 circumstance and weigh it in your further
20 deliberations.

21 Upon retiring to the jury room, you will
22 need to select one from among your number to
23 act as a foreman, who may be a man or a woman.
24 The foreman will preside over your
25 deliberations and will be your spokesperson
26 before the Court.

27 If it becomes necessary during your
28 deliberations to communicate with the Court,
29 please write out your message or question and

JURY INSTRUCTIONS GIVEN BY THE COURT

1 pass the note to the bailiff. No member of the
2 jury would ever attempt to communicate with the
3 Court by any means other than in writing, and
4 the Court will never communicate with any
5 member of the jury on any subject touching on
6 the merits of the case other than in writing or
7 orally here in open Court.

8 If you unanimously reach a verdict as to
9 the sentence or in the event you are unable to
10 unanimously agree on a sentence, the decision
11 of the jury shall be written and the signature
12 of the foreman affixed on the sentencing forms
13 provided by the Court.

14 I was told, ladies and gentlemen, that
15 lunch is probably here for you now, rather
16 than -- and closing arguments are going to take
17 a while, so we'll recess and allow you to have
18 lunch and then resume about 12:45. And the
19 Court will stand in recess.

20 And, ladies and gentlemen, like I've told
21 you, don't talk about it or consider any type
22 sentence until you've heard closing arguments
23 and are told to begin your deliberations.

24 (FOLLOWING THE LUNCH RECESS,

25 PROCEEDINGS CONTINUED IN OPEN COURT WITH
26 ALL PARTIES, INCLUDING THE JURY, PRESENT,
27 TO-WIT:)

28 **BY THE COURT:** The Court will come to
29 order. Ladies and gentlemen, we're now going

CLOSING ARGUMENT - STATE

1 to hear closing statements, first starting with
2 the State.

3 **BY MR. HILL:** Ladies and gentlemen of the
4 jury, make no mistake about it. The State
5 believes that the only proper penalty in this
6 case is the death penalty. And you say, why is
7 that? It's not because of some personal animus
8 between me or Mr. Evans or any officer or
9 anything like that against Curtis Flowers. I
10 don't know that I've ever spoken to him. It's
11 because of what he's done.

12 You have found the Defendant guilty of the
13 capital murder of four innocent people. He
14 took the life of each and every one of those
15 people with extreme prejudice, extreme
16 premeditation, extreme deliberation. All
17 you've got to do is imagine in your mind him
18 going that morning and getting that firearm and
19 going back to that store.

20 He went to get that gun for a reason. He
21 had to walk all the way down to Angelica and
22 get that gun and walk all the way home. Walk
23 all the way back with that gun on him til he
24 got to Tardy's. And when he went in there --
25 those are not the shootings. They are not just
26 shooting them in the leg, in the arm, what
27 about those.

28 You've had occasion to look at the autopsy
29 reports and the drawings, seen the pictures.

CLOSING ARGUMENT - STATE

1 Every one without fail, every one of those
2 shots, was a head shot. Every one of them was
3 lethal.

4 I admit, there is one interesting thing
5 about shooting Robert Golden; he was shot
6 twice. He was shot point blank in the side of
7 the head, up close, gunpowder residue on the
8 side of his face. I don't know which was
9 first, whether he was shot in the top of the
10 back of the head first and then finished off by
11 shoving the gun up to his head and pulling the
12 trigger or vice versa. I don't know.

13 **BY MRS. STEINER:** If the Court please. I
14 would object. I believe this is argument going
15 to an aggravator that the State has not -- that
16 the jury has not been instructed with respect
17 to.

18 **BY THE COURT:** Overruled.

19 **BY MR. HILL:** As I was going to say, I
20 don't know if Dr. Hayne even knew which one of
21 those shots was first, but the point is that
22 the shots were with premeditation, with
23 planning.

24 Another factor is when he shot the first
25 person, he then had to shoot another person.
26 And if they were present in the store when he
27 shot the first one, chances are great that the
28 second one, third one, fourth one knew that the
29 first one was shot before they died because

CLOSING ARGUMENT - STATE

1 they were all right there in the same place
2 basically.

3 **BY MRS. STEINER:** Same objection, Your
4 Honor.

5 **BY THE COURT:** Overruled.

6 **BY MR. HILL:** The death penalty is only
7 given in Mississippi if someone has been found
8 guilty of capital murder, at least in the
9 current state of our law in recent legal
10 history of our law. Capital murder is the only
11 crime for which you can receive the death
12 penalty. And why is that? The reason for it
13 is because it is the ultimate crime. That
14 means you have been engaged in -- as in this
15 case, you've been engaged in a robbery and then
16 you kill somebody while you're committing
17 another crime. So it's the ultimate crime, and
18 it deserves the ultimate punishment.

19 In this case, we are not talking about one
20 capital murder. You know, the defense is going
21 to get up here and argue that Mr. Flowers
22 should be given a life sentence. And if we
23 were talking about one capital murder,
24 depending on the circumstances, we would
25 plausibly entertain such a notion.

26 But what about two capital murders? Does
27 that up the stakes any? What about three?

28 Finally, what do we, as citizens of our
29 community, do when we have somebody who kills

CLOSING ARGUMENT - STATE

1 four people? And we've got to seriously,
2 seriously start considering what the
3 appropriate punishment is and whether or not
4 the death penalty is the only punishment that
5 is appropriate.

6 Now, the Court has read you a bunch of
7 instructions. You've got a lot of those
8 instructions. I want to call one set of
9 instructions to your attention because this is
10 one of the sets of instruction that you're
11 going to need in analyzing what to do; in other
12 words, as you set out to decide what penalty in
13 this case would be appropriate.

14 You are given a formula. These
15 instructions, SS-1 -- which is this little
16 number right here at the bottom -- SS-1 is a
17 sentencing instruction that tells you how to go
18 about the procedure. You've got -- and
19 they're -- I will tell you this: There's one
20 of these for each of the four victims. You'll
21 find the victim's names up here on the first
22 line or two. This one I'm holding up is the
23 one that says, "You have found the Defendant
24 guilty of the crime of capital murder of Bertha
25 Tardy." But there will be one for Carmen
26 Rigby, one for Robert Golden, one for Derrick
27 Stewart. Each one of them will have about a
28 three-page instruction, and they're all the
29 same except for the name of the victim.

CLOSING ARGUMENT - STATE

1 So the process for each one will be the
2 same, but you've got four decisions to make.
3 You have to make a separate decision on the
4 penalty for each of the four victims. And it
5 tells you -- on the first page, there is a set
6 of four things that you have to find in order
7 to move to the next step in the sentencing
8 process. It says, "To return the death penalty
9 in this case with regard to Ms. Tardy, you must
10 first unanimously find from the evidence beyond
11 a reasonable doubt that one or more of the
12 following facts existed," and then there's a
13 list of those.

14 Now, these are not difficult, but you've
15 got to go through the process. It says that
16 the Defendant actually killed Bertha Tardy.
17 Well, we already know that, don't we? He shot
18 her in the head. So, yes, he killed Bertha; he
19 actually killed her. He shot her, and he
20 killed her.

21 The second one is that he attempted to
22 kill Bertha Tardy. The answer to that in our
23 view is, yes, he not only attempted, he
24 attempted and was successful and killed
25 Ms. Tardy. So his attempt was successful as he
26 murdered Ms. Tardy by shooting her in the head.

27 The third one is that the Defendant
28 intended the killing of Bert Tardy to take
29 place. Again, I think it goes back to the fact

CLOSING ARGUMENT - STATE

1 that all of these shots are to the head. This
2 is not willy-nilly shooting a gun around. She
3 was shot in the head.

4 And the evidence that he intended to kill
5 is that when you take -- I think it's pretty
6 obvious from what we have here in this case
7 when we go in a store and we see four people
8 killed, we know that that gun is a lethal
9 deadly weapon. I mean, it will do its job.
10 And it did, in fact, do the work of the
11 Defendant that day. It killed Ms. Tardy.

12 The next thing is that the killing was
13 intended; he intended the killing of Bertha
14 Tardy. So again, that is an easy, I think,
15 thing to see.

16 And finally, the Defendant contemplated
17 that lethal force would be used. Again, that
18 is a true statement. So what I'm telling you
19 is, all four of those are true statements. So
20 we believe that in your deliberations when you
21 get back there and you're working through the
22 form there on each of the four victims that you
23 would find -- and you'll have a place.
24 Mr. Evans will go over with you how to report
25 and write that up, the four things for each of
26 the victims are, the Defendant actually killed,
27 he attempted the killing, he intended that the
28 killing take place, and he contemplated the use
29 of lethal force.

CLOSING ARGUMENT - STATE

1 Now, when you fire a gun at somebody's
2 head, you know before you pull the trigger that
3 that is lethal force. You know it is. You
4 know, so -- you've got those four things. The
5 point I'm making here is in your deliberations,
6 you go over those four steps and make a finding
7 of those four things.

8 Now, I'm only suggesting it because I
9 believe that the evidence in this case
10 overwhelmingly proved beyond any doubt
11 whatsoever, beyond any question that the
12 Defendant did those four things.

13 Now, the next thing -- the next page, the
14 very next page at the top of the page says
15 this, "Next, to return the death penalty, you
16 must find the mitigating circumstances, those
17 which tend to warrant the less-severe penalty
18 of life imprisonment without parole, do not
19 outweigh the aggravating circumstances which
20 tend to warrant the death penalty." There are
21 those aggravating circumstances or elements of
22 aggravation -- or what I call for short,
23 aggravators -- those aggravators are listed
24 here at the top of the page right up there,
25 consider the following elements of aggravation,
26 and then one, two, three. You have three
27 listed elements of aggravation.

28 The first one is that the Defendant
29 created a great risk of death to many people.

CLOSING ARGUMENT - STATE

1 Not one, not two, not three, but four. Did he
2 create a risk of death when he pointed that
3 pistol at their head and fired? Yes, he did.
4 The risk came about, didn't it? The risk of
5 ending their life came about when he pointed
6 that pistol and pulled that trigger and the
7 risk and the fulfillment of the consequences of
8 that risk was immediate.

9 And if per adventure, let's just say, if
10 for the purpose -- for the sake of argument, if
11 he didn't know that pointing a pistol at
12 somebody's head and pulling the trigger would
13 not end their life, he sure did after he shot
14 the first one of those people, didn't he? Yep.

15 So the -- the thing, the first aggravator
16 is that he knowingly created the great risk of
17 death to many people. You know what I put in
18 my notes to prove that point? Bodies on the
19 floor. You just count them.

20 The next thing, the next aggravator --
21 aggravator number two is the capital offense
22 was committed while the Defendant was engaged
23 in the commission of the crime of armed robbery
24 for pecuniary gain. What is pecuniary? Money,
25 monetary. You know, basic human fault of
26 greed. He took the money. We know he took the
27 money. We have that great huge poster over
28 there of the empty cash drawer. The money's
29 gone. It didn't walk out by itself. He took

CLOSING ARGUMENT - STATE

1 the money. We have the financial records to
2 show it was there. We walked in with the four
3 bodies in the floor; the money's gone. You
4 draw your own conclusions. He took the money.
5 That's pecuniary gain.

6 The armed robbery part of it, we've
7 already seen that, have we not? I mean, we've
8 got a pile of dead bodies and gunshot firearms
9 evidence all over the floor, and Mr. Ballard
10 testified about the shell casings and the
11 bullets. We even had a live round he said that
12 got jammed when Curtis cleared his pistol. He
13 ejected one of the bullets, and we've got one
14 live round on the floor. But we know there's
15 five shots. He fired five times, and we can do
16 that because we've got five wounds. So we know
17 how many times he shot someone.

18 The third one is that the capital offense
19 was committed for the purpose of avoiding or
20 preventing lawful arrest or effecting an escape
21 from custody. Do we know that for sure?
22 Absolutely. Why do we know that for sure?
23 Because he had no reason to kill anybody over
24 the money. He walked in, an armed man. He
25 basically was up against women and children
26 with the exception of Robert and we know -- and
27 I don't know. I don't know exactly, but I know
28 Robert got two shots in his head. And I submit
29 to you that he didn't have to kill those people

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #2010-DP-01348-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : Joseph H. Loper Jr.

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Kathy Gillis, Clerk

.....
TRIAL COURT # : 2003-0071-CR

CLOSING ARGUMENT - STATE

1 to take the money. He had a gun. They would
2 have to comply. He had the gun. If he wanted
3 the money, all he got to do is walk up there
4 and take it.

5 So why did he kill all these people, to
6 shut them up, silence them so they could not be
7 a witness against him? They couldn't walk in
8 here and sit on that stand and tell you that
9 Curtis Flowers came in with a gun and stole our
10 money. He got rid of the witnesses; he
11 silenced them forever. And he did that to
12 prevent his arrest, to effect his escape.

13 It's very simple. You have three
14 aggravating circumstances. They are all clear.
15 They are the same aggravating circumstances in
16 all four of the instructions, one for each of
17 the victims.

18 Now, in order for those to be -- you have
19 to find those unanimously. But I don't think
20 that's a stretch, and I don't think that's a
21 problem. I think it's -- the evidence in this
22 case is so clear; it's so overwhelming that
23 it's just plumb obvious. We know who did this.
24 We know who he killed. We know how he went
25 about it.

26 Now, the defense has a list of factors
27 called mitigating factors, things that they
28 propose would mitigate this down. In other
29 words, they tend to indicate that the sentence

CLOSING ARGUMENT - STATE

1 of life without parole is the better sentence.
2 Those are called mitigators. No history of
3 prior criminal activity. Prison -- good prison
4 record, excellent prison record. All of that
5 kind of stuff. You've heard all of that. The
6 question is, do those outweigh the aggravators.

7 You know, basically, what the Defendant
8 established by calling his witnesses in
9 mitigation was that he had an average life. I
10 thought -- and you'll hear argument from
11 counsel. They may suggest differently -- but I
12 thought the evidence suggested that Curtis did
13 not have a deprived life. He has a mama and
14 daddy, brothers and sisters. Yeah, he had a
15 good life. We don't know everything about him,
16 but we know what they put on. Yeah, he had a
17 good family.

18 The question for you is does that -- I
19 mean, a lot of people have a good family. A
20 lot of people have a good childhood. Does
21 that -- does that outweigh the fact that he
22 walked in one day, probably because he was mad
23 or he was -- you know, his paycheck was on that
24 desk back there. If he would have come in on
25 that Monday, he probably could have had that
26 check but he didn't show up. And he didn't
27 show up. And then he calls, wants to know if
28 he still has a job. But he has not really made
29 arrangements to take care of his debt, he

CLOSING ARGUMENT - STATE

1 hasn't cleaned that up and Ms. Tardy said, We
2 don't need you anymore. He wasn't reliable.
3 He knew he wasn't reliable. His attorneys even
4 told you at the beginning that he decided to
5 stay home; he quit.

6 But that's not really true. The evidence
7 suggests that he was let go, that he was fired.
8 Now, Curtis didn't have a job. Robert did. I
9 know this has been what, a week and a half, two
10 weeks, something like that when Curtis did not
11 return back to work. And it's been just about
12 long enough for him to need some money and
13 figure that he had some money up there at that
14 store he could put his hands on.

15 Now, I don't know if Ms. Tardy was heading
16 back there to get him that check in order to
17 try to appease him or not. She was shot and
18 killed as she went back toward the office and
19 that check was on her desk.

20 Okay. The mitigators outweigh -- not just
21 living an ordinary life outweighs the brutal,
22 senseless, cold-blooded murder of four innocent
23 people.

24 **BY THE COURT:** Mr. Hill, you asked me to
25 tell you when you had ten minutes left.

26 **BY MR. HILL:** Thank you, Your Honor.
27 Ladies and gentlemen, this case, this
28 circumstance, this situation, it's why we have
29 the death penalty in my view because you have

CLOSING ARGUMENT - STATE

1 to ask yourself the question: How many people
2 do you have to kill before the death penalty is
3 the appropriate penalty? Did y'all understand
4 that? How many people do you have to kill?

5 Under our law, killing one person is just
6 the same procedure. The State puts on
7 aggravators, the defense puts on mitigators on
8 the death of one person. If it's an armed
9 robbery -- let's just say hypothetically for
10 the sake of argument, somebody goes in, holds
11 up a store. They shoot and kill the clerk,
12 steal the money. Just one person, that's
13 capital murder. And then we look at the
14 aggravators and the mitigators and decide if
15 that person, that the death penalty should be
16 imposed on that person. That's all of them.

17 My question to you -- and I think the
18 answer is obvious -- how many people do you
19 have to kill? You know, another way of stating
20 it is what is the life of one of these victims
21 worth? One person, life in prison? Two, it
22 gets to the point, and I think it's rather
23 obvious that the point comes -- the time comes
24 when the only appropriate penalty is the death
25 penalty. The only thing. I mean, what are you
26 going to do if the next guy comes up and says I
27 didn't kill but one person.

28 **BY MRS. STEINER:** I'm going to object. I
29 believe this is --

CLOSING ARGUMENT - STATE

1 **BY THE COURT:** I'll sustain as to anything
2 said by anybody else in the future. But you're
3 to disregard that part of the argument.

4 **BY MR. HILL:** Your Honor, I'm speaking in
5 generalities. The deal is this: How many
6 people do you have to kill? I
7 certainly think -- and it could be argued, at
8 any rate -- and these are all, you know,
9 general thoughts. One person, two people, you
10 keep coming back to the same thing.

11 **BY MRS. STEINER:** I'm going to object on
12 the same grounds again, Your Honor.

13 **BY THE COURT:** Overrule that.

14 **BY MR. HILL:** You keep coming back to the
15 same thing. Curtis killed four people. What
16 is the appropriate penalty? I don't see how it
17 could be life. I don't see how it can be.
18 This is a case that screams out for death
19 penalty. And we're talking justice. We're
20 talking the appropriate penalty for this case.
21 For this case.

22 I think this is why we have the death
23 penalty for cases like this, because life just
24 doesn't seem right for the killing of four
25 innocent people. Premeditated, cold-blooded
26 execution. And I'm not the first to use this
27 word in a courtroom, execution of four innocent
28 people.

29 Ladies and gentlemen of the jury, when you

CLOSING ARGUMENT - DEFENSE

1 get back there and you're deliberating and
2 you're going through the formula here, I don't
3 think you can come to any other conclusion but
4 the only -- the only appropriate penalty in the
5 case is to impose the death penalty because of
6 what he did.

7 **BY MR. CARTER:** One thing is very clear,
8 and that is the State of Mississippi says for a
9 capital murder the penalty is life or death,
10 and I'm leaving it up to you to choose which
11 one you think is appropriate under these
12 circumstances. I'm going to leave it up to
13 you. I'm going to go over the facts and leave
14 it up to you.

15 I don't know who was shot in what order,
16 but I know there was no testimony about it. I
17 don't know why Mr. Golden was shot twice, but I
18 know there was no testimony about why he was
19 shot twice. And I know that all of the
20 killings took place on the same occasion, the
21 same day around the same time. And it's not
22 like, you know, he went down there on four
23 separate occasions and shot four people; I know
24 that. And I don't know what kind of
25 premeditation was involved. I don't know if it
26 was extreme or what it was. I'm not even going
27 to try to tell you what it was. But, you know,
28 we know that four people were killed and we
29 know that you found Mr. Flowers guilty. And

CLOSING ARGUMENT - DEFENSE

1 because of that, I find myself with the awesome
2 task of standing before you once again with a
3 clear mind and strong will and not under any
4 illusions about the circumstances in which I
5 stand.

6 Like Mr. Flowers, I'm deeply concerned at
7 this point about whether you will listen to me
8 and about whether you will consider both
9 penalties. But I'm not paralyzed by being
10 concerned. I'm not even scared. My hope is
11 shattered, practically destroyed. And yet I
12 march forward because that's what I do.

13 I do this for a living. Every case, this
14 is what I do. And sometimes I feel like I'm
15 marching to the cross for my clients, but I do
16 it because that's what I choose to do. I used
17 to be a corporate lawyer, and I quit. I walked
18 out, because this is what I want to do.

19 Now, I'm a defense lawyer. I told you
20 before. I don't apologize; I don't have any
21 shame whatsoever for it. I chose to represent
22 the hated. I chose to represent the damned,
23 the low, those given up on. And oftentimes,
24 people never have a chance. Those who don't
25 know the beauty of fairness and compassion, for
26 many of them have never experienced it.

27 I come to court constantly with everybody
28 expecting, desiring and doing all they can to
29 make sure I lose. Those are the circumstances

CLOSING ARGUMENT - DEFENSE

1 under which I toil, and I don't ask for any
2 sympathy for it. You shouldn't feel any
3 sympathy for it. This is what I choose to do.

4 Now, people -- nearly everybody wants me
5 to lose, wants my client to be executed. And
6 my job is to represent him zealously and be
7 unafraid. You know, you might say he act like
8 he doesn't even care about the victims.

9 Now, I look at this all the time. I do
10 see them. I see them more than they realize.
11 I see them in the hallways. But I know what my
12 responsibilities are. My responsibilities, my
13 responsibility is to Mr. Flowers, and that's
14 who I represent. And it would be unfair to
15 hold me to another standard.

16 The people I represent may go to jail.
17 They may even get executed. But there's one
18 thing you can count on is that somebody's going
19 to fight for them before anything happen to
20 them. I don't apologize for that. And I hold
21 no grudge against the prosecution. They got
22 their job to do, and I got mine. And it might
23 even surprise you that I don't dislike
24 Mr. Evans. I don't have any ill will toward
25 him whatsoever. But when we get in the
26 courtroom, we're in a contentious battle, and
27 I'm not his friend when I'm in here. He's
28 doing his job, and I know I got to do mine.

29 Now, we seek justice, and we might have a

CLOSING ARGUMENT - DEFENSE

1 different opinion about what justice is. I'm
2 going to leave it up to you to decide what it
3 is. The victims deserve justice, and so does
4 Mr. Flowers.

5 Now, we asked you if you could consider
6 mitigation, consider what we presented, and I'm
7 concerned about whether you would give it
8 meaning and value and consideration or whether
9 you would consider it mere excuses and fodder
10 for sympathy. I'm always concerned about that.
11 And you said you could consider mitigation, and
12 we're counting on you to do that.

13 I actually believe -- and you don't have
14 to agree with me -- that there is some residual
15 doubt. I'll leave it up to you whether you
16 agree with me or not. If you don't, that's
17 fine. And as I told you before, I don't have a
18 problem accepting your decision even if I
19 disagree with you. But I'm telling you justice
20 demands a decision that is based on reason and
21 based on deliberation. Our system of justice
22 requires that. Otherwise, I don't know that
23 anybody could ever get any real consideration.

24 You know, to sit where I sit and do what I
25 do, people might think I don't know pain. You
26 know, my two favorite brothers got killed.
27 Somebody killed them. And at the time, I was
28 very angry about that and wanted to do
29 something. But I can tell you, at this point

CLOSING ARGUMENT - DEFENSE

1 15, 25 years later that I'm glad I didn't. Of
2 course, I didn't know I was going to feel that
3 way, but that's the way I wound up.

4 This case is not about the lawyers,
5 believe it or not; we just happen to be here.
6 I guess the State of Mississippi requires us to
7 be here only for the process to work. I can
8 see that killing is wrong, and it is.

9 I'm one of these people who don't like
10 guns, to be quite honest about it. Killing is
11 wrong, in my opinion, unless it's in self
12 defense or defense of others or maybe in war --
13 necessary wars. And if it's wrong for
14 Mr. Flowers to do it, it ought to be wrong for
15 other people to do it, too.

16 You know, we have an option. You don't
17 have to kill Mr. Flowers to punish him
18 severely. Giving somebody life without the
19 possibility of parole is serious punishment.
20 There's no doubt about that.

21 What I would want somebody to tell me if I
22 was angry and in a situation and contemplating
23 killing somebody, I would want somebody to tell
24 me to stop, to think about it, to decide if you
25 really want to do it. Decide whether you have
26 to do it. Decide what effect it would have on
27 you later on. Because at 54, I'm convinced
28 that doing wrong not only hurts the victim, it
29 hurts the perpetrator, too.

CLOSING ARGUMENT - DEFENSE

1 You've had several days to sit here and
2 listen to us, and probably had several days
3 even before then to think about this case.
4 Now, I submit to you I wasn't at Tardy's so I
5 don't know what happened. But I bet you
6 Mr. Flowers didn't have ten days, 11 days to
7 think about whether he wanted to do this or
8 not, to think about whether he could do --

9 **BY MR. EVANS:** Your Honor, that's not
10 appropriate.

11 **BY MR. CARTER:** What's inappropriate about
12 it?

13 **BY MR. EVANS:** Talking about how long
14 Mr. Flowers had to think about what he did.

15 **BY MR. CARTER:** Well, I don't know how
16 long he had to think about it, Your Honor.

17 **BY MR. EVANS:** That's inappropriate.

18 **BY MR. CARTER:** I thought that's what I
19 said, I don't know.

20 **BY MR. EVANS:** But it's inappropriate to
21 even talk about it.

22 **BY THE COURT:** I'll overrule.

23 **BY MR. CARTER:** Well, to be fair, I don't
24 know what happened down there. But the facts,
25 as I understand them, is that on July the 16th
26 this all happened. And not some of it, but all
27 of it, as I understand it, the entire episode.

28 Now, death leaves a heartache that nobody
29 can heal. And as I'm telling you, I've been on

CLOSING ARGUMENT - DEFENSE

1 this case at least eight years. And every time
2 I come up here, I can see this heartache. I
3 can see the pain. All I do is look out, walk
4 out here across the hallway and see it. You
5 can't miss it. I've even seen the effect that
6 this crime has had on this town to some degree,
7 but not as much as folks who live here. But
8 I'm up here a lot, and I'm not Brian, even
9 though I do wear glasses.

10 Mr. Flowers should not be completely, in
11 my opinion, judged by his worst act. Now, who
12 can stand to be judged only by their worst act?
13 I don't even know the worst thing I've done,
14 but I know I don't want to be judged by just
15 that because I'm more than that. And
16 Mr. Flowers is more than that.

17 Mr. Flowers is a son, a father, friend, a
18 gospel singer, and I've known him for at least
19 eight years. And I can even remember when this
20 case happened. I was in the courtroom with
21 another death penalty case and when I heard
22 about it, first thing out of my mouth is, "I'm
23 so glad that I'm not involved in that." And I
24 can't believe that a few years later this case
25 would pass to me, but it was. And I took it,
26 and I'm glad I took it. No matter what
27 happened.

28 I've gotten to know Mr. Flowers. I like
29 him. I've gotten to know his family -- his

CLOSING ARGUMENT - DEFENSE

1 wonderful family. Mr. Flowers is a kind -- in
2 a lot of ways and certainly an interesting
3 personality, a lot of fun to be around.
4 There's goodness in him. Ain't no doubt about
5 it. You know, we can't bring the victims back.
6 If we could, we certainly would, which we
7 can't. That's just the way it is.

8 While I think my job might be hard, I also
9 know your job is hard, and you had to sit here
10 and hear all this and probably see some things
11 and feel some things you don't want to feel
12 because I had to be blind to my client as much
13 as I can. Two wrongs don't make a right.
14 We've heard it over and over. I believe it.

15 Ladies and gentlemen, I do, in fact, ask
16 you to spare Mr. Flowers' life and allow him to
17 live. And if you can't do it for me -- and I
18 don't expect you to -- but if you can't do it
19 for him -- I wish you would -- but if you
20 can't, I wish you would do it for his child
21 that he found out that he had when she was 14.
22 Didn't even know it. Found out he had the
23 child. He didn't even know. Thank you.

24 **BY THE COURT:** Mrs. Steiner, he didn't use
25 thirteen minutes.

26 **BY MRS. STEINER:** Oh, thank you. I'd like
27 to use those.

28 Ladies and gentlemen, by your verdict
29 yesterday, you have guaranteed that Curtis

CLOSING ARGUMENT - DEFENSE

1 Flowers will die in prison. The judge could
2 have discharged you and sent you home, and
3 Curtis Flowers will die in prison.

4 His Honor has instructed you if he
5 receives a life sentence, it is without parole.
6 He will never be released. The question we're
7 here to consider today -- and it's each and
8 every one of you individually -- each must
9 decide this separately. The question to decide
10 is will Curtis Flowers die in prison when God
11 chooses to take him or will he die on your
12 personal individual say-so at the hands of an
13 anonymous state official who one day, probably
14 many, many years down the road will poison him
15 to death.

16 That's each of your decision. No one
17 sitting in that jury room has the right to
18 change your mind to what he or she believes if
19 you believe that it's -- enough is enough, that
20 a life sentence without parole, locking Curtis
21 Flowers, throwing away the key, consigning him
22 to the hell hole described by Mr. Aiken, the
23 continual punishment.

24 If Curtis Flowers is sentenced to life in
25 prison without parole, he will never again be
26 private and alone. He will never again have
27 anything beside walls, barbed wire and men with
28 guns keeping him from any semblance of personal
29 freedom. Someone else will decide when he

CLOSING ARGUMENT - DEFENSE

1 eats. Someone else will decide what he eats.
2 Someone will be able to watch him when he goes
3 to the bathroom every day of his life, until
4 God takes him. Leave it in God's hand.

5 You also heard from Mr. Aiken. He will be
6 in personal danger. You have heard from
7 Mr. Aiken. He has been extraordinary among
8 prisoners in his ability to obey the rules, to
9 stay out of trouble. That doesn't make prison
10 not the dangerous place. He will be on maximum
11 security with people not only who have
12 committed terrible crimes and then -- this was
13 a terrible crime, and I respect that you have
14 determined beyond a reasonable doubt that he
15 committed it. But the draconian punishment
16 that locks him away, that throws away the key.

17 He'll never gather with his family. Many
18 of you had told me you were acquainted with his
19 family as well as with the families of the
20 victims in this. He will never again gather
21 with them on an occasion of joy and celebrate
22 the birth, perhaps of his grandchild, perhaps
23 of a niece or nephew, perhaps the joyous
24 marriage of one of his nieces or nephews or his
25 daughter. Never again will he share that.

26 That, by your verdict yesterday, you have
27 taken from him -- you -- on a sentence of life
28 in prison without parole. He will never be
29 able to gather at the family wake, at the

CLOSING ARGUMENT - DEFENSE

1 family gathering when, as will happen to all of
2 us, his parents die. It's happened
3 unfortunately here to many, to Brian Rigby, to
4 Roxanne Ballard. He is deprived of that
5 opportunity to mourn and heal.

6 He will be under armed guard with men who
7 are dangerous with no privacy, with nothing
8 except the time to think and contemplate and
9 repent and let God do his work through him.
10 And you heard from Reverend Billy Little. This
11 is a man -- he's like you and me. He's not a
12 bleeding heart. He's not a liberal. He is a
13 man of God called to minister to the worst of
14 the worst.

15 He told you it doesn't matter the crime.
16 It doesn't matter how awful. It doesn't matter
17 if it's one, two, three, four murders. His
18 ministry to those men is to bring them in
19 themselves redemption.

20 And what did he tell you? Curtis Flowers
21 is -- when he was there, raising his voice in
22 song. It wasn't for Curtis' enjoyment. That's
23 not why he should stay locked up and wait for
24 God to take him. It's because Curtis is an
25 instrument of people like Reverend Little in
26 doing his work, doing God's work, bringing
27 these people, these souls, these terrible
28 people to a peace to not continue their evil or
29 whatever you call it, their crimes.

CLOSING ARGUMENT - DEFENSE

1 And similarly, Mr. Flowers, there is no
2 indication, however terrible these crimes were,
3 that he would continue in that role. Thirteen
4 years. You heard Mr. Aiken say it. Sure,
5 inmates talk about coming to religion. Sure,
6 inmates are good for a few months at a time.
7 Thirteen years of perfect inmate behavior is
8 not a soul so lost, not a man so vile, not a
9 person so worthy that you personally should
10 vote to have him poisoned to death.

11 The State talked a lot to you about what
12 the instructions said, but they didn't talk
13 about the instruction -- you know, he told you
14 how to enter a verdict to sentence Mr. Flowers
15 to death, but he didn't talk about the
16 instructions that talked about the promises
17 that your made, each and every one of you to
18 His Honor that you were not individuals who
19 needed vengeance. You would leave your
20 personal feelings of anger, of your opinions
21 that vengeance was needed, your sympathies for
22 the people who came before you to talk about
23 their mourning.

24 That you have promised not to be mere
25 instruments of vengeance. Not for the
26 families, certainly not for any larger
27 community. You are making a reasoned, moral
28 judgment about whether you want to tell the
29 State of Mississippi, each of you individually,

CLOSING ARGUMENT - DEFENSE

1 to kill Curtis Flowers.

2 You promised His Honor, and he has
3 reminded you in his instructions that you would
4 be guided by reason and moral judgment. And
5 more than that, you promised His Honor -- and
6 as I told each of you whom I talked to in voir
7 dire, I said, What you're going to hear in
8 mitigation will probably have nothing to do
9 with the facts of this crime. It's not going
10 to answer your question of why he came on that
11 morning to be in a rage that is totally
12 uncharacteristic of how he's acted in the 13
13 years since or how anybody has testified he was
14 in the 27 years before this horrible event
15 happened, these murders which you have found
16 him guilty of.

17 But I did talk about who he was. I talked
18 about not his enjoyment but what he brings to
19 the people who love him. Four murders. He is
20 still loved. Four murders. There are still
21 people who came up to tell you about his worth,
22 including the Reverend Billy Little who has
23 that personal worth to him.

24 Who knows if in maximum security lockdown
25 he'll ever be able to sing other than as he
26 sits in his own cell? I don't know that they
27 have that program. It's a more draconian
28 punishment than he was in with Reverend Little.
29 But it wasn't for his enjoyment. It was

CLOSING ARGUMENT - DEFENSE

1 because of what he brings despite -- despite
2 the worst thing he ever did.

3 His value in this world to the people who
4 love him, to the people who may be inspired by
5 a Reverend Little to come to God, to live a
6 better life in prison.

7 You remember what Mr. Aiken said, that
8 prisons are safer places. Inmates are less
9 troublesome. They're not going to hurt each
10 other. They're not going to hurt guards.
11 They're not going to try to escape. They're
12 going to have successful lives that they can
13 carry to once they will get out, and that
14 Mr. Flowers won't. And Mr. Flowers' example --
15 you heard his own quotes, his example -- and
16 you heard Reverend Little, what he -- the gifts
17 he has to demonstrate, that -- that is value.
18 That makes him more valuable than the worst
19 thing he ever did. And he will be suffering.
20 He will be in draconian circumstances. This is
21 no light sentence. The death penalty does not
22 end it now. A life sentence without
23 possibility of parole locks him up, throws away
24 the key and ends this now.

25 And if you recall, as I spoke to each of
26 you before you were selected, you promised that
27 you would not try and be an instrument of
28 vengeance. You promised that the powerful
29 emotions that we all had as we listened to

CLOSING ARGUMENT - DEFENSE

1 Ms. Ballard, Mr. Rigby, Mr. Golden and
2 Ms. Permenter talking about how they were
3 affected by the sudden loss of their loved
4 ones. That you agreed that you were not them.
5 You could set those emotions aside. You could
6 understand them. You could hear them.

7 His Honor said to hear victim impact is to
8 hear simply about the experience, and we do not
9 for a minute doubt the devastation that these
10 losses have caused these families. But that
11 you were to hear it and not to make it
12 aggravating of the crime, not to be weighed
13 against the value of Curtis Flowers' life, not
14 the Curtis Flowers of the world, to other
15 people.

16 This is not -- you are to view and
17 understand about these -- their emotions that
18 they tell you, but you need to make them their
19 emotions, not yours. You must bring a reasoned
20 moral judgment to whether or not in this world
21 the extraordinary penalty of you taking a life
22 is worth it. And it is not here in this case;
23 it is simply not.

24 By virtue, you said -- the conviction of
25 the crime, as I said in voir dire and as His
26 Honor has instructed you, we don't have to say
27 anything about and you must -- you promised His
28 Honor you would consider -- you wouldn't just
29 listen and to ignore but actually consider,

CLOSING ARGUMENT - DEFENSE

1 each of you individually, each of these things.
2 I don't think you had your fingers crossed when
3 you made that promise.

4 I know yesterday afternoon and evening it
5 was late; we were tired; we were hungry. I
6 noticed that some of you were -- you
7 negotiated -- and you asked His Honor, Please
8 let us get this over with. And I don't blame
9 you. It was a long day.

10 But as His Honor instructed you when you
11 went for the night, this is a life-and-death
12 decision, the most important one any jury is
13 ever called upon to make in a court of law.
14 And it's not one that's a group consensus. It
15 is an individual one. And I'm glad that you're
16 here today remembering what you promised His
17 Honor, what you promised yourself to do, to
18 consider the evidence in mitigation and to
19 consider it individually.

20 The other promise you made was that you
21 would understand that because this is such a
22 personal and individual decision that you would
23 not give it up just because someone else felt
24 differently, someone you have come to know,
25 someone you have come to like, someone you've
26 spent ten days with, with little influence --
27 other influence than the right to be with each
28 other.

29 You have the -- you have become friends

CLOSING ARGUMENT - DEFENSE

1 and some of you may feel one way and don't want
2 to change. But you remember you promised His
3 Honor you're in this jury; you promised us that
4 you would respect each other. That unlike with
5 the guilt phase, you could agree to disagree.

6 This ends here if you agree to disagree.
7 No -- no one will disrespect you, as his Honor
8 says. No one -- you don't even reveal -- no
9 one will ever outside the jury room need to
10 know who, if there's not an agreement, who
11 voted what way. That is private. That is
12 personal within the jury, and the 12 of you go
13 into that jury room equal and respect for each
14 other -- in respect for each other's views.
15 And even if you can't agree, all that happens
16 is the draconian punishment the Mississippi
17 State Legislature -- not a liberal body, not a
18 bleeding heart body, not a wimpy body -- but
19 our own legislature, who is very tough on
20 crime, has said life in prison without parole
21 in the hell hole of the Mississippi State
22 Penitentiary is an appropriate punishment for
23 one capital murder, two capital murders, three
24 capital murders, four capital murders.

25 There's nothing in His Honor's
26 instructions -- it says about endangering
27 multiple people. Yes, that's an aggravator.
28 But the murders of which you convicted him
29 yesterday, he now stands -- even if you had

CLOSING ARGUMENT - DEFENSE

1 gone home and not considered this -- to spend
2 the rest of his life without possibility of
3 parole.

4 And in case one sentence isn't enough,
5 there's four of them. And it ends here if you
6 bring a reasoned, particular judgment and you
7 look into your heart and you see that however
8 terrible the murders Mr. Flowers has been --
9 you have convicted him of committing on
10 July 16th, 1996, however terrible they are,
11 Curtis Flowers was before -- whatever happened
12 that made him do that and has certainly since
13 then been a much better man than this worst
14 thing he ever did.

15 He has a daughter. He has a daughter who
16 came to know him only after he was in jail
17 locked up for this. And the daughter has come
18 to love him. She understands that he has --
19 you know, he will never probably even hold his
20 grandchild should she marry and have children.
21 But she has a father that she's proud of
22 despite this. Don't take that away from this
23 child. Don't order -- don't order that he be
24 killed.

25 **BY MR. EVANS:** Your Honor, that's not
26 appropriate.

27 **BY MRS. STEINER:** I'll move on, Your
28 Honor.

29 **BY THE COURT:** Okay. Move on.

CLOSING ARGUMENT - DEFENSE

1 **BY MRS. STEINER:** Vote to lock him up and
2 throw away the key. You know, he's not just
3 what he's done. He's what he can be used for,
4 good in this world, to atone in this world for
5 the terrible crimes he has committed. And,
6 yes, Mr. Flowers -- Mr. Carter said if you have
7 residual doubt, I'll let you disagree or I
8 really disagree.

9 But, you know, I understand that you found
10 him guilty beyond a reasonable doubt. And as
11 His Honor instructed you, you were entitled to
12 do that even on the suspicious testimony of
13 Odell Hallmon. And make no mistake about it,
14 your guilty verdict could not be here without
15 the words of self-admitted liar Odell Hallmon.

16 And what you heard in the penalty phase is
17 there are some kinds of inmates who are on
18 lockdown, in maximum security on the same tiers
19 as death row. That's where Curtis Flowers had
20 to live because of prior verdicts. It wasn't
21 for his behavior. It was because of the
22 sentences he was then under.

23 Odell Hallmon, on the other hand, he was
24 one of those inmates that Mr. Aiken was talking
25 about. He was the trouble maker. He was there
26 because he couldn't live in prison, and he told
27 you out of his own mouth he was a liar. He
28 told you out of his own mouth as he walked out
29 of this courtroom had committed crimes while in

CLOSING ARGUMENT - DEFENSE

1 prison. Crimes of which he hadn't been charged
2 yet except on the prison things.

3 This is the words -- this is the evidence
4 on which each of you must make your individual
5 decision. This is not, you know, saying I
6 wouldn't hang a dog on the word of a liar.
7 Well, you may -- you have decided Curtis
8 Flowers committed these terrible murders. Lock
9 him up, throw away the key, but do not vote to
10 have the State of Mississippi kill someone who
11 on the word of this self-admitted liar, this
12 prison trouble maker.

13 I have been representing Mr. Flowers since
14 2008, and I, too, have come to know the man his
15 family described. I've certainly come to know
16 the man that Mr. Aiken described. The person
17 who is not likely to cause trouble behind
18 prison. He's never going to have the chance to
19 ever do anything like this again. He is going
20 to be punished.

21 He is going to have to learn to live with
22 the judgment of this jury and that he is the
23 murderer of Bertha Tardy. He is the murderer
24 of Carmen Rigby. He is the murderer of Robert
25 Golden. He is the murderer of Bobo Stewart.
26 He has to live with that, and he is going to
27 live with that every day of his life until God
28 takes him.

29 And during that time, what we do know is

CLOSING ARGUMENT - DEFENSE

1 he won't hurt anybody else. And if he tries he
2 can be hurt. He can be restrained. He will be
3 locked up. He will be restricted. It's not
4 like he's going to be wandering around loose
5 and free. But he could be even more
6 restrictively done. And we know that he is
7 going to continue to be an object lesson, to be
8 someone people like Reverend Little can use to
9 do their work.

10 Ladies and gentlemen, you have a choice.
11 You have a choice to let Curtis Flowers live
12 until God chooses to take him or you have a
13 choice to direct that he be killed. You have a
14 choice to prolong the ordeal that these murders
15 have created in the hearts and minds of the
16 victims of -- of the survivors of the victims
17 of these crimes and in this community. And you
18 can put an end to that with a verdict of life
19 in prison without parole for Curtis Flowers.

20 You have the choice to kill -- to vote to
21 kill, to take an act which kills or to vote for
22 mercy and to let God decide when Curtis Flowers
23 will die. Be better than Curtis Flowers who
24 had a choice about whether or not to kill. And
25 he chose to kill. You are better than Curtis
26 Flowers. You are in this jury box because you
27 are better than his acts. You are better than
28 someone who chooses to kill. Throw Curtis
29 Flowers in prison. Lock him up. Throw away

CLOSING ARGUMENT - STATE

1 the key. But don't you decide. Let God decide
2 when to take him and save your souls, save your
3 community and save -- end the ordeal once and
4 for all.

5 **BY MR. EVANS:** May I proceed, Your Honor?

6 **BY THE COURT:** You may.

7 **BY MR. EVANS:** It's just terrible that
8 Curtis Flowers is going to have to live with
9 knowing he killed four people. That's what the
10 defense just said. I almost fell out of my
11 chair when she said that. That's just
12 terrible. That's putting a lot on him that he
13 has to live with the fact that he brutally
14 murdered four people. Oh, I feel so sorry for
15 him because he's going to have to live with
16 that.

17 July the 16th, 1996, four people were
18 minding their own business. Ms. Bertha Tardy
19 was at work. She was running the business like
20 she always did. Ms. Carmen Rigby was the
21 bookkeeper. She was going to the bank, going
22 to the post office, not even dreaming that
23 there was a problem. Derrick Stewart, young
24 boy, was on his second day at work, his first
25 job and second day at work. His life was
26 starting. Robert Golden was there for his
27 first day at work.

28 What did Curtis Flowers do? He goes to
29 the store with a gun and takes their lives.

CLOSING ARGUMENT - STATE

1 Curtis Flowers has been here the last 14 years
2 to visit with his family. Where have they
3 been? But feel sorry for him.

4 The law in Mississippi is that the death
5 penalty is an appropriate punishment for
6 capital murder. Each of you told us that you
7 believed in the law and that if the law
8 justified it and the facts justified it, you
9 could give the death penalty. What more facts
10 could it take for the death penalty than
11 murdering four people that hadn't done anything
12 to you, four people that had helped you?
13 Ms. Bertha Tardy had tried to give him a job.
14 But feel sorry for him. That's what they want
15 you to do. This, to me, is something you
16 shouldn't have any question on.

17 **BY MRS. STEINER:** Object, Your Honor. I
18 believe he did misstate the argument. I didn't
19 ask them to feel sorry for him when I said give
20 him the opportunity to regret what he had done.

21 **BY MR. EVANS:** I think the jury heard what
22 she said, Your Honor.

23 **BY THE COURT:** I think the jury very well
24 was listening.

25 **BY MR. EVANS:** All they want to do is sit
26 up here and try to talk about how bad the
27 penitentiary is. I don't guess we need to put
28 anybody in there, either.

29 Ladies and gentlemen, this is a brutal

CLOSING ARGUMENT - STATE

1 crime. The defense attorneys, from the very
2 beginning, have talked about how brutal it was
3 and what a terrible crime it was. It is. This
4 Defendant did it. I think from the facts of
5 the case you can only have one verdict and that
6 would be that this case does deserve the death
7 penalty because of what he did.

8 He deserves the death penalty because of
9 the actions that he took, that he choose on his
10 own to take. Nobody talked him into doing it.
11 Nobody forced him to do it. He chose to go get
12 that gun. He chose to go down there and rob
13 the store. He chose to take their lives. He
14 put hisself in there. You're not putting him
15 in anything; he did it.

16 I'm going to briefly go through the
17 instruction because it is a long instruction.
18 It is kind of complicated. But if you look at
19 it, it's really not. The instruction that the
20 judge gives that has the A and B on it, I think
21 it's No. 3. Under the A section, that's the
22 ones that you will look at to fill out the
23 first part of the instruction you have to fill
24 out. And it says here that it's under Section
25 A. "We, the jury, unanimously find from the
26 evidence beyond a reasonable doubt that the
27 following facts existed at the time of the
28 commission of the capital murder."

29 And like Mr. Hill said, I think after

CLOSING ARGUMENT - STATE

1 looking at it, you'll find that all four of
2 those do apply. You would fill them in, the
3 ones that you unanimously agree on on these
4 lines right here.

5 Then you'll go to the next step. That's
6 where the aggravators are. That comes under
7 Section B. That's the ones right here. "That
8 knowingly, created great risk of death to many
9 persons, capital offense was committed while
10 the Defendant was engaged in the commission of
11 the crime of armed robbery for pecuniary gain.
12 The capital offense was committed for the
13 purpose of avoiding and preventing lawful
14 arrest or effecting his escape from custody."
15 Those that you find unanimously will be filled
16 in on this line.

17 And if at that point, by following the
18 Court's instructions, unless you find that the
19 mitigating circumstances outweigh these
20 aggravators, the death penalty is an
21 appropriate sentence. And at that point, the
22 jury can impose the death penalty, and that
23 would be where the foreman would sign on the
24 top line stating that the jury finds that the
25 mitigating circumstances do not outweigh the
26 aggravating circumstances and that he should
27 suffer death. That is what the evidence
28 justifies.

29 Like Mr. Hill said and I -- it's just so

CLOSING ARGUMENT - STATE

1 to the point. How many people would he have to
2 kill before the death penalty would be
3 appropriate if it wasn't four? This is a
4 terrible --

5 **BY MRS. STEINER:** Same objection, Your
6 Honor, as during Mr. Hill's argument.

7 **BY THE COURT:** Overruled.

8 **BY MR. EVANS:** This is a very terrible
9 crime. And again, he put himself there. He
10 chose to do this. We are asking that you
11 follow the law and that based upon the law,
12 that you find that the evidence justifies the
13 death penalty in these four cases because of
14 what he did and that you return a verdict of
15 death in those four cases. Thank you, Your
16 Honor.

17 **BY THE COURT:** Ladies and gentlemen of the
18 jury, I'll now ask that you retire to the jury
19 room to begin your deliberations. When you
20 have reached a decision, you will knock on the
21 door and notify the bailiffs and everybody will
22 be called back into court at that time. But
23 you now may begin discussing this case.

24 (AT APPROXIMATELY 2:05 P.M., THE JURY
25 RETIRES TO BEGIN DELIBERATIONS. THE
26 FOLLOWING PROCEEDINGS WERE HAD IN OPEN
27 COURT OUTSIDE THE HEARING AND PRESENCE OF
28 THE JURY, TO-WIT:)

29 **BY THE COURT:** And let me just state for

JURY RETIRES; NOTE READ IN OPEN COURT

1 the record, when the jury went into the jury
2 room, the exhibits that were admitted during
3 the sentencing phase were submitted to the jury
4 for their consideration. The Court will now
5 stand in recess to await decision of the jury.

6 (AT APPROXIMATELY 2:45 P.M., THE JURY
7 KNOCKED, INDICATING THAT THEY HAD A
8 QUESTION. AFTER A NOTE WAS HANDED TO THE
9 BAILIFF AND THEN PASSED TO THE COURT, THE
10 FOLLOWING PROCEEDINGS WERE HAD IN OPEN
11 COURT OUTSIDE THE PRESENCE OF THE JURY,
12 TO-WIT:)

13 **BY THE COURT:** Court will come back to
14 order. If you would, bring the jury in,
15 please, note from the jury. I've got a
16 question that says, "If we cannot agree
17 unanimously, who will make the ultimate
18 decision?" And I think I should just write
19 back, "That is not a concern for the jury as to
20 who makes the ultimate decision. That isn't
21 for them to be concerned about."

22 **BY MRS. STEINER:** Well, Your Honor, I
23 think the law is clear that the Court is
24 obligated to enter sentence.

25 **BY THE COURT:** But that's not something
26 they -- you know, I've instructed them on what
27 they should be concerned about.

28 **BY MRS. STEINER:** As you know, we
29 submitted a proposed instruction that did

JURY RETIRES; NOTE READ IN OPEN COURT

1 instruct them on that. And we would just ask
2 that that instruction heretofore denied be
3 given in response to this note.

4 **BY THE COURT:** I have written, "That is
5 not an issue that the jury should be concerned
6 about it," and I'll sign it or initial it.

7 (THE NOTE WAS HANDED BACK TO THE JURY
8 BY THE BAILIFF AND DELIBERATIONS WERE
9 RESUMED AT APPROXIMATELY 2:48 P.M. AT
10 APPROXIMATELY 3:35 P.M., THE JURY KNOCKS,
11 INDICATING THEY HAVE REACHED A VERDICT.
12 THE JURY WAS ASSEMBLED IN OPEN COURT FOR
13 THE FOLLOWING PROCEEDINGS:)

14 **BY THE COURT:** Be seated please. Court
15 will come back to order.

16 Mr. Foreman, has the jury come to a
17 decision?

18 **BY THE FOREMAN:** Yes, sir, we have.

19 **BY THE COURT:** Is that written on the
20 forms provided?

21 **BY THE FOREMAN:** Yes, it is.

22 **BY THE COURT:** Would you hand that to the
23 bailiff, please.

24 I'll have the clerk read the verdict. If
25 the Defendant will please stand.

26 **BY THE CLERK:** "We, the jury, unanimously
27 find from the evidence beyond a reasonable
28 doubt that the following facts existed at the
29 time of the commission of the capital murder of

VERDICT READ

1 Derrick Stewart: The Defendant actually killed
2 Derrick Stewart. The Defendant attempted to
3 kill Derrick Stewart. The Defendant intended
4 to kill Derrick Stewart -- take place. The
5 Defendant contemplated that lethal force would
6 be employed.

7 "We, the jury, unanimously find that the
8 aggravating circumstances of the Defendant
9 knowingly created great risk of death to many
10 persons. Capital offenses were committed while
11 the Defendant was engaged in the commission of
12 armed robbery for pecuniary gain. The capital
13 offenses were committed for the purpose of
14 avoiding or preventing lawful arrest or
15 effecting the escape from custody, exist beyond
16 a reasonable doubt and is sufficient to impose
17 the death penalty. And that there are
18 sufficient mitigating circumstances to outweigh
19 the aggravating circumstances. And we further
20 find unanimously that the Defendant should
21 suffer death. Signed Barron Davis, foreman of
22 the jury.

23 "We, the jury, unanimously find from the
24 evidence beyond a reasonable doubt that the
25 following facts existed at the time of the
26 commission of the capital murder of Robert
27 Golden: The Defendant actually killed Robert
28 Golden. The Defendant attempted to kill Robert
29 Golden. The Defendant intended the killing of

VERDICT READ

1 Robert Golden take place, and the Defendant
2 contemplated that lethal force would be
3 employed.

4 "We, the jury, unanimously find that the
5 aggravated circumstances are: The Defendant
6 knowingly created a great risk of death to many
7 persons. Capital offenses were committed while
8 the Defendant was engaged in the commission of
9 armed robbery for pecuniary gain. Capital
10 offenses were committed for the purpose of
11 avoiding or preventing lawful arrest or
12 effecting his escape from custody, exist beyond
13 a reasonable doubt and is sufficient to impose
14 the death penalty and that there are
15 insufficient mitigating circumstances to
16 outweigh the aggravating circumstances. And we
17 further find unanimously that the Defendant
18 should suffer death. Signed Barron Davis,
19 foreman of the jury.

20 "We, the jury, unanimously find from the
21 evidence beyond a reasonable doubt that the
22 following facts existed at the time of the
23 commission of the capital murder of Bertha
24 Tardy: The Defendant actually killed Bertha
25 Tardy. The Defendant attempted to kill Bertha
26 Tardy. The Defendant intended the killing of
27 Bertha Tardy take place, and the Defendant
28 contemplated that lethal force would be
29 employed.

VERDICT READ

1 "We, the jury, unanimously find that the
2 aggravating circumstances are: The Defendant
3 knowingly created a great risk of death to many
4 persons. The capital offenses were committed
5 while the Defendant was engaged in the
6 commission of armed robbery for pecuniary gain.
7 Capital offenses were committed for the purpose
8 of avoiding or preventing lawful arrest or
9 effecting escape from custody, existed beyond a
10 reasonable doubt and is sufficient to impose
11 the death penalty. And there are insufficient
12 mitigating circumstances to outweigh the
13 aggravating circumstances, and we further find
14 unanimously that the Defendant should suffer
15 death. Signed Barron Davis, foreman of the
16 jury.

17 "We, the jury, unanimously find from the
18 evidence beyond a reasonable doubt that the
19 following facts existed at the time of the
20 commission of the capital murder of Carmen
21 Rigby: The Defendant actually killed Carmen
22 Rigby. The Defendant attempted to kill Carmen
23 Rigby. The Defendant intended the killing of
24 Carmen Rigby to take place, and the Defendant
25 contemplated that lethal force would be
26 employed.

27 "We, the jury, unanimously find that the
28 aggravating circumstances are: The Defendant
29 knowingly created a great risk of death to many

JURY POLLED

1 persons. The capital offenses were committed
2 while the Defendant was engaged in the
3 commission of armed robbery for pecuniary gain.
4 Capital offenses were committed for the purpose
5 of avoiding or preventing lawful arrest or
6 effecting escape from custody, exist beyond a
7 reasonable doubt and is sufficient to impose
8 the death penalty. And there are insufficient
9 mitigating circumstances to outweigh the
10 aggravating circumstances, and we further find
11 unanimously that the Defendant should suffer
12 death. Signed Barron Davis, foreman of the
13 jury."

14 **BY THE COURT:** I'm going to poll each one
15 of you.

16 Ma'am, on the first row, is this your
17 verdict as to all four charges?

18 **BY THE JUROR:** Yes, sir.

19 **BY THE COURT:** Is this your verdict as to
20 all four charges?

21 **BY THE JUROR:** Yes, sir.

22 **BY THE COURT:** Is this your verdict as to
23 all four charges?

24 **BY THE JUROR:** Yes, sir.

25 **BY THE COURT:** Is this your verdict as to
26 all four charges?

27 **BY THE JUROR:** Yes, sir.

28 **BY THE COURT:** Is this your verdict as to
29 all four charges?

JURY POLLED

1 **BY THE JUROR:** Yes, sir.

2 **BY THE COURT:** Is this your verdict as to
3 all four charges?

4 **BY THE JUROR:** Yes, sir.

5 **BY THE COURT:** Ma'am, is it your verdict
6 as to all four charges?

7 **BY THE JUROR:** Yes, Your Honor.

8 **BY THE COURT:** Sir, is this your verdict
9 as to all four charges?

10 **BY THE JUROR:** Yes, sir.

11 **BY THE COURT:** And, ma'am, is this your
12 verdict as to all four charges?

13 **BY THE JUROR:** Yes, sir.

14 **BY THE COURT:** And, ma'am, is this your
15 verdict as to all four charges?

16 **BY THE JUROR:** Yes, sir.

17 **BY THE COURT:** And, ma'am, is this your
18 verdict as to all four charges?

19 **BY THE JUROR:** Yes, sir.

20 **BY THE COURT:** And, sir, is this your
21 verdict as to all four charges?

22 **BY THE JUROR:** Yes, sir.

23 **BY THE COURT:** Let the record show that
24 the jury has been polled and all 12 jurors have
25 affirmed that this as being their verdict.

26 Ladies and gentlemen, I know it's been a
27 long, difficult process for you. I appreciate
28 the service that you have rendered. I
29 appreciate the patience that you've shown. You

JURY POLLED

1 may step in and get your personal belongings.
2 I don't know -- you know, some of you live
3 alone and want to be escorted home by a state
4 trooper or deputies or anything like that.
5 Certainly, we're going to make sure that
6 you're -- you know, don't have any reason to
7 feel ill -- or feel concerned about going home
8 or anything like that. But if you have any
9 difficulties or concerns, then if you'll just
10 walk around to the sheriff's office with the
11 bailiffs, and I assure you that you will be
12 escorted home or any concerns you might have,
13 we'll alleviate and take care of. And you're
14 finally excused -- discharged.

15 (THE JURY LEAVES THE COURTROOM)

16 **BY MRS. STEINER:** Your Honor, may we have
17 the actual note from the jury and the
18 response --

19 **BY THE COURT:** Mary Lee, make sure that
20 note's in there that was sent earlier.

21 **BY THE BAILIFF:** Your Honor, I'll have to
22 go catch the foreman and see if he --

23 **BY THE COURT:** Well, go find him --

24 **BY THE BAILIFF:** -- it might be in there.

25 **BY THE COURT:** Maybe go find him in
26 case --

27 **BY MR. CARTER:** Your Honor, that note has
28 got to be made a part of the record.

29 **BY THE COURT:** Well, it's read in the

SENTENCING

1 record.

2 Curtis Flowers, you've been found guilty
3 of the crime of capital murder of Bertha Tardy.
4 The judgment of the jury is that you suffer
5 death for that. So it is, therefore, the order
6 and judgment of this Court that you're
7 sentenced to death for the murder of Bertha
8 Tardy.

9 You've also been found guilty of capital
10 murder for the killing of Robert Golden. The
11 jury has imposed a sentence of death, so it is,
12 therefore, the order and judgment of this Court
13 that you're sentenced to death for the murder
14 of Robert Golden.

15 You've also been found guilty by a jury of
16 capital murder of Carmen Rigby. The jury has
17 imposed a sentence of death or recommended a
18 sentence of death. It is, therefore, the
19 judgment and order of this Court that you're
20 sentenced to death for the murder of Carmen
21 Rigby.

22 You've also been found guilty of capital
23 murder of Derrick Stewart. The jury has found
24 that the death penalty should be imposed so it
25 is, therefore, the order and judgment of this
26 Court that you're sentenced to death for the
27 murder of Derrick Stewart.

28 That is the judgment of this Court and
29 these proceedings are -- this case is

SENTENCING

1 concluded, and this Court stands in recess.

2 (OFF RECORD)

3 (DEFENDANT'S EXHIBIT NO. 25, CV OF
4 ROBERT JOHNSON, WAS MARKED FOR
5 IDENTIFICATION TO REPLACE THE ORIGINAL
6 EXHIBIT THAT WAS MARKED AND MISPLACED)

7 **BY MRS. STEINER:** Your Honor, if the Court
8 please, we have one other evidentiary matter.
9 Exhibit D-25 for identification was marked as a
10 curriculum vitae of Robert Johnson.
11 Apparently, either Mr. Johnson made off with
12 it -- I haven't been able to reach him by
13 phone. The parties have agreed that this is an
14 exact duplicate of what was marked, and we'd
15 like to have it marked as that exhibit number
16 for identification.

17 **BY THE COURT:** That'll be fine. It can be
18 marked in place of the one. The question that
19 was sent from the jury is available.

20 **BY MRS. STEINER:** All right. We'd like it
21 to be part of the record as well.

22 (PROCEEDINGS CONCLUDED)
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1 COURT REPORTER'S CERTIFICATE

2 STATE OF MISSISSIPPI

3 COUNTY OF MONTGOMERY

4 I, Noelle C. Skelton, Official Court Reporter
5 in and for the Fifth Circuit Court District of the
6 State of Mississippi, do hereby certify that to the
7 best of my skill and ability I have reported pages
8 477-785, 953-1047, 1265-1470, 1756-1832, 2006-2266,
9 2412-2638, 2827-3118, and 3366-3490 in the
10 proceedings had and done in the State of Mississippi
11 v. Curtis Giovanni Flowers, Cause No. 2003-0071-CR,
12 on the docket of the Circuit Court of Montgomery
13 County, Mississippi, and that the above listed pages
14 contain a true, full and correct transcript of my
15 stenographic notes and tape taken in said
16 proceedings.

17 This is to further certify that I have this
18 date filed the original and one copy of said
19 transcript, along with one (1) CD of said
20 transcript, for inclusion on the record of appeal,
21 with the Clerk of the Circuit Court of Montgomery
22 County, Mississippi, and have notified the attorneys
23 of record, the Circuit Clerk, and the Supreme Court
24 Clerk of my actions herein.

25
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27
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29

COURT REPORTER'S CERTIFICATE (CONTINUED)

I do further certify that my certificate annexed hereto applies only to the original and certified transcript and CD. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This, the 31st day of May, 2011.


NOELLE C. SKELTON, CSR 1356
OFFICIAL COURT REPORTER

COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI

COUNTY OF MONTGOMERY

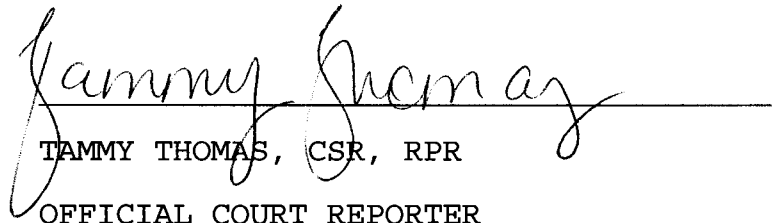
I, Tammy Thomas, Official Court Reporter for the Fifth Circuit Court District of the State of Mississippi, do hereby certify that to the best of my skill and ability I have reported the proceedings had and done in the trial of State of Mississippi v. Curtis Giovanni Flowers, being No. Cause Number 2003-0071-CR on the docket of the Circuit Court of the Fifth Judicial District of Montgomery County, Mississippi, and that the above and foregoing pages numbered 285-476, 786-952, 1048-1264, 1471-1642, 1643-1755, 1833-2005, 2267-2411, 2639-2826, 3119-3365, and 3491-3492, contain a true, full and correct transcript of my stenographic notes and tape taken in said proceeding.

This is to further certify that I have this date filed the original and one copy of said transcript, along with one c.d. of said transcript in pdf format, for inclusion in the record on appeal, with the Clerk of the Circuit Court of Montgomery County, Mississippi, and have notified the attorneys of record, the Circuit Clerk and the Supreme Court Clerk of my actions herein.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript and electronic disk. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the 3rd day of June, 2011.

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TAMMY THOMAS, CSR, RPR
OFFICIAL COURT REPORTER

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ATTENDANT THERETO: \$3,950.40